IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2018] SGHCF 10

HCF/Youth Court Appeal No 2 of 2017

Between

UNB

… *Appellant*

And

Child Protector

… *Respondent*

GROUNDS OF DECISION

[Family law] — [Care and protection orders] — [Threshold for state intervention]

[Family law] — [Family Justice Courts] — [Relationship between Youth Court and Family Court]

UNB
v
Child Protector

[2018] SGHCF 10

High Court — HCF/Youth Court Appeal No 2 of 2017
Debbie Ong J
6 March 2018

26 July 2018

Debbie Ong J:

Introduction

1 The parenting of children is one of the most central family obligations regulated by family law in Singapore. Joint parental responsibility is placed on both parents during their marriage and persists even after the parents' married relationship has ended in a divorce: see s 46, Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter"). In general, in matters relating to the parent and child relationship, family life is kept within the private sphere unless there are legitimate reasons for the state to intervene, such as where parents have plainly failed in their fundamental responsibilities to the child. The Charter regulates the private care of children while another statute, the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA") regulates the public care of children. In both spheres, the welfare of the child is the paramount consideration. The present case raises the important question of how to achieve

the optimal balance between these two spheres of legal regulation. In particular, when should the state intervene under ss 4(*d*)(i) and 4(*g*) of the CYPA, where there are allegations of "emotional injury"? How should the role of the state be understood in the light of the Family Court's powers to manage parent-child relationships in private family proceedings?

2 In these written grounds, I shall refer to the appellant as the "Mother", her former husband as the "Father", and to both collectively as the "Parents". The Parents have two children ("the Children"), who were 14 and 10 at the time of this appeal.

3 In the proceedings below, the Child Protective Service ("CPS") of the Ministry of Social and Family Development applied for care and protection orders for the Children under s 49 of the CYPA. The Mother resisted the application. The Father did not contest the application, but took the view that state intervention was appropriate.

4 The District Judge ("DJ") agreed with CPS, holding that the Children were suffering "emotional injury" under ss 4(*d*)(i) and 4(*g*) of the CYPA. As a result, the DJ made several orders ("the Orders"). The court ordered that the Children were to be placed under the supervision of an approved welfare officer, which in this case is CPS. Furthermore, the Children were to reside with the Father, while their access with the Mother would be subject to the approval and review of CPS. The Parents were also placed under a bond to exercise proper care and guardianship. Dissatisfied with these Orders, the Mother filed the present appeal.

5 After considering the parties' submissions and evidence, I allowed the appeal and set aside the Orders. I also informed the parties that I would issue fuller grounds of my decision in due course.

Procedural history

6 The Parents married on 8 April 2000. The Mother commenced divorce proceedings against the Father on 24 December 2012, and the Interim Judgment of Divorce was granted on 8 July 2013. The Parents then filed various applications involving the Children's custody, care and control and access.

7 On 28 October 2013, District Judge Lim Choi Ming granted the Parents joint custody of the Children, with care and control to the Mother, and access (including overnight and public holiday access) to the Father. Notably, this order was a "consent order", granted on the basis of both Parents' consent to the terms.

8 The Children were first referred to CPS in August 2014, after allegations that the Mother had ill-treated them. However, CPS was not able to substantiate those allegations, and no further action was taken in respect of them. Around the same time, the Children began to live with the Father, and the Children's regular contact with the Mother ceased.

9 Thereafter, on 21 April 2015, District Judge Sowaran Singh ("DJ Singh"), in making orders for the ancillary matters of the divorce, granted joint custody of the Children to the Parents, with no orders on care and control, access and maintenance until the Parents and the Children have undergone counselling at TRANS SAFE Centre ("TRANS"). Meanwhile, the Father's applications for personal protection orders brought on behalf of the Children against the Mother (SS 1992/2014) and their maternal uncle (SS 1993/2014) were dismissed.

10 The Mother subsequently applied for sole custody, care and control of the Children with supervised access to the Father. On 2 February 2016, DJ Singh granted the Parents joint custody of the Children, with interim care and control to the Father, and access to the Mother by way of phone calls and Skype calls for half an hour, two days a week, for six months. This was subject to a review by the court on 2 August 2016.

11 At the review on 2 August, DJ Singh maintained the order for joint custody. He further granted the Father care and control, and granted the Mother Skype access for half an hour, two days a week. These orders would persist until the last day of October 2016. With effect from 4 November 2016, however, the Parents were to have joint care and control of the Children, with the Mother having overnight access, school holiday access and public holiday access to the Children.

12 On 4 November 2016, when the Children were scheduled to have their overnight access with their Mother, they refused to leave the Father's car. As a result, the Father admitted them to KK Women's and Children's Hospital. The Children were noted to be displaying post-traumatic stress symptoms. On 6 December 2016, they were referred to CPS.

13 On 27 December 2016, CPS applied to the Youth Court for care and protection orders. Interim orders for the Children were made by the Youth Court to place them under the supervision of an approved welfare officer, whilst they would reside with the Father. However, the Children's access with the Mother and/or significant others were to be subjected to the approval and review of the approved welfare officer. Subsequently, the DJ heard CPS' application for care and protection orders for the Children on 11 September 2017. Having found that the threshold of state intervention set out in s 4 of the CYPA was met, the DJ

made the Orders summarised at [4] above. As stated above, the Mother appealed against these Orders.

Decision below

14 The DJ considered that there were two broad issues for determination. The first was whether the Children were in need of care and protection under ss 4(*d*)(i) and 4(*g*), read with s 5(2)(*b*)(ii) of the CYPA, which are as follows:

> **When child or young person in need of care or protection**
>
> **4**. For the purposes of this Act, a child or young person is in need of care or protection if —
>
> …
>
> (*d*) the child or young person has been, is being or is at risk of being ill-treated —
>
> (i) by his parent or guardian; …
>
> …
>
> (*g*) there is such a serious and persistent conflict between the child or young person and his parent or guardian, or between his parents or guardians, that family relationships are seriously disrupted, thereby causing the child or young person *emotional injury*;
>
> …
>
> **Ill-treatment of child or young person**
>
> **5**.—…
>
> (2) For the purposes of this Act, a person ill-treats a child or young person if that person, being a person who has the custody, charge or care of the child or young person —
>
> (*a*) subjects the child or young person to physical or sexual abuse;
>
> (*b*) wilfully or unreasonably does, or causes the child or young person to do, any act which endangers or is likely to endanger the safety of the child or young person or which causes or is likely to cause the child or young person —

> (i) any unnecessary physical pain, suffering or injury;
>
> (ii) any *emotional injury*; or
>
> (iii) any injury to his health or development;
>
> …
>
> [emphasis added in italics]

15 In relation to s 4(*g*), the DJ found that there was serious and persistent conflict between the Children and the Mother, and that their relationship was seriously disrupted, thereby causing the Children emotional injury. The DJ premised this finding on the reports prepared by various professionals which were tendered by CPS, and the Mother's implicit acknowledgment in her affidavit that there were serious issues between her and the Children. As for s 4(*d*)(i) of the CYPA, the DJ found that the children were at risk of being ill-treated by the Mother. The DJ was of the view that there was a real risk that the Mother may, in her desire to see the Children, attempt to enforce access with them without adequately prioritising their emotional well-being, and thereby cause further emotional injury to them. The DJ took into account expert reports which state that the Children were fearful of the Mother and refused to see her, and that further access with the Mother could deepen the trauma experienced by the Children.

16 The second issue which the DJ had to determine was what care and protection orders would be in the best interests and welfare of the Children. In this regard, he found that a neutral placement for the Children would be less helpful in supporting them in their "recovery process" as compared to "a familiar and safe environment". The DJ noted that the Children were not entirely free from the influence of the Father in terms of how they viewed and responded to the Mother. However, the DJ accepted that CPS was guarding against any such potential negative influence from the Father by monitoring him and

devising a safety plan with him. The DJ thus held that at the time of his decision, it was in the Children's best interests to reside with the Father, instead of with the Mother or at a neutral location. The DJ also held that it was necessary to order, at least temporarily, that access between the Mother and the Children be subject to the approval and review of the approved welfare officer.

17 Finally, the DJ held that it would be in the Children's best interests for all parties to take active steps to facilitate and restore their contact and access with the Mother, so as to rebuild and restore their relationship.

Issues

18 The two main issues which arose for determination were:

(a) whether the Children were in need of care or protection under the CYPA, and in particular, under ss 4(*g*) and 4(*d*)(i), read with s 5(2)(*b*)(ii); and

(b) if so, whether the care and protection orders made were in the Children's welfare.

19 I was of the view that the requirements in the CYPA were not met, and allowed the appeal. At the hearing, I pointed out to the parties that even without a care and protection order, the Children's welfare would still be at the forefront of the court's consideration in family proceedings. I also emphasised that the Family Court has powers to direct updated independent reports on the Children, make counselling orders and well-calibrated care and access orders. I elaborate on these below.

Threshold for state intervention

The law on care and protection orders

20 In determining whether the Children were in need of care and protection, the starting point must be the words of the relevant provisions in the CYPA, which have been set out at [14] above.

21 At the hearing, CPS confirmed that it was not relying on any allegations of physical abuse or ill-treatment of the Children by the Mother, which were in any event unsubstantiated. Instead, their case was premised on the "emotional injury" allegedly suffered by the Children. As a result, the important issue in this appeal is how the term "emotional injury" in ss 4(*g*) and 5(2)(*b*)(ii) ought to be interpreted. The Mother submitted that there must be a "likelihood of *significant* harm" [emphasis added] to the child in question before the state may intervene, while CPS, relying on the relevant parliamentary debates, submitted that the term ought not to be restrictively interpreted. CPS also pointed out that there are legislative safeguards which protects against unwarranted intrusion on parental rights.

22 An interpretation that would promote the purpose of the legislative provision at hand is preferred to one that would not promote such a purpose: s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed). In determining the purpose, "primacy should be accorded to the text of the provision and its statutory context over any extraneous material", such as parliamentary debates: *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [43]. In this regard, it is important to note that s 3A(a) of the CYPA states:

> **Principles**
>
> **3A.** The following principles apply for the purposes of this Act:

> (*a*) the parents or guardian of a child or young person are primarily responsible for the care and welfare of the child or young person and they should discharge their responsibilities to promote the welfare of the child or young person; …

23 It is also noteworthy that the other grounds for making care and protection orders in s 4 are limited, such that the threshold for state intervention is set at a relatively high level. The grounds may be grouped as follows:

(i) a child effectively has no parent or guardian providing for or supervising him (ss 4(*a*) to 4(*c*));

(ii) no effective action is being taken to at least preserve the child's health or development (ss 4(*e*) and 4(*f*));

(iii) the child is, at the very least, in danger of a relevant offence, as defined under the CYPA, being committed against him (s 4(*h*)); and

(iv) the child is wandering without any settled place of abode and without visible means of subsistence, begging or receiving alms, engaged in carrying out undesirable activities, or using an intoxicating substance for the purpose of causing in himself a state of intoxication (s 4(*i*)).

24 Thus, while it is clear that the purpose of s 4 of the CYPA is to ensure that children are protected and well cared for, the statutory context, which includes s 3A and the other relevant provisions in s 4, demonstrates Parliament's recognition of the primacy of the parents' role, and the state's more limited role in parenting children in this context. It is unlikely that Parliament intended to empower and task CPS with the mandate to intervene whenever a child is suffering from some emotional injury, no matter what the extent.

25 This view is consistent with the speeches made during the parliamentary debates at the second reading of the Children and Young Persons (Amendment) Bill in 2001 ("the 2001 Debates"), which, when passed, expanded the definition of child abuse to include emotional or psychological abuse. For instance, Mr Abdullah Tarmugi, the Minister for Community Development and Sports, stated as follows (*Singapore Parliamentary Debates, Official Report* (20 April 2001) vol 73 at col 1613):

> … [T]his Amendment Bill aims to improve the care, protection and rehabilitation of children and young persons. These amendments make the legislation more flexible and ensure parental responsibility and participation in the rehabilitation process. Parental responsibility is especially important, as parents must ultimately be the carers, nurturers and protectors of our children and young people. So they must take this responsibility seriously and *the state should step in only as a last resort* [emphasis added].

26 This was echoed by Mr Charles Chong at col 1616:

> … However well-intentioned the provisions of the Bill may be, I think we should be cautious in handling issues related to the family and *guard against the state inadvertently taking over responsibilities in the upbringing of children* that rightly should be left with the family. *Intervention in family matters should be done only as a measure of last resort*, and I am delighted to hear the Minister share this view [emphasis added].

27 In fact, many other members of parliament had expressed reservations over the apparently broad definition of "emotional injury". Associate Professor Chin Tet Yung spoke at col 1619–1620:

> Ill-treatment is widely defined to include emotional injury or injury to the child's health or development. Development itself is widely defined to mean physical, intellectual, emotional, social or behavioural development. Sir, these new terms vastly extend the scope of the legislation and will give rise to several problems, quite apart from the open textured nature of the words used. For instance, reasonable people may disagree as to when a child may be said to be in need of protection. …
>
> …

> … There must be a serious attempt to set out clear guidelines as to how these new provisions are to be interpreted and applied. Without such guidelines, I worry that parents and guardians may be wrongly subjected to investigations which may, in turn, give rise to undeserved social ostracism or misunderstanding. In our society, where family values are so enshrined, it would be particularly reprehensible for a parent or guardian to be wrongly accused of ill-treating his child.

28 Similarly, Dr S. Vasoo warned at col 1614–1615:

> … [U]nlike physical abuse, psychological abuse is an area which is very contentious and very difficult to establish. Therefore, I think there are likely to be disputes between the Ministry and the parents in terms of what and how one establishes psychological abuse. This issue has to be looked into very carefully…

29 The 2001 Debates therefore make evident that Parliament was aware of the dangers of inappropriate intervention, and viewed that state intervention should be a measure of last resort.

30 CPS brought to my attention the following excerpt from the speech of Minister for Community Development, Youth and Sports, Dr Vivian Balakrishnan (*Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 at col 2130), which appears to indicate otherwise:

> There have also been questions of what constitutes emotional and psychological abuse. I know that is difficult to define easily but, again, I would go on a practical basis and I think that anything that causes damage to the behavioural, social, cognitive, affective or physical functioning of a child, including things like terrorising a child, rejecting or degrading a child, isolating, exploiting or corrupting a child would constitute emotional or physical abuse. I think most Members here, in this House, would agree with that definition.

31 I do not think that the Minister intended that the state should have powers to intervene whenever the child has suffered some emotional injury, regardless of its extent and the nature of the family circumstances. This is, in

my view, clear from an earlier part of his speech at col 2129, where he emphasised the limited role of the state:

> … I would also go on to emphasise what I said earlier, that the removal of a child is *the last resort*. In fact, even if you were to look at this purely from a utilitarian perspective, it is far more efficient, far more effective and, ultimately, also the morally right thing to do, to bring up a child *within the context of an intact family*. [emphasis added]

32 Indeed, if one were to take the Minister's words at [30] literally, exposing a child to a parent's habitual smoking and resulting second-hand smoke would amount to abuse, because that would cause damage to the "behavioural" or "physical functioning" of the child. Such a result could not have been intended.

33 If a broad reading of "emotional injury" were adopted, the state may intervene when for instance, a child witnesses his parents frequently quarrelling or when a child has a parent who suffers from some symptoms of depression: see Debbie Ong Siew Ling, "The Quest for Optimal State Intervention in Parenting Children: Navigating Within the Thick Grey Line" [2011] Sing JLS 61 ("*The Quest for Optimal State Intervention*") at p 82. In my view, Parliament could not have intended to confer on CPS such an exceedingly wide ambit to intervene in the parenting of children.

34 Such a broad reading of the term "emotional injury" was rejected by V K Rajah JA in *ABV v Child Protector* (Magistrate's Appeal No 244/2009/02) ("*ABV(HC)*"). That was an appeal against the decision of the Juvenile Court (as the Youth Court was then known) in *ABV and Another v Child Protector* [2009] SGJC 4 ("*ABV(JC)*"). The relevant facts can be found at the following paragraphs of the Juvenile Court's written grounds of decision:

Case concerning the Child

…

10 Disturbing facts were disclosed about the Mother by the Child's schools, who informed the CPS that they were concerned over the Mother's insight and ability to meet the Child's developmental needs. For example, whilst in pre-school the Mother disallowed teachers from changing the Child's diapers even if it was soiled but was also against the idea of toilet-training the Child, who was then already 5 years old. They were not allowed to change the Child's school uniform even if it was very wet or dirty. This controlling behaviour continued even after the Child went to primary school and she was still made to wear diapers in primary two. But when questioned by the doctor who examined her during the school health screening exercise, the Mother said that there was no medical reason for her to continue w earing diapers.

11 Schools which the Child attended repeatedly complained that the Mother would harass and question teachers over minute details regarding the Child. This caused a lot of frustration, distress and even fear amongst the school staff, including the canteen vendor and members of the parents' support group. When unhappy, the Mother would write letters of complaint to the Ministry of Education, Ministry of Finance, the Prime Minister's Office and the press – much in the same way she reacted when she dealt with affairs concerning BM.

Impact on the Child

12 The Child has an unhealthy fear of the Mother, even though they shared a close relationship. She seemed constantly worried that the Mother would interrogate her over what happened in school, much in the same way BM was. The Child follows the Mother's instructions to a T but ostentatiously out of fear. According to the CPS, this restricted the Child's developmental potential and ability to be spontaneous and free in her learning and interaction with her peers.

13 The Mother's difficult personality and demanding attitude had made it necessary for the Child to change schools frequently and this is detrimental at a stage when the Child needed stability, continuity and predictability in her life. The Mother's antagonistic and adversarial ways also make it a challenge for various community-based professionals to work with her.

35 Like the present case, there was no allegation of physical abuse in *ABV(JC)*. Rather, CPS was in that case concerned over the long term

psychological impact on the child. The Juvenile Court agreed with CPS and committed the child to a place of safety under s 49(1)(*c*) of the CYPA for three months, and ordered that the child and parents receive counselling and psychological services. It took the view that otherwise, "the Mother would make it practically impossible for any objective and holistic assessment to be made on the Child": see [14] of *ABV(JC)*. The parents' appeal against those orders was allowed by Rajah JA, who ordered that the child be returned to the parents. According to a media report, Rajah JA warned that "[t]he removal of a child from the parents is a very drastic remedy that should be resorted to only when there is a real fear of imminent physical or psychological danger": see Selina Lum, "Child ordered to be returned to her mother", *The Straits Times* (6 October 2009), cited in *The Quest for Optimal State Intervention* at p 71.

36 I find *ABV(HC)* to be particularly instructive, because the facts in that case could be argued to fall within the expanded scope of ss 4 and 5 of the CYPA, as the child could have suffered some injury to her long term development if the mother continued to be excessively controlling over her and antagonistic towards the school teachers. The decision of Rajah JA cautions against using a blunt instrument in cases which do not necessitate it. This is not to say that the court does nothing; in that case, counselling and therapy were ordered to support the family.

37 The common thread in the parliamentary speeches and the case law is that the state may not intervene just because the child may be suffering from some emotional injury, regardless of its extent and the family circumstances. On the contrary, the state should only intervene as a last resort. Thus a court determining a case under ss 4(*d*)(i) and 4(*g*) of the CYPA should consider if the nature of the risk and the extent of the emotional injury in question is such that a blunt instrument of last resort is justified.

Application of law to the present facts

Parties' arguments

38 In the present case, the Mother submitted that the threshold for state intervention under s 4 of the CYPA had not been met. In particular, she submitted that DJ Singh's order granting her overnight access, school holiday access and public holiday access to the Children with effect from 4 November 2016 evidenced the DJ's belief that there were no "safety issues". Furthermore, she pointed out that the Children had grown up in her family home with the maternal grandmother and maternal uncle from 2004 to 2014.

39 In addition, she submitted the CPS reports failed to provide a balanced view of the relationship between the Mother and the Children because CPS relied mainly on the accounts of professionals engaged by the Father who did not interview her for her account of her relationship with the Children.

40 The Mother further submitted that the Child Representative's Report ("the CR Report") and the social reports prepared by TRANS ("the TRANS Reports") provided valuable background for this case, because the CR and TRANS were court-appointed. While the CR recognised that the Children did not have a comfortable relationship with the Mother, she still thought that they must continue receiving counselling to safeguard their wellbeing and to facilitate restoring their contact with the Mother. The CR had noted that between February 2014 and May 2014, the younger child, for instance, still expressed love towards the Mother, but between February 2015 and July 2015, the Children were unable to recall any positive interactions with the Mother from the time even before the Parents' divorce. The CR thus concluded that "[t]he state of the Mother-[C]hildren relationship worsened after they started living with [the] Father in August 2014." The CR was also of the view that "the

[C]hildren's [negative] views of the Mother and the restoration of contact with her are absolute with such rigidity that they are deemed unusual", and observed that "[i]t appears that [the] Father has deliberately or unconsciously interfered with [the] Mother-[C]hildren bond." In fact, the CR submitted that "[t]he [C]hildren's continued stay with [the] Father will probably delay and worsen the chances of restoration of the Mother-[C]hildren relationship".

41 The TRANS Reports state that the Children consistently alienated and rejected the Mother, and highlights that the Children's rejection of the Mother was "unusual" and might be more intense than expected. Nevertheless, TRANS assessed that a future therapeutic goal for the family would be to facilitate meeting sessions between the Mother and the Children, and recommended that a longer period of access be granted to each parent to facilitate and strengthen parent-child bonding. TRANS also proposed that the Parents "be ordered to strictly adhere to the access order". In a similar vein, the Mother claimed that the Father alienated the Children from her, polarised them against her, and embroiled them into a loyalty conflict between the Parents.

42 The Mother further relied on the views of Dr D, an independently appointed expert, who found that the Children did not suffer from any medical or psychiatric condition other than a parent-child relationship problem. In addition, she emphasised that the therapists whom the Father hired had also confirmed that the Children were doing well under her care before the Father "abducted" the Children on 14 August 2014.

43 On the other hand, CPS submitted that the Children were in need of care or protection under s 4 of the CYPA. CPS adopted the DJ's reasons for making the care and protection orders: see [14]–[17] above. CPS submitted that the Orders were made in the Children's best interests, and were appropriate in view

of the type of emotional harm caused, the imminence of further harm and both Parents' rights and responsibilities.

44 The Father denied that he had "brainwashed" the Children, and claimed instead that he was the one who had tried to co-operate and pro-actively involve the Mother in the Children's lives. He maintained that the Mother had physically harmed the children, and submitted that CPS should be allowed to do what was necessary to help the Children, without the Mother's interference.

My decision

45 The DJ's grounds of decision have been summarised at [14]–[17] above. In my view, the Children were not suffering from such emotional injury that justified state intervention from CPS. However, the Children were in need of the Family Court's intervention.

46 The DJ relied on the following professional reports in coming to his conclusion that s 4(*g*) of the CYPA was satisfied:

(a) Ms E, Child Psychotherapist, XXX –

In Ms E's separate reports on the Children dated 16 January 2017, the Children were noted to be in a state of "chronic stress" and "anxiety", which "persisted for a few years". Their mental health was noted to be "highly at risk". They were observed to have "negative and unresolved issues" with the Mother, where they felt "forced to engage…causing the further deterioration of their relationship."

(b) Dr F, Consultant Psychiatrist, XXX –

In Dr F's separate reports on the Children dated 10 January 2017, the Children were found to be "very negative and frustrated" about their mandatory interactions with the Mother, and there were "unresolved feelings of fear, anger and anxiety/distrust" towards the Mother.

(c) Dr G, Consultant Psychiatrist, XXX –

In Dr G's medical memo dated 2 November 2016, it was stated that the Children were suffering from "Post-Traumatic Stress Syndrome" and they are "at risk of further psychological trauma if the overnight visit (with the Mother on 4 November 2016) were to go ahead as scheduled at this time." Subsequent medical reports from Dr G dated 20 February 2017 concluded both the Children were "suffering from post-traumatic stress disorder".

(d) Ms H, Clinical Psychologist, XXX's Psychosocial Trauma Support Service –

In Ms H's reports dated 9 February 2017 and 21 February 2017 for GCC and GCD respectively, the Children were reported to have experienced distress symptoms, including "significant distress", "fear", "body symptoms", in response to the thought of meeting the Mother.

(e) Dr D, XXX –

Reports by Dr D for the Children dated 17 April 2017 diagnosed the Children's medical/psychiatric condition as "Parent-child relationship problem", which is "unlikely to show improvement if no active intervention measures or parental cooperation to reduce their conflict and the fear in the child" are taken. The Children were also observed to be "vulnerable" to "emotional and behavioural problems". Both the

> Children were noted to "reject contact" with the Mother, which could be "harmful and painful" for the Children and the Mother, which would in turn "risk [the Children] having trouble with [their] own relationships and self-esteem".

47 These reports undoubtedly show that the Children were emotionally distressed. I note that other than Dr G, the professionals were consistent in opining that the Children were anxious, fearful and frustrated, without stating that they were suffering from any serious psychiatric or psychological disorders. For completeness, I note that while Ms H verbally informed CPS on 4 November 2016 that the Children "had symptoms consistent with post-traumatic stress", she did not diagnose the Children with post-traumatic stress disorder in her reports dated 9 and 21 February 2017.

48 I had some concerns in respect of Dr G's report. First, whilst Dr G met the Children in November 2016, he did not meet them since. Instead, in preparing his reports dated 20 February 2017, Dr G relied on secondary evidence such as medical records and the meeting minutes of a multi-agency case discussion. Indeed, Dr G even conceded that he could not "comment about latest clinical status". This can be contrasted with the report prepared by Dr D, who interviewed the Children before preparing his reports dated 17 April 2017, and was thus in a better condition to assess the Children's medical condition. Pertinently, Dr D's only medical diagnosis was that the Children were suffering from "parent-child relationship problem". Second, I note with some concern that Dr G, unlike Dr D, did not appear to have interviewed the Mother before preparing his recommendations. In a case like this, where one parent is alleging that the other parent has been alienating the children from him or her, it would be desirable for both parents and the children to be interviewed, so that the professional can take a holistic view of the issues facing the family. Therefore,

having regard to all the reports available to the DJ, I was of the view that while the Children were emotionally distressed, this was not a case where state intervention was the only option.

49 In my view, s 4(*g*) of the CYPA was not satisfied. I pause here to make some further observations on s 4(*g*). It appears to have been assumed by the DJ and the parties that the threshold in s 4(*g*) would be satisfied as long as there was a conflict between the child and the parent leading to disruption of family relationships and emotional injury. It is questionable whether this was intended by Parliament. I illustrate my point by the following hypothetical: suppose a 15-year-old teenaged girl experiences emotional turmoil after a failed boy-girl relationship. The teenager feels that her parents do not understand her troubles, and her parents' attempts at helping and engaging her result instead in a gravely deteriorating relationship between teenager and parents. The parent and child relationship then worsens into open conflict and hostility. On a literal reading of s 4(g) of the CYPA, the requirements in s 4(*g*) appear to have been satisfied. It would however be incongruous for CPS to intervene to remove her from her parents under these circumstances. On the contrary, this teenager needs her parents to guide and support her through this difficult period. My point is that the presence of "serious and persistent conflict between the child … and his parent" in itself, does not, without more, warrant the use of a blunt instrument of state intervention and should not be interpreted in this way.

50 I emphasise at this juncture that it does *not* follow that just because state intervention involving CPS is not warranted, the Family Court's intervention is also not warranted. On the contrary, the Family Court is best placed to make orders necessary to protect the Children's welfare.

51 As for the application of s 4(*d*)(i) of the CYPA, I was also not persuaded that the Children were at such risk of being ill-treated by the Mother. I note that the only purported acts of ill-treatment were the Mother's attempt to enforce access orders to see her Children: see [15] above. In other words, the conflict between the Children and the Mother stem from the difficulties in carrying out the access orders, which, in my judgment, hardly warrants state intervention. Her desire to see the Children is not in itself harmful; in fact, in ordinary circumstances, a mother's desire to see her children is a wonderful thing. It is in the context of the Children's apparent rejection of her that CPS and the Father have alleged her desire and attempt to see them as emotionally abusive. I accept that at this time, assistance is required to improve the relationship of the Mother and the Children. Unfortunately, it is not unusual for children of divorced parents to experience emotional turmoil as a result of conflicting loyalties. As I explained to parties during the hearing, there are many cases that come through the Family Court where the children are emotionally distressed; the state is not involved in the overwhelming majority of those cases, but the Family Court is empowered to grant legal remedies, using a multi-disciplinary approach, to assist these families.

Welfare of the Children

52 To provide guidance in future cases, I will give my views on whether the orders made were in the welfare of the Children, beginning with some observations on the roles of the Family Court and Youth Court in safeguarding the welfare of children.

Relationship between Youth Court and Family Court

53 By way of background, s 5 of the Family Justice Act 2017 (No 27 of 2014) ("the FJA") established two subordinate courts within the family justice

system: the Family Court and the Youth Court. The Family Court has jurisdiction over matters pertaining to divorce (s 26(2) FJA, read with s 22(1)(*a*) FJA and s 17(1)(*a*) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)), which are essentially private proceedings involving spouses. In contrast, the Youth Court has jurisdiction over CYPA matters (s 35(1) FJA), which include child protection proceedings, where the state is involved. Central and common in those proceedings is that the welfare of the child is the paramount consideration: see s 125(2) of the Charter and s 3A(b) of the CYPA.

54 In some cases, such as the present one, there may be concurrent proceedings in the Family Court and the Youth Court involving the same children. CPS submitted that where this happens, the Youth Court is not barred from making care and protection orders which may even be inconsistent with existing orders on custody, care and control and access. This is because in the Family Court, "[c]ustody, care and control orders arise from the matrimonial dispute between private parties", and the court decides "the parental rights and responsibilities as between each parent towards the child". The Youth Court, on the other hand, "decides what orders are necessary for the child's care and protection" and where there is a "conflict between a parent's rights and responsibilities and what is in the child's welfare and best interests… the child's interests will be first and paramount".

55 As I have explained above, the child's welfare is paramount whether the proceedings are heard in the Youth Court or the Family Court. It is therefore not helpful to characterise the issue as a conflict between parental rights and responsibilities on one hand and the child's welfare on the other, as a distinct matter from what is necessary for the child's protection. It is also not accurate to state that the Family Court focuses on issues of "parental rights", because the

focus in family proceedings where a child is involved is always on the child and not the parent: see also *BNS v BNT* [2017] 4 SLR 213 at [84].

56 As I pointed out in an earlier, unrelated decision in *AZB v AZC* [2016] SGHCF 1 at [24], the court may also obtain updated independent reports on the children, such as a Custody Evaluation Report, Access Evaluation Report and specific child issues reports, with the assistance of professionals from the appropriate disciplines. Further, the court may appoint assessors under ss 27 and 28 of the FJA. These can include a registered medical practitioner, psychologist, counsellor, social worker or mental health professional to examine and assess the child for the purposes of preparing expert evidence for use in proceedings. In addition, Rule 30 of the Family Justice Rules 2014 (S 813/2014) provides that the court may appoint a Child Representative, whose role is to "represent the child's views and best interests in court proceedings, thus helping to ensure that the decisions eventually made by the court are in the child's best interests". The Family Court is well-equipped to ensure that the welfare of children is safeguarded in those circumstances.

57 There will be situations where the nature of the risk to the children is such that state intervention is warranted. These commonly involve care and protection orders made where *neither* parent is a fit parent. The harm from which the children are being protected may be physical or sexual abuse by the parent, or may involve significant psychological or emotional abuse. Where the allegations relate only to psychological abuse, or where there is suspicion that the children have been coached by a parent to make allegations against the other, the court must subject the evidence to sufficient scrutiny before determining whether state intervention is warranted. As has been observed, "[w]here it is unclear whether parents have failed to protect their children or ill-treated them, there is an area of uncertainty, a 'thick grey line' within which the state should

be very circumspect in the measures used to protect the children": *The Quest for Optimal State Intervention* at p 62.

Whether the Orders were in the Children's welfare

58 I was of the view that the Orders were not in Children's welfare and best interests. The Orders have been summarised at [4] above. The effect of the Orders was to grant sole care and control to the Father while restricting access to the Mother. The Mother pointed out that in the past 14 months, CPS facilitated only 14 calls with the older child and 12 calls with the younger child, each lasting about 5 to 15 minutes. The Mother did not see the Children during that period. The Mother argued too that telephone contact alone was unsatisfactory as it only permitted one dimension of interaction, *ie*, conversations. In this sense, the effect of the Orders was to override the order of DJ Singh dated 2 August 2016, in which he granted the Mother overnight access, school holiday access and public holiday access to the Children: see [11] above.

59 In my view, such intervention by the state under the CYPA was not necessary and in fact carried a risk of negative effects, which I explain below. The problems arising from the Mother's attempts to enforce access to the Children could have been addressed first by the Family Court. For instance, the Family Court could have varied the order on access, on the ground that there was a material change in circumstances or because it was unworkable. It could also have directed parties to receive professional help with the aim of restoring the Mother's relationship with the Children. I also observe that in this case, CPS had determined that the Father was a sufficiently fit parent with whom the Children were to reside. In my view, where one parent is capable of caring for the child, state intervention will rarely be warranted unless, for example, that fit

parent is also determined to be unable to protect the children from being further harmed by the unfit parent.

60 It was of concern to me that in the present case, state intervention risked entrenching the *status quo* at that time of parental conflict. This case is unlike the more typical situation where CPS removes a child from both parents. Instead, by leaving the Children in the care of the Father while limiting the Mother's access, the state and the Father were aligned with each other in their stance that the Mother was an unfit parent by causing the Children emotional harm. As CPS had itself recognised, the Parents needed to "address their poor communication with each other and to work on their ability to co-parent [the Children]", and that "[t]heir poor communication pattern has affected the intervention for the children and themselves". By this alignment, the Father may have perceived that his views have been vindicated, rendering him even less likely to co-operate with the Mother. At the same time, the Children's negative perception of the Mother may have been reinforced by the impression that even the state has chosen to align with the Father's views. As a result, the prospects of restoring the Children's relationship with the Mother could have been severely undermined.

61 In making these observations, I do not doubt that CPS had acted professionally and independently, and that they had the welfare and interests of the Children in mind.

Conclusion

62 For the above reasons, I allowed the Mother's appeal and set aside the Orders. However, I did not restore the previous access orders. I note that the Parents have separately applied for sole custody, care and control of the

Children. These issues will therefore be determined by the Family Court in those proceedings.

63 I also made the following orders:

(a) The Mother's physical access to the Children shall be stayed. CPS shall continue arranging access between the Mother and the Children in a way that promotes reunification.

(b) CPS is to transfer the access arrangements to Divorce Support Specialist Agency ("DSSA") and update the Family Justice Courts ("FJC") within one month of from the date of this order.

(c) Access review is to be fixed in the FJC.

(d) DSSA is to provide to the FJC a report on counselling of the Mother.

64 I conclude by reminding the Parents of s 46 of the Charter, which provides that "[u]pon the solemnization of marriage, the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children." It is clear that this parental responsibility persists beyond the termination of the parents' marriage. This is not just a moral expectation but a *legal* one as well. The Father must actively support the Children to rebuild their relationship with the Mother. This may require a significant change in his mindset and attitude towards how to work for the best interests of their children. As for the Mother, she will need to be patient, understand that the process of restoration will take time, and give her best to work cooperatively towards the Children's welfare. I encourage this family to remain hopeful even though the journey may not be easy.

Debbie Ong
Judge

The appellant in person;
Faith Boey (Attorney-General's Chambers) for the respondent.