

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGHCF 20

District Court Appeal No 98 of 2018

Between

TEN

... Appellant

And

TEO

... Respondent

District Court Appeal No 99 of 2018

Between

TEO

... Appellant

And

TEN

... Respondent

In the matter of Divorce Suit No 6206 of 2012 (Summons No 117 of 2017 and
Summons No 1440 of 2018)

Between

TEN

... Plaintiff

And

TEO

... *Defendant*

GROUPS OF DECISION

[Family Law] — [Custody] — [Care and control]

[Family Law] — [Custody] — [Access]

[Family Law] — [Maintenance]

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**TEN
v
TEO
and another appeal**

[2020] SGHCF 20

High Court (Family Division) — District Court Appeal Nos 98 of 2018 and 99 of 2018

Debbie Ong J

20 March, 21 October 2019, 15 July 2020; 18 August 2020

23 November 2020

Debbie Ong J:

Introduction

1 The appeals before me were cross-appeals of the parents (“the Mother” and “the Father”) against the decision of the district judge (“DJ”) on custody, care and control, access and maintenance in relation to their two daughters, who are now 16 and 13 years of age (“the Children”). HCF/DCA 98/2018 (“DCA 98”) was the Mother’s appeal and HCF/DCA 99/2018 (“DCA 99”) was the Father’s appeal.

2 Both appeals formed part of a long-drawn and acrimonious parental dispute that began in the courts in 2012 when the writ for divorce was filed. The parents have remained locked in battle over the Children ever since. They have

appeared in both the Family Court and the High Court (Family Division) numerous times for various matters.

3 In these appeals, I ordered that the Mother and the Father were to share joint custody of the Children. The Children were to remain in the care and control of the Father who was also ordered to facilitate the Mother's access to them. While it was in the Children's interest to restore the relationship with their Mother, I did not think it was beneficial for their welfare presently to "force" them to reconnect with the Mother right now.

4 I first heard the parents on 6 March 2018 in HCF/YA 2/2017 ("YA 2"), which was the Mother's appeal against the decision of the Family Court to grant the application of Child Protective Services ("CPS") for care and protection orders over the Children, under s 49 of the Children and Young Persons Act (Cap 38, 2001 Rev Ed) ("CYPA"). Under those orders, the Children were to reside with the Father and access to the Mother was subject to the approval and review of CPS. I set aside those orders and in my decision, reported as *UNB v Child Protector* [2018] 5 SLR 1018 ("*UNB*"), I reminded the Mother and the Father of s 46(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("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". I urged the Father to actively support the Children in rebuilding their relationship with the Mother, and encouraged the Mother to be patient, to understand that the process of restoration would take time, and to give her best to work co-operatively towards the Children's welfare (*UNB* at [64]).

5 It is unfortunate that the relationship between the Mother and the Children has still not been restored to date. At the time of my decision in the

present appeals, the Mother had not had any meaningful contact with the Children since August 2014 (when they would have been about ten and seven years old). The Court of Appeal recently said in *VDZ v VEA* [2020] 2 SLR 858 (“*VDZ*”) that the family justice system is “intended to aid the parties (and their children) to achieve as much healing in all its variegated aspects as is possible in order that they move forward as positively as possible with their lives” (at [75]). The conduct of these proceedings is a reminder that while the family justice system will fully support the families in moving forward, particularly in respect of matters affecting children, it is the *personal responsibility* of all parents to place the interests of their children at the forefront of all their concerns.

Background

6 The earlier legal proceedings between the parents are set out in the judgment in *UNB* at [6]–[13]. The following paragraphs set out only the brief background relevant to the present appeals.

7 Shortly after divorce proceedings were commenced in 2012, both parents filed various applications involving the custody of the Children. In May 2013, an order was made granting joint custody of the Children to both parents, with care and control to the Mother and access to the Father. A *consent order* was reached in the divorce proceedings on 28 October 2013 on substantially the same terms (see also *UNB* at [7]). This position remained unchanged until August 2014, when both parents filed separate applications for sole custody, and care and control of the Children. Those applications arose out of certain incidents in August 2014 that led to the Children being hospitalised, allegedly because the Mother had hurt them. The Father made a police report and CPS was contacted. However, as the allegations of ill-treatment were

unsubstantiated, no further action was taken. Around that time, the Children's regular contact with the Mother ceased (*UNB* at [8]).

8 After various applications by both parents and the appointment of a Child Representative by the Family Court, on 2 February 2016, the Family Court made an interim order that the parents were to have joint custody of the Children, while the Father had care and control of them. The Mother was to have access to the Children by way of phone calls and Skype calls. The court also fixed a review hearing six months later on 2 August 2016 (*UNB* ([4] *supra*) at [10]). At the review hearing, the Family Court made a final order that the parents were to continue to have joint custody of the Children, with care and control to the Father and access to the Mother over Skype until 4 November 2016. On that date, 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. This order will be referred to as "the August 2016 order" (*UNB* at [11]).

9 According to the Father, on 4 November 2016, the same day that the Children were supposed to commence overnight access with the Mother, they became hysterical and refused to leave his car. The Children were admitted to the hospital. On 6 December 2016, the Children were once again referred to CPS. This time, on 27 December 2016, CPS filed child protection proceedings seeking care and protection orders pursuant to the CYP A. Their case was premised on the emotional injury suffered by the Children, and not on any physical abuse or ill-treatment (*UNB* at [12]–[13] and [21]).

10 The Youth Court granted CPS's application as well as interim care and protection orders under which the Children were to reside with the Father. Access to the Mother was subject to the approval and review of the approved

CPS welfare officer. These interim orders were made final by the Youth Court on 11 September 2017 (*UNB* at [13]). Subsequently, the Mother appealed against that decision in YA 2.

11 Before the final care and protection orders were made, the Mother filed FC/SUM 117/2017 (“SUM 117”) on 9 January 2017 seeking the following orders:

- (a) The Mother shall be granted sole custody, and care and control of the Children.
- (b) The Father shall return the Children to the Mother forthwith.
- (c) The Commissioner of Police of the Singapore Police Force shall be directed to render all necessary assistance in the enforcement of the orders in procuring the handover and/or return of the Children back into the custody, care and control of the Mother.
- (d) The Father and/or his relatives or agents shall be restrained from contacting and/or physically removing the Children from the Mother’s custody without the Mother’s prior written consent.
- (e) Neither parent shall remove the Children from Singapore without an order of court or by prior written agreement of both parents.
- (f) The Mother shall continue to keep the Children’s passports, birth certificates and citizenship certificates.
- (g) The parents shall continue to undergo counselling and abide by the instructions of the counsellors at [“TCC”].
- (h) The parents shall not intrude into each other’s access time.

- (i) The parents shall not make any recording of any conversation with the Children or take or make photographs or recordings of the Children with the prior written consent of both parents.
- (j) The parents shall not make any negative comments about each other to the Children.
- (k) The Children shall not see any other counsellors or similar professionals other than court-appointed counsellors without the Mother's written consent.

12 The Father filed his own application also seeking custody, care and control of the Children. On 9 November 2017, the DJ determined that it was not appropriate to vary the August 2016 order or to make further orders on care and control and access while YA 2 was pending, and declined to make any orders (see *TEN v TEO* [2018] SGFC 17 at [49]–[51]). The Mother filed an appeal against that decision in HCF/DCA 156/2017 (“DCA 156”).

13 On 6 March 2018, I allowed the Mother's appeal in YA 2 against the care and protection orders (*UNB* ([4] *supra*) at [5]). I held that the requirements in the CYPA had not been met because the Children were not suffering from such emotional injury that justified state intervention from CPS (*UNB* at [45]). In particular, I was not persuaded that the Children were at such risk of being ill-treated by the Mother. The only purported acts of ill-treatment were the Mother's attempts to enforce access orders to see her children, and it was only in the context of their apparent rejection of her that CPS and the Father alleged that her conduct was emotionally abusive (*UNB* at [51]). I also highlighted that intervention by the State under the CYPA carried a risk of negative effects because it risked entrenching the status quo at that time of parental conflict, as

the State and the Father appeared aligned with each other, which might reinforce the Children's negative perception of the Mother (*UNB* at [60]). At the same time, I directed the Counselling and Psychological Services ("CAPS") of the Family Justice Courts to assist, including arranging access between the Mother and the Children in a way that promoted reunification, and to transfer the access arrangements to a Divorce Support Specialist Agency ("the DSSA") within one month (*UNB* at [63]). The family was referred to the DSSA on 11 April 2018, but it appears that DSSA did not have the opportunity to facilitate supervised access.

14 On 24 April 2018, less than two months after I set aside the care and protection orders, the Father filed FC/SUM 1440/2018 in the Family Court seeking the following orders:

- (a) The Father shall be granted sole custody, and care and control of the Children.
- (b) The Children's passports and birth certificates shall be handed to the Father within seven days of the court order.
- (c) The Father shall be at liberty to bring the Children overseas for holidays giving the Mother at least one week's advance notice together with the itinerary and accommodation details.
- (d) The Mother shall be ordered to attend and undergo psychiatric/psychological assessment to ascertain her ability to relate to the Children at the Institute of Mental Health ("IMH").
- (e) Pending the completion of the IMH report, all contact by the Mother with the Children shall cease, and in the meantime the Children

shall undergo counselling at DSSA to work out their issues pertaining to their relationships with the Mother.

(f) The Mother shall contribute 50% of the Children's maintenance with effect from August 2014.

15 On 26 June 2018, DCA 156 (being the Mother's appeal against the DJ's decision not to make any further orders in SUM 117) was fixed to be heard in the High Court (Family Division). The Father's counsel applied for the Father's application in SUM 1440 to be consolidated and heard together because it would be rendered moot by any decision made in DCA 156. SUM 1440 was at that time fixed to be heard by the DJ in the Family Court.

16 In light of my decision in YA 2, I considered it appropriate that both parents' applications be heard afresh by the DJ. In particular, it was highly relevant that the DJ's decision to make no orders on care and control in SUM 117 had been reached while the care and protection orders under the CYPA were in force. As I had disposed of YA 2 and set aside the care and protection orders, the DJ determining the care and control issues would no longer be constrained by the care and protection orders under the CYPA. I remitted SUM 117 to be heard together with SUM 1440 so that the DJ could consider the circumstances afresh and decide both parents' applications together.

The decision below

17 The DJ heard SUM 117 and SUM 1440 together and made the following orders on 13 September 2018 (see *TEN v TEO* [2018] SGFC 112 ("GD") at [1]):

(a) The parents shall have joint custody of the Children. For the purpose of joint custody, the Father shall discuss major decisions

relating to the Children with the Mother. In the event that the parents are unable to agree, the Father shall decide solely.

- (b) The Father shall have care and control over the Children.
- (c) The Mother shall hand over the Children's original passports and birth certificates to the Father within seven days.
- (d) The Father shall be at liberty to bring the Children overseas for holidays for up to one month by giving the Mother at least one week's advance notice, together with the full itinerary, contact and accommodation details of the place(s) the Children will be residing at.
- (e) The parents and the Children are to complete counselling sessions with the DSSA.
- (f) In the interim, the Mother shall have supervised access with the Children at the DSSA once a week for eight sessions, after which a report shall be submitted to the court by the DSSA and a review will be fixed by the court.
- (g) The Mother shall not be required to pay the Father maintenance for the Children.

18 In setting out the reasons for his decision, the DJ highlighted that no appeal had been brought against the August 2016 order on custody, care and control (referred to at [8] above): GD at [31]. Hence, the first issue was whether there had been a material change in circumstances that would necessitate a variation of those orders: GD at [34]. Given the state of the relationship between the Children and the Mother, the orders were unworkable and such unworkability constituted a material change in circumstances: GD at [36].

19 While the DJ did not exclude the possibility of the Father exerting some degree of influence over how the Children viewed the Mother, he held that there was a lack of clear and compelling evidence and grounds to make a conclusive finding that since the interim orders, the Father had been deliberately or wilfully alienating the Children from the Mother: GD at [38]–[40]. He found that the Mother had, by her own actions and behaviour post-August 2016, contributed to the Children becoming estranged from her. This behaviour included the manner in which the Mother interacted with the Children during Skype access sessions, and her acts of exposing them to the court order and related messages: GD at [44]–[45].

20 On the issue of custody, care and control, the DJ held that it was not in the Children’s best interests for custody and care and control to be awarded to the Mother solely as the Children were clearly not ready for such arrangements. The relationship between the Mother and the Children needed to be rebuilt, and to prematurely award sole custody and care and control to the Mother would, in all likelihood, have a strongly adverse effect on the Children: GD at [48]. Further, given the current state of the relationship between the Children and the Mother as well as the significant level of conflict and acrimony between the Mother and the Father, shared care and control was neither feasible, nor in the Children’s best interests. The DJ held that it was in the Children’s best interests and welfare that care and control be given to the Father: GD at [49].

21 The DJ was of the view that the Mother still cared for the Children and wished to be involved in their lives, and that it was not in the Children’s welfare for sole custody to be awarded to the Father. The DJ intended to send a message to both parents that, notwithstanding their differences, they should endeavour to communicate and discuss key matters and major decisions relating to the Children. However, if there was a deadlock after the discussions, the Father, as

the parent having care and control, would decide the matter. This was in order to avoid, or at least minimise, the likelihood of the parents having to make further applications to the court: GD at [52].

22 The DJ granted the Mother supervised access to the Children at the DSSA for eight sessions: GD at [53]. He declined to send the Children or the Mother for further assessment, or to order additional reports as it would be more suitable for the DSSA to make any follow-up arrangements, if necessary: GD at [54].

23 As a consequence of his decision to grant the Father care and control, the DJ also allowed the Father to keep the Children's birth certificates and passports so that the Father would not have to repeatedly request them from the Mother. This was in the hopes of minimising the likelihood of further disputes: GD at [56]. The Father was also allowed to bring the Children overseas provided that he kept the Mother updated of all the necessary details: GD at [57].

24 With respect to maintenance, the DJ noted that while both parents should be responsible for the Children's expenses after divorce, the Father did not provide any documentary proof of his job or earnings and there was no evidence that the Mother earned more than him or that he was unable to maintain the Children on his own. The DJ was also mindful of the likelihood of future disputes over issues of payment or enforcement of maintenance, and so declined to order the Mother to pay maintenance: GD at [59].

The present appeals

25 Both parents filed appeals against the DJ's orders. The Mother also filed an application to stay the execution of the orders so that she would not have to hand the Children's passports to the Father. This application was refused, and

she appealed against this decision in HCF/RAS 30/2018, which I heard and dismissed on 21 January 2019. At the hearing of that appeal, the Father's counsel agreed to keep the Children's passports on an interim basis until the court disposed of the present appeals.

26 When I first heard the present appeals on 20 March 2019, I noted that the reports on the Children that were available to the court were outdated. I directed the parents and the Children to attend "family conferences" to be fixed and managed by CAPS, and also directed CAPS to assess the state of the children, to identify how they had reached this extent of estrangement with the Mother and what therapeutic interventions they may need to move forward. My hope was for CAPS to provide the therapeutic support they could to this family within this period to take steps forward in a positive way. Supervised access was suspended for the time being so that CAPS could facilitate access when assessed to be appropriate.

27 The matter came before me again on 21 October 2019 to record an interim consent order that (amongst other things), pending the final decision in these appeals, the Father was at liberty to bring the Children overseas for a period of up to one month upon giving the Mother at least 24 hours' notice together with the full itinerary, contact details and accommodation details of where the Children would be staying. The parents also recorded their consent that the Children should be at liberty to go overseas for future school trips, and the Father should inform the Mother of such trips as soon as he was aware of them. This was an encouraging development – the parents were able to reach an agreement on these issues, which was a positive sign that they could cooperate on issues that were important for the Children's welfare.

28 The final hearing for the present appeals was fixed on 15 July 2020. This was intended to be conducted with the benefit of reports from CAPS. For various reasons, including the intervening restrictions due to the COVID-19 pandemic, only the parents and the older daughter had been interviewed by CAPS by the time of the hearing. Nevertheless, I considered the available reports in reaching my decision.

The Mother's case

29 In DCA 98, the Mother appealed against these aspects of the DJ's decision:

- (a) “Veto Power”: The Mother appealed against what she submitted was a “veto power” granted to the Father by the DJ as the parents were granted joint custody of the Children but where they did not agree, the Father had the power to decide the matter solely.
- (b) Care and control: The Mother appealed against the grant of care and control of the Children to the Father. She argued that the Children were rejecting her for the sole reason that they had been subject to negative indoctrination by the Father. She accepted, however, that the Children could not be “airlifted” to her care and asked that they continue to attend counselling, even if they remained in the care of the Father.
- (c) Overseas travel: The Mother initially appealed against the permission granted to the Father to take the Children overseas and sought the reinstatement of “safeguards” in the August 2016 order, which included the provision that neither parent should remove the Children from Singapore without an order of court or by prior written agreement. She accepted a different position at the hearing on 15 July

2020 after an interim consent order had been reached in October 2019 and agreed that the Father could take the Children overseas (see [58]–[59] below).

(d) Passports and birth certificates: As part of the safeguards on overseas travel, the Mother also appealed against the order that she should hand over the passport and birth certificates belonging to the Children to the Father within seven days of the order. She maintained this argument even after agreeing to overseas access.

The Father's case

30 In DCA 99, the Father appealed against these aspects of the DJ's decision:

(a) Joint custody: The Father submitted that he should be awarded sole custody of the Children. This was an exceptional case as the parents were unable to cooperate and the Children were suffering from emotional injury.

(b) Supervised access: The Father submitted that the court should obtain reports from IMH and the DSSA to understand the Children's fear of the Mother, and the Mother should not be allowed access to the Children for now.

(c) Psychological and psychiatric assessment: The Father submitted that the Mother should undergo psychiatric or psychological assessment to ascertain her ability to relate to the children at IMH and that, pending the report, all contact between the Mother and the Children should cease.

- (d) Maintenance: The Father submitted that the Mother should pay \$3,761.35 in monthly maintenance for both Children.

Decision

Observations

31 As the present case involved breakdowns in family relationships so grave and extreme that even the State, through CPS, became involved, I found it appropriate to set out some observations on the deterioration of the relationship between the Mother and the Children. This was not to assign blame to either parent, but to reflect on how the relationship breakdown might have been caused by the actions, unintentional or otherwise, of both parents, and how their reactions to the dispute might have influenced the Children. This may assist the parents to better appreciate what parental responsibility entails, what supporting the welfare of the children fully means, and how they should continue to discharge their parental responsibility. The Children are still young, and the parents will have to continue to co-parent for several more years ahead.

32 The Father's counsel emphasised the need to hear the voices of the Children which she claimed reflected their genuine fear of the Mother. However, the "voices" of the Children in these circumstances may not necessarily reflect their authentic perspectives if they have been subjected to a significant amount of influence from a parental figure over the years, beginning at a time when they were young in age. The Father's counsel relied extensively on counselling reports by Clinic R ("the R reports"), which were produced by the Father in support of his applications for sole custody in 2013 and 2014. Later reports were also produced in 2015. The Mother submitted that the R reports were biased and written by the Father's "hired guns", and that the Father engaged in parental alienation and manipulated the Children to reject her.

33 I considered these reports and was of the view that the court ought to be cautious in giving weight to their contents. It appeared to me that these reports were sought by the Father for the purpose of litigation. Further, the counsellors did not interview the Mother or any other independent person. Even if these reports were to be considered, I was unable to draw any inference that the Children were rejecting their mother from 2013 or even prior to August 2014. At most, I was only able to accept that during that period, the Children did not like something in the Mother's home environment rather than the Mother herself.

34 When the custody battles first began, the Father likely took advantage of the Children's preference for his home over the Mother's home. The R reports from 2013 to 2014 included portions that suggested that the Children preferred the Father's home to the Mother's home. Nothing negative was stated directly about the Mother; instead there were suggestions that the Children had issues with other people in the home, such as their maternal grandmother and uncle. For example, there were indications in the earlier reports that the Children were reluctant to return to the Mother's home because they had witnessed the maternal grandmother scolding the helper.

35 The Father's counsel appeared to suggest that the Children's failure to say something negative about the Mother in the earlier reports was suspicious, and that it should be inferred that there was something negative about their interactions with her. This was neither a fair nor logical inference. In fact, various aspects of the R reports suggested that the Children had a good relationship with the Mother until at least May 2014. The older daughter shared that the Children engaged in leisure activities such as shopping, watching movies or making up funny stories with the Mother. She also indicated that she would like to spend half her time with each parent. The counsellor opined that

she was well-bonded with both parents, and there was no obvious indicator that she was rejecting of the Mother in particular. The younger daughter also expressed that she enjoyed “shopping with mummy” and drawing images of the Mother or drawing with the Mother’s favourite colour. The counsellor noted that she “expressed her love towards her mother during sessions” (which were between February and May 2014). The younger daughter did not want to take sides, but the counsellor noted that she did not appear keen on living in the Mother’s home.

36 Something changed just prior to August 2014. The Father produced “evidence” of the Children’s rejection of the Mother in his affidavits, and the Children’s drawings dated from August to October 2014. The older daughter wrote that the Mother’s house was “bad bad and bad”. The Father also claimed to have video evidence of the Children’s rejection of the Mother from 2013 to 2014. I found that the Father’s allegations that the Children had been traumatised by the Mother’s actions since 2012 did not match up with the Children’s opinion that they loved the Mother in the very same R reports that the Father relied on. It would appear that the shift towards negativity appeared between May 2014 to August 2014, but the parents did not point me to any objective evidence that could explain this drastic change.

37 The Mother has had little opportunity for contact with the Children since August 2014. Yet, the Children are rejecting the Mother in an alarming way today even though there would have been little that the Mother could have done to abuse the children (as alleged by the Father) after that date. Further, the Children’s anger towards the Mother appeared to have escalated since August 2014 *despite* their lack of contact with her, to an extent that seemed disproportionate to the alleged incidents of abuse. I found it likely that there was excessive gatekeeping or alienating behaviour by the Father, through conduct

arising whether intentionally or unintentionally from his words and acts. For example, the Father claimed there was evidence of the Children's preference for living with him in the form of a questionnaire dated 12 November 2014 in which he had asked the Children, "Who do you like to live permanently with – at [the address of the maternal family's home] or with Daddy at Daddy's Home?" This was an example of a question framed in an unbalanced manner, focused on the Mother's home by reference to only her address with no reference to the Mother herself, but one that used an affectionate description of the Father's home without an address. Not surprisingly, the Children indicated their preference for "Daddy's Home".

38 Another example involved a handover incident on 5 November 2015 at a public library. The Father claimed that the Children were so resistant to seeing their mother that two complete strangers called the police to express their concerns about a woman approaching two young girls. He produced a police report and a statutory declaration by these strangers. The Mother submitted that this was a "set up". Indeed, I find the circumstances to be of concern. The police report was made on 7 November 2015 and the statutory declaration was made on 17 December 2015. If the people were indeed strangers, it is surprising that the Father would have access to a report made two days after the event, or get in touch with a stranger to obtain a statutory declaration a few weeks later.

39 I also found the Father's use of the child protection proceedings very disappointing. As stated above (at [9]), while CPS applied for care and protection orders on behalf of the Children, it is significant to note that despite the Father's previous insistence that the Mother had physically abused them, the care and protection applications were made on the basis of *emotional*, not physical, injury. The alleged emotional injury appeared to be largely related to the Mother "forcing" access (*UNB* ([4] *supra*) at [51]). CPS filed a report

observing that the Children continued to fear the Mother in 2017, despite the Children having been in the Father's care since August 2014. By this point in time, their fears had become so extreme that it included the fear that the Mother would kill them or harm them.

40 The reports by various counsellors and professional services tendered to the court also raised some concerns. Reports by two Family Service Centres in 2016 and 2017 observed that the Children exhibited a high level of accusatory behaviour and aversion towards the Mother. The social worker observed that there was a possibility that the Children had been alienated from the Mother as their extreme aversion to her appeared disproportionate to the available evidence of the abuse allegedly inflicted on them. At the same time, there was no conclusive evidence that such alienation was intentional, as it could be a result of the Father's overprotectiveness or projection of his sense of helplessness or victimisation. One counselling centre ("TCC") which attended to the parents and the Children from February to July 2015 recommended a different approach in managing the Children. The social workers recommended longer periods of access for the *Mother* as the Father was too obliging to the Children's desire *not* to see their Mother. They noted that the Children were unable to recall any positive interactions with the Mother, and that the Father had told the Children directly that the Mother was the cause of their inability to travel overseas, despite knowing that their perception of the Mother would be negatively reinforced. Unfortunately, the Father thereafter became extremely resistant to counselling by TCC and claimed that the sessions caused more harm to the Children. He unilaterally cancelled counselling sessions with them. The report of the Child Representative appointed by the court also hinted that the Children had been coached by the Father.

41 I had considered the above reports in my decision in *UNB* (at [45]–[48]), where I had reached the conclusion that the Children were not at risk of ill-treatment or emotional injury at the hands of the Mother. Despite my exhortation for the parents to cooperate in *UNB* (see also [4] above), the Father still did not appear to *support* the Children’s relationship with their Mother. Instead, he appeared to continue to paint a picture of the Mother as an obstructive parent to the Children and did not protect the Children from the parental conflict to the extent that he could have.

42 For example, in his submissions filed in March 2019, he alleged that the Mother had interfered with the Children’s holiday in February 2019 by causing the Immigration and Checkpoints Authority (“ICA”) to detain and question the family at Tuas Checkpoint. In a letter to the ICA, the Father alleged that the ICA had received instructions from the Mother to prevent the Children from leaving the country and that the younger daughter was separated from the family to be questioned, which was a highly traumatic experience. The ICA categorically denied that it was acting on the Mother’s instructions, or that the Children had been separated from the family, and further stated that there was CCTV footage as evidence. At the hearing, it was further suggested that the Mother had “contact” with the ICA. The suggestion that the Mother was somehow capable of manipulating government actors was a serious one. In my view, this incident was an example of the Father’s tendency to exaggerate or embellish incidents to cast the Mother in a negative light, and went to the credibility of his allegations.

43 The Father repeatedly defied orders for supervised visitation or access by claiming that the Children were resistant. The Mother also claimed he had been deliberately hindering therapy and counselling for the Children, including communication with the Children by the Family Justice Courts’ own

counsellors. It was, and remains, the responsibility of the Father as the parent with care and control, to *facilitate* the reunion between the Children and the Mother. The law *does not* “*force*” children to love a parent; even in functioning families, children may be closer to one parent than the other, and may even have conflicts with a parent. The law does, however, expect a parent *not* to engage in alienating behaviour, and to support the reunification efforts as far as he or she can. If a parent has been facilitative and the children still, for whatever reason, continue to reject the other parent, that is another matter. Here, the Father did not merely fail to be facilitative, the reports and evidence available on the relationship breakdown between the Mother and the Children suggested he had exhibited excessive gatekeeping or polarising conduct. The Father’s application for the Mother to be sent for psychiatric assessment before she was permitted to see the Children further reflected his view that the Mother had mental issues that rendered her unfit even for supervised access. Given how strongly he felt on this issue, I found it likely that he had shared these views with the Children.

44 Having considered the evidence available before me, I found that the Father had undermined the Children’s emotional and psychological wellbeing by failing to cease this behaviour over the past years. I stress that I did not by this view find that the Father’s influence was the *only* cause of the estranged situation between the Children and the Mother, for there are always other various factors at play in how relationships turn out.

45 In this case, I found that the Mother also bore some responsibility for the present state of her relationship with the Children. While it must have been distressing to see the Children withdraw from her, she reacted by insisting on contact with them, which unfortunately pushed the Children further away. The Father’s conduct played into the Mother’s fears of losing her Children, to the extent that she took positions that might have appeared unreasonable to the

Children, such as insisting on keeping their passports, which made it difficult for them to travel. Unfortunately, over the past six years the Children have somehow lost all good memories of the Mother from earlier times and despite repeated intervention, remain resistant to meeting her.

46 I made these observations to explain my views on what contributed to the serious breakdown of the family relationships as they stand today. The issue before me in these appeals, however, was *how to help this family move forward*. Although the Children's fears about the Mother were exacerbated by the Father's conduct, those fears were real to them, and the past six years have been very difficult for them. They have had to see multiple counsellors and repeatedly recount their anxieties to them. They were also unable to travel freely or enjoy their childhood in ordinary ways. The overarching aspiration of the family justice system is to assist families to move forward positively. Therapeutic justice delivered through a problem-solving court process seeks to allow healing, restoration and recasting of a positive future (see *VDZ* ([5] *supra*) at [75]). It is with these principles in mind, and the welfare of the Children as my utmost concern, that I approached the legal issues in these appeals.

Custody

47 Both parents sought sole custody of the Children. The Mother alleged that the Father had engaged in extensive parental alienation which caused the Children to reject her. The Father alleged that the Children felt fear and anxiety when told to interact with the Mother.

48 It is accepted that an order for sole custody of a child is only made in exceptional circumstances, such as where one parent physically, sexually, or emotionally abuses the child (*CX v CY (minor: custody and access)* [2005] 3

SLR(R) 690 (“*CX v CY*”) at [38]). Acrimony alone is not sufficient to justify a sole custody order (*CX v CY* at [24]).

49 While the Father’s submissions suggested that he took the position that the Mother was emotionally abusing the Children by causing them “emotional injury”, I did not accept this view. I held in *UNB* ([4] *supra*) (at [51]):

... 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... 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. ...

50 Even on the Father’s own case, any hurt or trauma to the Children would be caused by “forced” access. That in itself was insufficient to find emotional injury by the Mother. I agreed with the DJ below that the Mother still cares for the Children and wishes to be involved in their lives. Even if immediate access did hurt the Children, this did not mean that the Mother could not be involved, at least indirectly, in major life decisions *with the Father’s co-operation*. As for the Mother’s submissions, I stated above (at [44]) that I did not conclude that the Father was deliberately and intentionally alienating the Children from the Mother; rather, the breakdown of their relationship was a result of a confluence of factors. It was clear to me that the Father cared about the Children and there was no reason to deprive him of custody. Generally, an order for sole custody would have the consequence of depriving children of the guidance and input of the non-custody parent in major issues affecting their upbringing – as such, it should not be made too readily. Despite the high level of acrimony between the

parents, there were no exceptional circumstances which would warrant such an order in the present case.

51 This case involved two parents who loved (and continue to love) their children, but gravely lacked insight on how best to parent them after their own marital relationship broke down. Even in functioning families, parenting styles differ, and parents may disagree on various parenting issues, but functioning families are able to sort out their conflicts and move on. Each child is also different – in personality, in developmental needs and even in how each connects with her father and her mother. In the present case, as the Children are now teenagers, their needs and wants will also change. Both parents could do with the assistance of appropriate services that can assist them to be stronger parents.

52 In the present case, I also accepted that there was a high degree of hostility between the parents and it was likely that they would not be able to decide on certain matters. The presence of hostility does not invariably mean that a joint custody order would be unworkable (see *CX v CY* ([48] *supra*) at [29]). However, in the present circumstances of this case, it would be in the best interests of the Children and the parents to forestall any protracted disputes between them in respect of major decisions concerning the Children. As such, I affirmed the DJ's order of joint custody which also provided that if the parents were unable to agree on major decisions, the Father should decide the matter. I made this decision in light of the fact that the parents have had to resort to multiple applications to the court over the past six years that have entombed the family in the litigation box. Many of these applications involved decisions that parents are best placed to decide; it is in the Children's best interests if they can be decided without litigation in court. The consent order recently reached in

October 2019 was a positive sign that the parents could agree on matters that were important for the Children.

53 I emphasised that the joint custody order meant that the Father must inform and consult the Mother on the issue(s) to be decided before making any decision himself. He cannot make a unilateral decision without consulting the Mother by assuming that they will not be able to agree. The Mother also expressed her view that being kept informed was also important. For that reason, I also directed that the Father shall send the Mother regular updates of the Children's progress in school on a quarterly basis. Copies of the material in the school report books shall be provided to the Mother by email, and the Mother shall provide an email address which the Father can use for this purpose.

Care and control and access

54 Both parents also sought sole care and control of the Children. The Father submitted that all access between the Mother and the Children should cease until the Mother was sent for psychiatric assessment. The Mother, on the other hand, accepted that the Children were not ready to be transferred to her care immediately and asked that they continue to receive therapeutic intervention.

55 I have said above (at [44]) that I did not conclude that the breakdown of the relationship between the Mother and the Children was solely attributable to the Father's conduct. I did not think a reversal of care and control here was appropriate. I highlight that the Mother was not seeking an immediate reversal of care and control because she (very fairly, in the circumstances) recognised that it would be difficult to immediately restart contact with the Children. She indicated that she was open to a more gradual process. I commend the Mother

for her patience in this regard. I did not find that her conduct in seeking to re-establish contact with the Children indicated any kind of psychiatric or mental disorder. I did not order the Mother to attend psychiatric assessment as I did not accept the Father's submission that she was not mentally sound. However, like the Father, she can benefit from therapeutic support services for herself, which could include strengthening parenting and communication skills.

56 In the present circumstances, I found that the best interests of the Children required the Mother to cease direct contact with them until they were ready and willing to meet her. This would be painful for the Mother, but I was of the opinion that pushing the Children to connect with the Mother now might cause a further deterioration of whatever remained of their relationship with her. It would be better for the Children to be given room to recover without such pressure. When the Children are older, they may see and understand that both parents loved them, but when they were unable to resolve their own conflicts, circumstances spun off in a direction that was very unfortunate. It may well be that children of divorce will only be able to look back on the difficult years and understand that their parents were themselves mired in deep emotions that might have taken over rational decision-making, only after they have reached adulthood. These children, as more mature adults, may then be willing to reconnect with their estranged parents.

57 I note that the Children continue to receive professional therapeutic support. At the July 2020 hearing, the Father's counsel informed the Court that the DSSA was restarting sessions with the older daughter while the IMH's Child Guidance Clinic ("CGC") was starting sessions with the younger daughter. The Mother was willing to continue with counselling at the DSSA, and both parents were agreeable to the DSSA having overall conduct of the Children's counselling. Given the extent of legal proceedings so far, and to avoid having

the Children see too many therapists, the parents were also agreeable to CGC communicating with the DSSA on the younger daughter's progress. It was my hope that with therapeutic support, the Children would be willing to meet their mother in future. As I have said earlier (at [51]), both parents also need to be willing to learn to parent under these circumstances and should seek support services for themselves in this respect where appropriate.

Overseas access

58 At the time of the hearing, the Children's passports were held by the Father's counsel pursuant to my directions in the Mother's earlier appeal (see [25] above). The Mother did not want the documents to be handed to the Father as she was concerned the Children would be taken overseas without her consent. While I sympathised with the Mother's anxieties, it was neither practical nor sustainable for the passports to be kept with the lawyers indefinitely and I agreed with the DJ that it was unlikely that the Father would abduct the Children overseas as they are well-settled here (GD at [58]). I ordered that the Father, as the parent with care and control, should have possession of the Children's passports and birth certificates.

59 As stated above (at [27] and [29(c)]), the parents had reached an agreement on the Children's travel arrangements in October 2019. The interim order also stipulated that the Father was at liberty to bring the Children overseas for up to one month upon giving the Mother 24 hours' notice. In light of my decision that the Father should keep the Children's passports, I was of the view that a longer period of one week's notice was appropriate, moving forward, to give the Mother greater assurance. In line with the interim order, the Children shall be at liberty to go overseas for future school trips, and the Father shall inform the Mother of such trips as soon as he is aware of them.

Maintenance

60 The Father’s counsel submitted that the Mother was obliged to maintain the Children, that she had failed to produce evidence of her own income, and that affordability was not an issue. The Father, however, also did not produce evidence of his own income. The evidence before this court was limited to what was declared in both parents’ affidavits of assets and means filed in 2014, and the information was necessarily outdated by the time the appeals came before me. The Father’s counsel indicated that the Father did not want to disclose more information about his assets and means due to the level of distrust between the parents. In my view, he should have done so to allow the court to reach a fair decision. In fact, this was the reason the DJ declined to make an order for maintenance (GD at [59]).

61 Section 68 of the Charter provides that both parents have the duty to maintain their children. The obligation to maintain a child does not vary according to whether the parent has access or the quality of the personal relationship the parent has with the child (see *VDZ v VEA* [2020] 4 SLR 921 at [69]). The Mother indicated that she was willing to pay for the Children’s necessities, such as their school fees, save that she preferred to pay the money directly to the school rather than to the Father. Her concerns were with what she perceived to be the Father’s “discretionary expenses” including the house that he was renting and the car that he owned – she perceived them to be unnecessary, being in the nature of a luxury rather than a need.

62 It was heartening that the Mother desired to provide for the Children despite the state of their relationship, and I considered this to be an expression of her continued commitment to the Children and desire to be involved in their lives. In the circumstances, however, as the Father has care and control of the

Children, it was more practical for him to have a budget that he could manage rather than to allow the Mother to pay the sum to the Children's schools directly, especially since this sum would vary as the Children progress in their education.

63 The Father proposed a total maintenance sum of \$3,761.35. Having considered the list of expenses set out by the Father as well as the lack of information on his means, and bearing in mind the Mother's willingness to provide for the Children's necessities, I was satisfied that a total monthly sum of \$1,500 was a fair amount for her to provide for both Children. I assured the Mother that this was a sum that the Children would require for their basic necessities each month in any event, including their school fees, food and daily expenses.

64 The Mother was therefore to pay \$1,500 to the Father every month as maintenance for both Children. I ordered this maintenance order to take effect from the date of my decision. Although the Father sought backdated maintenance, a decision to backdate maintenance was within the discretion of the Court (*AMW v AMZ* [2011] 3 SLR 955 at [13]). I declined to exercise my discretion in the circumstances of this case. I hoped that the Mother's provision of maintenance would be an opportunity for her to show the Children that she cared for them and would provide for them.

Conclusion

65 I dismissed both appeals save for the orders I have specifically made. I directed CAPS to assist in the family's transition to the DSSA but I declined to fix any further review hearing because in my view, it was time for litigation to conclude, for the Children's sake. The parents should "let go" of the issues that have enmeshed them in hurtful conflict; they should learn to co-operate moving

forward, so that the Children would not find themselves the subject matter of litigation again, endlessly.

66 Much resources have been poured into this family to help them overcome these conflicts. Ultimately, it is the personal responsibility of parents to be the best they can be for the sake of their children – bigger, kinder, wiser. As the Court of Appeal reminded the parents in *VDZ* ([5] *supra*) at [79]), “[e]very child requires *love and care* from ***both*** parents in order to grow up and achieve their fullest potential as *balanced* individuals” [emphasis in original]. It is my hope that in time, the Children will rediscover their relationship with the Mother, and I hope the Mother does not lose heart.

Debbie Ong
Judge

The appellant in HCF/DCA 98/2018 and the respondent in
HCF/DCA 99/2018 in person;
Hing Wei Yuen Angelina and Ng Yu Hui Michelle (Integro Law
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