

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 28

Divorce (Transferred) No 101 of 2019
Summons 4085 of 2020
Summons 137 of 2021

Between

VTU

... Plaintiff

And

VTV

... Defendant

JUDGMENT

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

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VTU

v

VTV

[2021] SGHCF 28

General Division of the High Court (Family Division) — Divorce
(Transferred) No 101 of 2019, Summons 4085 of 2020, Summons 137 of 2021
Choo Han Teck J
22 July 2021, 2 August 2021

10 August 2021

Judgment reserved.

Choo Han Teck J:

1 The present applications arose from the relocation application made by the plaintiff wife (“the Wife”) on 24 December 2020 to bring the children of the marriage (“the Children”) back to Malaysia. By the time of the hearing on 22 July 2021, the Children have been residing in Malaysia since October 2020.

2 The parties were married in December 2010 in Malaysia. The Wife is a Malaysian national and a Singapore Permanent Resident, and the defendant Husband (“the Husband”) a Singapore citizen. They have two children, [Q] and [Y], who are nine and four years of age respectively. At the time of their marriage, they were living in Singapore for work purposes. Around the end of 2011, they founded an accounting firm, [EE] Pte Ltd, together, which grew into the EE Group which later expanded into Malaysia. The Husband is the director of EE Pte Ltd and the while the Wife became the sole shareholder of EE Sdn

Bhd that was incorporated in Malaysia. The Wife travelled frequently to Kuala Lumpur, Malaysia on EE's business.

3 The Wife filed for divorce on 7 January 2019, and the interim judgment was granted on 18 June 2019. Under the interim judgment, the parties had joint custody of the children, with the Wife having sole care and control and Husband reasonable access every Sunday from 10am to 8pm (with additional access to be discussed in January 2021). Ancillary matters concerning the division of matrimonial assets and maintenance are pending before the court.

4 The Wife travelled to Kuala Lumpur, Malaysia on or about 15 July 2020 for a work trip and remained there. On 31 October 2020, the children joined the Wife in Malaysia and have not returned to Singapore since then. In the Wife's solicitor's letter dated 23 November 2020, it was stated that the Wife intended to bring the Children back to Singapore once they attended their medical appointments. But due to the imposition of movement control arising from the COVID-19 pandemic, the Wife was unable to return immediately to Singapore.

5 By way of SUM 4085 of 2020 filed on 24 December 2020, almost two months after the Children left for Malaysia, the Wife made the relocation application to bring the Children with her to Malaysia, with reasonable access to the children to the Husband. The Husband opposed the relocation application by the Wife, and by way of SUM 137 of 2021, sought the return of the children, and a variation of care and control such that the Husband be granted sole care and control with reasonable access to the Wife.

6 The basis for her relocation application is that it was no longer tenable for her to remain in Singapore because her financial status in Singapore was precarious. She is no longer the corporate secretary of the EE Group of

Companies in Singapore, and could no longer receive her monthly income therefrom. She would have greater financial stability in Malaysia, as she intends to take over the EE group companies based in Malaysia (“the EE Malaysian companies”). Even if she does not take over the EE Malaysian companies, her financial situation would be more stable as the cost of living in Malaysia is lower, and she would receive financial support from her family.

7 The Wife explained that her intention to relocate was not to deprive the Husband of access to the Children; it was due to her fear that she may lose her stake in the EE Malaysian companies, and her worry that the Children would not receive the medical attention they need. She also has stronger family support in Malaysia to help her care for the Children. Her parents, siblings and extended family have always resided in KL. The Wife has made arrangements for the Children to study in KL. Q, the elder daughter, started at an international school on 4 January 2021, while Y, the younger one, has been enrolled in a kindergarten in close proximity to her residence. Q also has an atrial septal defect (a congenital heart defect) which was diagnosed in Singapore upon birth. The Wife has subsequently brought her to be treated in KL where the doctor is monitoring her conditions. The younger daughter Y also has a heart condition that is being monitored by the same doctor in KL.

8 As a part of the relocation proposal, the Wife intends to provide the Husband with weekly video access, unsupervised daily and overnight access if the Husband is physically present in KL, and any further access on special occasions such as the Children’s birthdays. The Wife also proposed to bring the Children to visit the Husband’s mother in Malaysia after the COVID-19 situation improves.

9 The Husband opposed the Wife's relocation application. He was not informed about the Wife's plan to relocate the children, until around 31 October 2020 when the Wife informed him via a WhatsApp message that the Children are with her in Malaysia. On 4 November 2020, he was informed by Q's school that Q had not reported to school since 2 November 2020 and the Wife had unenrolled her. The Wife has not engaged the Husband in any conversation to discuss the possibility of the Children relocating to Malaysia. As Malaysia is not a Hague Convention country, the Husband was unable to take steps to compel the Wife to return the Children to Singapore.

10 As for the merits of her relocation application, the Husband denied that he had excluded the Wife from the EE companies, nor did he interfere with the Malaysian companies. Further, the Wife's basis for application that her financial position is more stable because she was managing the EE Malaysian companies assumes that she would be entitled to take over the EE Malaysian companies as part of the division of matrimonial assets. There is no basis for such an assumption, as the court has made no determination on the division of matrimonial assets. Hence, the Wife's relocation application was motivated by her own financial gain and did not take into account the well-being of the Children.

11 The Father's counsel further submits that it would not be in the interest of Q for her education in Singapore to be disrupted, and that there is a potential loss of relationship between the Children and the Father if the relocation application were allowed.

12 In determining whether relocation applications should be granted, the welfare of the child is the paramount consideration. Although the reasonable wishes of the primary caregiver are important, as a child's welfare is closely

linked to the happiness and well-being of the primary caregiver, the wishes of the primary caregiver are not always decisive: *BNT v BNS* [2014] 4 SLR 859 at [16] and [17]. The court may still disallow the application even if the relocating parent's application is not unreasonable and done in bad faith. The tension is between upholding the reasonable wishes of the relocating parent, and the child's interest in maintaining a relationship with the other parent that is left behind. However, that the relocated children will have less access and interaction with the left-behind parent is not determinative as well, if relocation is in the welfare of the children: *UFZ v UFY* [2018] 4 SLR 1350 at [11].

13 The Wife has been the primary caregiver of the Children, bringing them for medical appointments and caring for their daily needs. Her well-being is undoubtedly closely tied to the welfare of the Children. Her wishes to relocate to Malaysia are reasonable, as she has no family support network in Singapore, and she constantly attended to the EE business in Malaysia. This does not appear to be a case of relocation by the Wife out of spite or an attempt to frustrate the Husband's relationship with the Children. In the interview with the Children, I find that they are cheerful and happy, and they seem to have settled down well in Malaysia. Both have adjusted to their school or kindergarten. They are also cared for by their maternal grandparents and extended family, all of whom are based in KL. They have weekly video calls with their father; Q has her own phone and could message her father. In light of the circumstances, and given the young age of the Children and thus the need for stability, it would be disruptive to uproot them once again. I am of the view that it will not be in the interest of the Children to relocate them back to Singapore even though the Wife's conduct cannot be condoned.

14 The order for joint custody means that in matters concerning the major aspects of a child's life such as where the child should be located, there must be

consensus, failing which, a court order. Although an application (one of the present applications) was made to this end, it came as a *fait accompli*. The fact that the children became stranded after the COVID-19 restrictions seem plausible, but was a situation brought about by the surreptitious travel in the first place. That is the act of default by the Wife in carrying out her duty as a joint custodian of the children. Although this is not exactly a case, this kind of breach can be an act of kidnapping by a parent, and no court will approve that. Taking a child of the marriage out of jurisdiction without leave has a range of opprobrium of which the present falls within the lower end. Section 126(3) of the Women's Charter (Cap 353, 2009 Rev Ed) makes clear that where an order for custody is in force, no person shall take the child who is the subject of the custody order out of Singapore except with the written consent of both parents or the leave of court, and a person contravening this could be guilty of an offence under s 126(5) of the Women's Charter.

15 I am empowered to order that the children be returned to Singapore, and an injunction can be ordered to enforce it should the Wife refuse to comply on pain of punishment, including imprisonment. This would be in accordance with the welfare principle under s 3 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) that accords the court the power to do so, if it is in the best interests of the children to be returned to Singapore. I will not, however, on the facts of this case, make the order for the time being. The full ancillary hearing has not been completed. In this case, it may not be in the best interests of the children to have them returned to Singapore – yet. I am content to leave the status quo, undesirable as it is, until the ancillary matters have been made.

16 The relocation application was made around two months after she moved the Children to Malaysia. In her solicitor's letter, she claimed that she was planning to return the Children after they attended their medical

appointments in KL. This was contradicted by her own evidence that she expected the Children to stay in Malaysia for a significant period of time, and thus made arrangements for their education in Malaysia. The fact that she unenrolled Q from her school in Singapore shows that she clearly intended to relocate the Children as early as November 2020. She has acted clandestinely and failed to discuss any of these plans with the Husband who, as a parent with joint custody, should have been consulted on the major life decisions concerning the Children. Even if she had legitimate reasons for wanting to relocate to Malaysia due to work and familial support, they do not give her the *carte blanche* to make such decisions unilaterally.

17 The potential loss of relationship between the Children and the left-behind parent is a serious matter for consideration. I reject the Wife's counsel's submission that there is minimal loss because the Husband did not have a strong bond with the Children to begin with. But the effects on the Husband's relationship with the Children can be ameliorated, for the time being, through other means, given the availability of video link and instant communication platforms. I observe that the Children have managed to maintain contact with their father through regular video-calls. The Wife has also updated the Husband on how the Children are doing after the relocation, as evidenced by her e-mail dated January 2021 updating the Husband on Q's chiropractor consultation. As the Husband has said himself, KL is not too far from Singapore, and when the COVID-19 situation improves, he could visit them as frequently as he would like to. But in spite of all this, for the reasons I have stated above, I cannot grant the relocation application but will not impose sanctions on the Wife in this case since the parties are at liberty to make fresh applications regarding the location of the children at the hearing of the ancillary matters.

- Sgd -
Choo Han Teck
Judge of the High Court

Ong Kah Liang Basil and Kerri Tan (PK Wong & Nair LLC) for the
 plaintiff;
 Chua Junyi Leonard and Lim Qui'en (Damodara Ong LLC) for the
 defendant.