

AQL v AQM
[2011] SGHC 264

Case Number : OSF No 168 of 2010 (RAS No 84 of 2011)
Decision Date : 16 December 2011
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Julian Lim (JLim & Chew Law Corporation) for the plaintiff/appellant; Alfred Tan (Alfred Tan and Co) for the defendant/respondent.
Parties : AQL — AQM

Family Law

16 December 2011

Woo Bih Li J:

1 The parties were married on 22 May 2000. A daughter was born to them on 21 September 2008. The parties' relationship was breaking down even before the birth of the child. One week before the child's delivery, the wife left the matrimonial home to live with her parents. The wife and child have been staying with her parents ever since. Like most soured love, the relationship between the parties is now notably marked by acrimony. There have been mutual allegations of adultery. Each party accuses the other of not having the child's best interests at heart. They cannot even agree on which pre-school centre to send the child to.

2 This case is about care and control of that child, now three years old. Her parents are in the middle of a divorce. The husband's application for care and control of the child was taken out under s 5 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) as it was made before the start of the divorce proceedings. Before that application was heard, the husband filed two more summonses seeking interim care and control. The first asked for access from 5pm to 6pm from Mondays to Fridays, and from 1pm to 4.30pm on Saturdays; the second sought access from 9am to 6pm on Mondays to Fridays, and from 10.30am to 4.30pm on Saturdays. These summonses were heard on Christmas Eve 2010. The husband was granted interim access from 2pm to 6pm on Mondays and Thursdays, 4pm to 6pm on Tuesdays, Wednesdays and Fridays, and 10.30am to 4.30pm on alternate Saturdays.

3 On 3 May 2011, a District Judge ("DJ") of the Family Court ordered joint custody but gave sole care and control of the child to the wife. The husband was allowed liberal access every weekday from 2pm to 6pm and from 10.30am to 4.30pm on Saturdays including alternate public holidays. During the Chinese New Year holidays, the husband was allowed access from 2pm to 6pm on the eve, the first, and the second days. The husband was also allowed access to the child on Christmas day from 2pm to 6pm. No overnight access was granted, although the DJ held that the child could potentially spend nights with the husband once she was five years old.

4 The husband has flexible working hours so access to the child on weekday afternoons is not inconvenient to him. Hence the access arrangements allowed the husband ample time and opportunity to be involved in the upbringing of his child. But the husband was not satisfied. He wanted sole care and control of the child, so he appealed.

5 At the hearing of the appeal counsel for the husband, Mr Lim, informed me that his client was no longer seeking sole care and control of the child. Instead, two positions were advanced:

- (a) the husband should be granted *shared* care and control of the child; or
- (b) the husband should be given more access to the child – including overnight access on Friday nights.

I dismissed the appeal on 19 October 2011. The husband has filed an appeal to the Court of Appeal. I state below the reasons for my decision.

Shared care and control

Meaning

6 To understand what is meant by shared care and control, one must first know what “care and control” is. The Court of Appeal in *CX v CY* [2005] 3 SLR 690 (at [31] – [33]) explained that “care and control” referred to the right to take care of the child and to make the day-to-day decisions concerning the child’s upbringing and welfare. It seemed to me that this right stems from the fact that a care and control order also determines which parent the child lives with. The two go hand in hand – the parent with whom the child lives *must* have the right to make the decisions that arise from the day-to-day life of a child. In this way, care and control is distinguished from “custody”, which relates to more long-term decisions affecting the child’s welfare – *eg*, whether the child goes to Polytechnic or Junior College.

7 When *sole* care and control is granted to a parent, that parent becomes the child’s primary caregiver. To the child, home will be where that parent is. It is also inevitable that the parent with sole care and control will in most cases assume a strong position of influence in the child’s life, even if the child loves both parents equally. It is in this context that access to a child makes sense. A parent will usually be granted reasonable access to a child when that child does not live with him (or her). The reason is that it is in the child’s interests to have interaction with both of her parents.

8 What then, does *shared* care and control mean? Mr Lim for the husband was unable to point to a local case where that term has been defined. In my opinion, an order for shared care and control means that the child spends time living with *each* parent, who then becomes the child’s primary caregiver for the duration that the child lives with him (or her). The right to make the day-to-day decisions on the upbringing of the child therefore rests with the parent the child is presently living with. In the context of shared care and control, it becomes meaningless to speak of “access”. This is because the child effectively has *two* homes and *two* primary caregivers.

9 The practical effect of an order of shared care and control means that the child will spend roughly equal amounts of time (including overnight) with each parent. An order of shared care and control can take different forms depending on the circumstances. This is illustrated by two High Court decisions where shared care and control was ordered: in *AHJ v AHK* [2010] SGHC 148 the child would spend Saturdays 8pm to Wednesday 11.30am with the mother, and the rest of the week with the father; in *AKF v AKG* [2010] SGHC 225 the same learned judge held that the children would spend alternate fortnights with each parent.

The parties’ submissions

10 The husband advanced his position almost entirely on the basis that he was the superior care giver for the child. He gave a litany of reasons to support his claim. In particular, he emphasised that, unlike the wife, he had extremely flexible work hours and would be able to take care of the child throughout most of the day. In contrast, the wife conceded that despite obtaining flexible work arrangements from her company, she still had to be in the office most of the time. While she was in the office, her mother would take care of the child.

11 The husband also said that he could provide a better living environment for the child: his home was cleaner, and it was safer because furniture corner guards had been installed and power sockets concealed. The husband also underlined the child's eczema condition which he said was chronic but the wife denied the child had such a condition. Both parties were able to rely upon medical opinions supporting their respective claims.

12 I should mention that Mr Lim attempted to admit new evidence to support the husband's various allegations at the hearing. This primarily took the form of photographs and documents that were attached to his written submissions. Upon the objection of the wife's lawyer, Mr Lim accepted that no reference would be made to the new evidence.

13 The wife's reply was essentially that there was no reason to vary the DJ's order. I was referred to the case of *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 ("*Soon Peck Wah*") for the proposition that in the general case, a young child should not be deprived of his mother's love and care. The wife's lawyer also briefly raised the possibility that the parties might not co-operate if shared care and control was ordered.

No shared care and control

14 I dismissed the husband's appeal for shared care and control because he could not convince me that it was in the child's interests to make such an order. Three reasons led me to this conclusion.

15 First, there was no reason to doubt that the wife could discharge her parental duties capably. Apart from relying on the presumption of maternal love in *Soon Peck Wah*, the DJ referred to a confidential Social Welfare Report (SWR) that had been prepared for the proceedings below (at [6]):

The confidential SWR showed that both parties and their parents loved the child and wanted the best for her. However, the parties' acrimonious relationship stood in the way and it is imperative that the husband and wife shed this and work together for the benefit of the young child. The wife's mother had recently quit her job to help take care of the child. She was a trained child care teacher ... The child had a closer relationship with the wife because she was with her most of the time. The conditions of both parties' homes were satisfactory in terms of the space, safety and environment.

16 On the strength of that report, the DJ felt it was appropriate to award sole care and control to the wife. At the hearing before me, Mr Lim orally submitted that the SWR was flawed. His main reason was that the social welfare officer had visited the wife's *new* premises and had not had a chance to witness the allegedly deplorable hygienic conditions of the previous home. I could not understand this argument. Even if one assumed that the old home was not as clean as the husband would have liked, it did not follow that the new premises would inevitably reach the same state as the old.

17 The second reason was that the child is too young for a shared care and control arrangement. In my opinion, children of a young age require a certain constancy in their routine. Uprooting the child every 3 – 4 days (or even every fortnight) to a new home will be overly disruptive. Young children

require a familiar and secure base-camp to which they may retreat when confronted with the myriad challenges of growing up. A sense of dislocation may result where the presence of two competing primary caregivers results in the child feeling that she has none.

18 The third reason is closely allied to the second. The wife and husband appear to have markedly different ideas on how to bring up the child. In particular, the husband's love for the child manifests itself in a single-minded pursuit of what he feels is the best for his child. For example, he says in his fifth affidavit (at para 34) that he has taken, or intends to take his three year old child for enrichment classes, speech and drama, art and craft, and Chinese language classes. He has also tried to develop the child's musical ability through singing sessions with his mother, and has brought her to the supermarket to teach the child independence. In contrast, the wife's parenting style seems more laid-back and less insistent on endless "enrichment" sessions.

19 When a child is very young, a strong clash in parenting styles is something that is relevant when deciding whether shared care and control should be ordered. One may expect that a young child will be considerably stressed if forced to adapt to different expectations and approaches every few days. Such strain cannot be beneficial at such an early stage in the child's development.

20 This concern is exacerbated by the parties' seeming inability to compromise. One example illustrates this point. I was informed by counsel at the hearing that the child presently attends pre-school classes at *two* different centres. This is because each parent thinks he or she knows best and both refuse to budge. The result is an unsatisfactory arrangement where the child attends pre-school at one place from 10am – 12pm, and at a second place from 2pm – 4pm, every weekday. It was my fear that, if both have shared care and control of the child, each parent will pursue his (or her) own agenda for the child's development without taking into account what the child is enrolled in by the *other* parent. The worst case (but on the facts, not totally implausible) scenario will be where the child attends school at one place for half the week, and school at another for the other half.

21 For these reasons, I decided to err on the side of caution. In my opinion, at this stage in the child's development, her interests will be best served by awarding sole care and custody to one parent. That will at least allow the child a certain measure of stability and consistency in her development. The husband conceded at the hearing that he was no longer arguing for sole care and control of the child. It followed that once I rejected the submission of *shared* care and control, the wife would have the sole care and control. But even if the husband had not made such a concession and after taking into account his numerous allegations, I would still have found that sole care and control ought to be granted to the wife. The maternal bond is given primacy; it cannot be displaced merely by showing that the husband might be more meticulous in his care of the child.

More access

22 Divorce is the new reality and the husband must realise that his access to the child will not be as unfettered as it would have been had the family remained whole – regardless of whose "fault" the divorce is. The breakdown of the family is something that the court has to take into account in deciding how to best balance the child's interests.

23 As it is, the father has been granted four hours of access to the child every weekday, and six hours on Saturdays. For the time being, this is adequate for meaningful interaction between child and father. Additionally, the husband has not specifically articulated *why* he needs more time or overnight access with the child. The impression I received from his fifth affidavit (paras 34, 58–63) and at the hearing was that he wanted more access not so that he could spend more time with the child, but to take her for more enrichment classes. Even if the husband was able to attend these classes with the

child, I doubted that time spent in this manner was in the best interest of the child. It seemed to me that the child was in danger of being overburdened with enrichment classes. For example, when the husband was granted interim access, he could have used the time to meaningfully build the father-daughter relationship, but he enrolled the child for classes instead. I was also concerned that the access from 2pm to 6pm might interfere with the child's afternoon rest, but as the wife did not raise this as an issue at the appeal, I did not pursue it.

24 In my opinion the child's interest in forming and maintaining a meaningful relationship with her father is adequately addressed by the amount of access time that is presently allowed to the husband for the time being. I was also of the view that bearing in mind the young age of the child, and that she had always spent the night with her mother, it might be traumatic for her to suddenly spend a night alone with her father. As the DJ noted, overnight access may be possible when the child is of a slightly older age. For these reasons, the husband's request for more and/or overnight access was denied.

25 Finally, this order was made near the end of the year. Different considerations may apply in 2012 when the child starts kindergarten. I have expressed my concern to the solicitors of the parties as to whether the child will be made to attend too many enrichment classes in the future.

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