

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 30

District Court Appeal No 38 of 2022

Between

WDW

... Appellant

And

WDX

... Respondent

District Court Appeal No 39 of 2022

Between

WDX

... Appellant

And

WDW

... Respondent

JUDGMENT

[Family Law — Custody — Care and control — Access]
[Family Law — Maintenance — Child]

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WDW
v
WDX and another appeal

[2022] SGHCF 30

General Division of the High Court (Family Division) — District Court
Appeal Nos 38 and 39 of 2022
Choo Han Teck J
25 October, 22 November 2022

23 December 2022

Judgment reserved.

Choo Han Teck J:

1 The parties were married on 17 December 2019. The Father is a 41-year-old American citizen. He owns a construction company in America which is in the process of being wound up. The Mother is a 31-year-old Singapore citizen. She holds a senior associate position in a bank. A day before their marriage, the parties signed a Prenuptial Deed (the “Deed”) dated 16 December 2019. The Deed was made in contemplation of the parties’ marriage and the birth of their daughter born in December 2019. The daughter is presently living with the Mother and attends a full-day childcare.

2 The parties filed cross-applications under s 5 of the Guardianship of Infants Act 1934 seeking rights over the daughter. The District Judge (the “DJ”) ordered that:

(a) The parties shall have joint custody of the daughter, with care and control to the Mother and access to the Father. The Father is to have access to the daughter on Mondays, Tuesdays and Thursdays from 3pm to 7pm and Saturdays from 10am to 6pm at the Father's residence.

(b) The issues of overnight access and overseas access were deferred to a time when the daughter is older to be determined. The Father was also ordered to pay the sum of \$3,200 per month to the Mother as maintenance, to be backdated to 1 August 2021.

(c) The sum of \$4,888.67 was a reasonable estimate of the daughter's monthly expenses, having regard to the means of the parties and their stations in life. This includes, *inter alia*:

- (i) \$750 allocated to the daughter's share of accommodation and household expenses;
- (ii) \$800 allocated for the daughter's personal goods and food; and
- (iii) \$1,500 allocated for the domestic helper's salary, levy and living expenses.

(d) Having regard to the financial capabilities of the parties, the daughter's expenses were apportioned between the Father and Mother in the proportion 65:35. The Father was also ordered to reimburse the Mother 65% of the additional educational expenses within 7 days upon the Mother providing the invoice.

3 HCF/DCA 38/2022 ("DCA 38") is the Father's appeal against the DJ's decision in relation to access and maintenance for the daughter.

HCF/DCA 39/2022 (“DCA 39”) is the Mother’s appeal against the DJ’s decision on maintenance for the daughter.

4 In DCA 38, the Father says that he should have overnight access to the daughter, who is turning three years old in December 2022. He proposes that this overnight access take place on alternate Fridays after school to 6pm on Sundays. He says that the daughter has slept overnight at the Father’s home with no problems and that she has gone to bed without the Mother putting her to bed. He also wishes to strengthen his relationship with the daughter. The Father relies on cases where overnight access was granted for children as young as eight months’ old. He says that in the event that overnight access is not granted now, a date or age at which overnight access is permitted should be set. The Mother says that the DJ’s orders on access should be upheld.

5 In my view, it would be too soon to introduce two consecutive nights of overnight access at this point. The daughter is only three. Furthermore, in 2022, the Father was abroad for almost three months of the year, as he has multiple investments and assets in the US. This is understandable, and, as it appears that as the Father’s construction business is still ongoing for the time being, he would likely have to make frequent overseas trips. To order two consecutive nights of overnight access at this point would not be practical nor would it be in the best interests of the daughter.

6 On a positive note, the daughter enjoys her time with the Father, and he, in turn, looks to spending more time with the daughter. He has moved to Singapore to care for the daughter. There were also at least two previous occasions when the daughter stayed overnight with the Father. In my view, the Father should be able to have overnight access to the daughter when she has spent a little more time with him, and a bond is established. The Father may

therefore apply again when the time is right. When that might be depends on how well their relationship grows. In the meantime, the Father is encouraged to use his access time meaningfully to build up his relationship with the daughter and to also acquaint himself with the daughter's night-time routine.

7 The Father also appeals against the DJ's decision on the estimate of the daughter's monthly expenses. He says that the DJ accepted the Mother's estimate of the daughter's monthly expenses without taking into account the fact that the daughter would be spending significant time with him and he would be paying for expenses of the daughter when under his care. He adduced evidence of about \$1,660 that he spends on the daughter per month. Therefore, the estimate of \$4,888.67 is excessive and is unsupported by the documentary evidence. In particular, he says that there is no documentary evidence that the Mother is paying a "token sum" of \$1,500 for staying at her parents' place monthly. He also says that the expenses allocated to the domestic helper are excessive as the daughter is not the "sole beneficiary" of domestic help and the helper performs chores for other household members at the Mother's place.

8 The Mother says the Father had intended for the daughter to lead a "princess lifestyle". She says that the Father's proposal is disproportionate to the parties' station of life and how they had previously agreed as to how the daughter ought to be brought up. She also says that it was known to the Father that her need to pay rent was partly to appease her mother, who was not supportive of the parties' relationship and was deeply unhappy that the daughter was conceived out of wedlock. The DJ below was thus correct to attribute \$750 to the daughter for her share of the accommodation. She also says that the daughter's access time with the Father is not "significant" such that the expenses paid by the Mother should be affected.

9 Presently, the Mother, the daughter and their domestic helper are staying in the Mother's parents' HDB flat. The Mother's mother has produced an affidavit stating that her daughter has been giving her \$1,500 each month since September 2021, and this is a token sum compared to the income she would have received had she rented out the two rooms. The Mother's payment of rent is to make up for her parents' economic loss of rent, including their share of utilities, broadband services and town council services. The Mother is also unable to afford private property on her single income and does not qualify for public housing.

10 I think the DJ was not wrong to include the daughter's share of rent in the maintenance sum. As I have mentioned in a past case, but for the daughter, the Mother would not necessarily have required the additional room or could have found a smaller and cheaper accommodation (*VPX v VPY* [2021] SGHCF 13 at [19]). The DJ was also not wrong to include the domestic helper's salary, levy and living expenses in the maintenance sum, as the helper's duties mostly concern the young daughter. Even when the daughter is at daycare, the Mother would still require the domestic helper to upkeep the home. I am also of the view that the estimates for the daughter's clothing, social activities, insurance, transport and monies set aside for contingency purposes are reasonable.

11 Nevertheless, I agree with the Father that the daughter's personal goods and food expenses have been overvalued. The daughter has started full-day childcare which provides the daughter at least two meals a day. The Father also has three weekdays of ordered access and spends Saturdays with the daughter, and the Father would pay for expenses incurred by the daughter during those periods. This amounts to almost half a week that the daughter is either at daycare or with the Father. However, I note that the helper assists in preparing meals for the Father and the daughter, and some of these costs may be borne by the

Mother. Generally, I agree with the Father that the amount to be allocated to the daughter's personal goods and food should be reduced from \$800 to \$500, which I think is sufficient for a daughter that age. I thus find that the daughter's monthly expenses should be adjusted to \$4,588.67.

12 I now turn to address DCA 39. The Mother says that the DJ erred in finding that the parties' ought to share the daughter's maintenance in the ratio of 65:35. The Mother points to the Deed and says that on a plain reading of the entire Deed, the inclusion of the clause that "[the Mother] shall have a joint responsibility to contribute to the said maintenance of the daughter based on her assets and means" and that "[b]oth parties will also contribute to the maintenance of the daughter" should mean that the maintenance to be paid by the parties' is to be apportioned using a ratio of their assets and means. The Mother thus says that the ratio should be based on her assets and means, as agreed between parties at the ratio of 90:10, with the Father to bear the higher proportion.

13 The Father says that the relevant clauses of the Deed are irrelevant as the Deed does not specifically provide for the apportionment of maintenance. The clauses that the Mother refers to state explicitly that they apply "in the event of a Termination of Marriage". The Judge also did not limit his consideration to the parties' incomes, but also their financial resources and capabilities.

14 Section 68 of the Women's Charter (Cap 353, 2009 Rev Ed) is clear that both parents have a duty to maintain or contribute to the maintenance of his or her children, having regard to his or her means and station in life. The Deed is also unequivocal that both parties must contribute to the maintenance of the daughter to some extent, although it does not set out the proportion that each party must bear.

15 Compared to the Mother, the Father has more assets — he has two properties in the USA, multiple investments and his construction business. However, I acknowledge that the Father’s construction business, from which he derives the majority of his income, is in decline, even though he has evidence that the company had taken up a project in September 2022, and the company is still earning. As determined by the DJ, the Mother’s monthly salary, inclusive of commission, is an estimated of \$7,920.10 per month. The Mother accepted this in the proceedings below, though she is now saying that she no longer earns any commission. In the absence of any concrete evidence that she is no longer earning any commission, I think that the Mother has substantial earning capacity. I also note that her IRAS Notice of Assessments for the years 2019 to 2021 reflect that her gross income was about \$10,563.08 per month, which further demonstrates her earning capacity. In the circumstances, I think it fair that the parties continue to contribute to the daughter’s maintenance in the ratio 65:35.

16 I therefore allow DCA 38 in part and dismiss DCA 39. I make no orders as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Iman Marini Binte Salem and Bernice Goh Jun Ting (Salem Ibrahim LLC) for the appellant in DCA 38 and respondent in DCA 39;
Lee Mong Jen and Yeo Yang (LMJ Law Corporation) for the respondent in DCA 38 and appellant in DCA 39.