IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 13

Divorce (Transferred) No 1861 of 2015
(Summonses Nos 326 and 370 of 2021)

Between

UBQ

… *Plaintiff*

And

UBR

… *Defendant*

GROUNDS OF DECISION

[Family Law — Custody — Care and control]
[Family Law — Custody — Access]
[Family Law — Child — Appointment of therapist]

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UBQ
v
UBR

[2022] SGHCF 13

General Division of the High Court (Family Division) — Divorce (Transferred) No 1861 of 2015 (Summonses Nos 326 and 370 of 2021)
Debbie Ong J
19 November 2021, 7, 21 April, 10 May 2022

31 May 2022

Debbie Ong J:

Introduction

1 The plaintiff is referred to as the "Husband", and the defendant is referred to as the "Wife". The parties have two children, [A] and [B], who are aged 14 and 12 respectively (the "Children").

Background

2 At the ancillary matters ("AM") proceedings, the following orders, *inter alia*, were made ("AM Orders"):

(a) Sole care and control of the Children is awarded to the Wife.

(b) The Wife's application for leave to relocate the Children to St Louis, Missouri, United States of America (the "US") is denied.

(c) The Husband shall have full and unsupervised access to the Children during the Spring Break and Fall Break. His access would begin after school on the last Friday of the school term and will end on 8.00pm of the Saturday before the school term resumes.

(d) During the Summer Break, the Husband's access will be as follows:

(i) In the first week of the Summer Break, the Husband is to have access from after school on the last Friday of the school term until the next Saturday, at 8.00pm.

(ii) In the two weeks before the end of the Summer Break, the Husband will have access from 2.00pm on the Friday two weeks before the end of the Summer Break, until 8.00pm of the Saturday before the school term resumes.

3 Both parties appealed against the AM Orders and the appeals went before the Court of Appeal in March 2021. Both parties subsequently withdrew their appeals. The Husband withdrew his appeal on the explicit written commitment that the Wife "would not be filing a relocation application in the foreseeable future". The Husband submitted that, not long after this, the Children were abducted by the Wife to the US in May 2021. In proceedings brought by the Husband pursuant to the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"), the US Federal Judge ordered the Wife to return the Children to Singapore. It was not disputed that the Wife and Children left for the US in May 2021 and returned in November 2021.

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Summons for injunction

4 In HCF/SUM 326/2021 ("SUM 326"), the Husband applied for the following orders to be made:

(a) the Wife, whether by herself or by her family members, servants or agents, shall be restrained from removing [A] and [B] from Singapore without the Husband's written consent or an order of court;

(b) the Wife shall hand over the Children's passports to the Husband for safekeeping within 24 hours from the date of the order to be made, and the Children's passports will only be released to the Wife upon his consent or an order of court;

(c) for all of the Wife's overseas travels with the Children, the Wife shall furnish a banker's guarantee of S$100,000 for each child as a safeguard to ensure that the Children are not abducted again and are returned to Singapore; and

(d) such further orders as the court deems fit.

Parties' submissions

5 The Husband sought the orders set out at [4] above. He also hoped to serve the restraining order on the Immigration and Checkpoints Authority in order to prevent future abductions. The Husband submitted that the Wife had made clear that she did not want the Children to be in Singapore, or to attend their present school or to have a bond and meaningful relationship with the Husband. The Husband believed that the Wife has plans to abduct the Children to the US again, as she has shown no regard for the law in Singapore or the orders made by the courts. Furthermore, her abduction of the Children in May

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2021 was intended to permanently remove the Children from Singapore, evidenced by the Wife enrolling the Children in schools and long-term extra-curricular routines in the US and her vigorous resistance of the Husband's application under the Hague Convention for the return of the Children to Singapore by claiming that [A] wanted to live in the US and was of sufficient maturity to express his views, pursuant to the defence under Article 13 of the Hague Convention. The Husband believed that she will attempt to remove the Children again at the earliest possible window.

6 The Wife submitted that she did not intend to travel beyond what was ordered by the court and in their agreement mediated previously at the then Child Focused Resolution Centre of the Family Justice Courts (the "CFRC"). The Wife submitted that court orders were made on 8 March 2016 to protect the Children's summer and winter travel routines. She further explained that she and the Children had always travelled to the US twice yearly to meet family and friends. For the travel to the US in 2021, she submitted that it was always her intention to return to Singapore within the normal timeframe, but was prevented from doing so as the portal for applications remained closed for dependant and student passes, and when she wrote to the Husband's employer to assist with procuring the passes, the Husband instructed her not to write to his employers as there were court orders preventing her from doing so (when there was in fact none). Further, she said that the Husband requested the US Federal Court to retain their passports so that they would not leave the US until the Hague Convention application was concluded.

7 SUM 326 was first heard on an urgent *ex parte* basis on 19 November 2021. Then, I granted an order that the Wife be restrained from removing the Children from Singapore without the written consent of the Husband and that the Wife should hand over the Children's passports to the Husband's solicitors

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for safekeeping. This order was made to hold the position then, given the exceptional events where the Wife had left with the Children for the US in May 2021 in breach of court orders, and where orders were made by the US Court to return the Children. I have now heard SUM 326 *inter partes* and render my decision.

Decision

8 In all matters where the custody or upbringing of the child is in issue, "the welfare of the child is paramount and this principle ought to override any other consideration" (*BNS v BNT* [2015] 3 SLR 973 at [19]). This welfare principle places the child's interests at the forefront, ensuring that the child's interests are not side-lined while his or her parents litigate over what they subjectively perceive to be their respective rights and entitlements (*TAU v TAT* [2018] 5 SLR 1089 at [10]).

9 I noted that certain aspects of the 2021 US trip were of concern. First, as the Husband pointed out, the Wife had left for the US over a period when the Husband was to have access with the Children, and this was a breach of the AM Orders. Further, while in the US, the Wife's conduct of making placement enquiries at several American schools and arranging for school tours was suspicious, even if she had explained that the schooling arrangements in the US were meant to be temporary. I understood the alarm the Husband must have experienced then – as a loving parent who is concerned for the Children, I could see that he was worried for their well-being and concerned that he would be permanently separated from the Children in a different country.

10 However, I accepted that 2021 was an unprecedented year. Due to the COVID-19 pandemic, global travel was gravely affected – in particular, re-entry into Singapore for non-citizens and permanent residents required specific

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approvals. It was thus important that the 2021 US trip should be viewed against the backdrop of these unusual pandemic-related restrictions.

11 I found that the Husband had also used the conditions arising from the COVID-19 situation to take out applications to prevent the Wife and the Children from going on their intended trip in December 2020 and did so again in May 2021. I was of the view that the Husband's application and ensuing court order prohibiting the Wife to take the Children for their intended Christmas vacation in December 2020 had a bearing on the events that took place in May 2021. I found this a very significant circumstance to understanding the context of the 2021 US trip. The Wife had explained that the Children were gravely disappointed by the prohibition to travel in December 2020. The Wife submitted during the hearing on 21 April 2022 that the time that the Children spend in the US is "critical" for their welfare, and that they were "distraught" that their trips were cancelled, beginning from the summer of 2019. When the Husband took out a similar application again in May 2021, it triggered a reaction where she felt that their well-being could barely withstand another cancellation of a much-needed trip to the US. The Wife and the Children had, prior to 2019, routinely spent the summer and winter school breaks in the US. The Wife explained that the Children looked forward to and enjoyed their US trips; the trips were important for their well-being and provided a sense of stability and respite in light of the parties' marital breakdown. She emphasised that in accordance with the CFRC mediated agreement in 2015, the parties had agreed that the Wife and the Children were to spend the summer and winter school breaks in the US. This was crucial to her agreement to reside in Singapore and withdraw her initial relocation application. I noted that the Husband was not opposed to the US trips in themselves but was seeking a temporary moratorium and further safeguards in respect of these trips. I did, however, think that ironically, the Wife's desire to relocate may be revived if the Husband continued to impede her holiday

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travel even in these ways, preventing the Children from spending time with their extended family and friends in the US the way they had previously.

12 At the hearing, the Husband's counsel argued that the fact that the Wife had mounted a defence under Article 13 of the Hague Convention in the Hague Convention proceedings also showed that she had no intention of returning to Singapore. However, I recognised that the Wife was not in a straightforward situation in 2021. [A] is no longer a young child that a parent could easily physically take along wherever she goes – he is a teenager who has opinions and can independently express his views. I accepted that she argued the Article 13 defence in the Hague Convention proceedings to allow [A] an opportunity to express his views during the proceedings.

13 While I understood that the Husband was still concerned over the Wife and Children's holiday travels, I was of the view that the past two years were highly exceptional years, and current travel arrangements are no longer as stringent as they previously were. The latter half of 2020 was so unusual that the Husband succeeded in obtaining an order prohibiting the Wife from travelling with the Children to the US for Christmas in December 2020. As I said earlier, this had an impact on the events in 2021 (at [11] above). The pandemic situation constantly evolves and will continue to change, and life must go on. The Husband should support the Wife and Children's travels to the US as stated in the court orders. The Wife had also experienced the Hague Convention application proceedings and was aware that she will not be able to use her holiday travel to "abduct" the Children *if* she had any intentions to do so.

14 Applying the welfare principle, I was of the view that it would be in the Children's interests to be permitted to travel to the US twice a year, as provided

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in the AM Orders. Accordingly, the Wife and Children may take their next trip in the coming summer vacation in May/June 2022. There should be no need for the Wife to furnish a banker's guarantee to travel. The passports should be held by the parent with care and control of the Children. The issue of care and control is addressed below.

15 I thus dismissed SUM 326.

Summons for variation of judgment / order

16 The Husband filed HCF/SUM 370/2021 ("SUM 370"), seeking sole care and control of [B] and [A], with video call access to the Wife for the first six months, and subsequently, physical access to the Wife every alternate week. This was a variation of the care and control and access orders that were made by Tan Puay Boon JC ("Tan JC") on 21 September 2020. Alternatively, the Husband prayed for him to have sole care and control of [B] and for the Wife to have sole care and control of [A] for a period of three months from the date of the order to be made, and thereafter, the Husband will have sole care and control of both [A] and [B]. Further and/or in the alternative, the Husband also prayed to have uninterrupted make-up access time with the Children. The Husband also applied for a therapist to be appointed to restore the relationship between him and [A], and for a Parenting Coordinator to be appointed. Finally, the Husband sought an order that neither party shall disclose information relating to the proceedings, including and especially this application to the Children, or to speak ill of the other party in the presence of the Children.

17 The Husband submitted that in breach of the AM Orders, the Wife took the Children and left Singapore for the US on 19 May 2021. Under Tan JC's Order, the Husband was to have Summer Break access to the Children from 28 May 2021 to 5 June 2021, and again from 23 July 2021 to 7 August 2021.

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The Husband argued that the Wife had made meticulous plans on her "intended permanent and irreversible" abduction of the Children to the US, evidenced by her making admission inquiries to multiple US schools and trying to have her Filipino helper apply for a visa to join her and the Children in the US on 31 July 2021. The Wife had also kept the Children in the US for the entirety of the Summer Break and admitted them into an American school in mid-August 2021. This May 2021 US trip has been discussed above.

Care and control of [A] and [B]

18 The Husband submitted that there has been a material change in circumstances since September 2020, the time of Tan JC's orders, that warranted the switch of care and control of the Children from the Wife to the Husband. He asserted that the Wife had placed the Children at the centre of her "relocation efforts". The Husband said that he was concerned for the Children's well-being and has serious concerns about leaving the Children in the care and control of the Wife – in particular, he was concerned over [B]'s suicidal tendencies and worries that [A] has gone down a "path of delinquency". Further, the Husband highlighted that his relationship with [A] has deteriorated, and he attributed this to the Wife's influence over [A]. The Husband alleged that the Wife had laid the blame on the Husband for prohibiting [A] from going to the US, played a part in [A]'s failure to attend regular access and also placed [A] at the centre of her Hague Convention application, using the Article 13 defence. The Husband also highlighted the Wife's mental health as a concern, and proposed that the sole care and control order be reversed to allow the Wife to focus on improving her mental health.

19 In the alternative, the Husband prayed for only [B] to live with him for the next three months, while [A] continued being under the Wife's sole care and

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control, but from the fourth month onwards, care and control of both be switched from the Wife to the Husband. He submitted that in this interim period, the current access arrangements for [A] should be maintained so that his relationship with [A] could first be repaired before care and control was switched.

20 The Husband submitted that the prayer to have uninterrupted sole care and control of the Children for the next six months without physical access to the Wife was to "repair [his] relationship with the Children and to reverse the harm and damage caused by [the Wife]". He submitted that he would facilitate access and encourage the Children to speak with the Wife. He also had flexible working arrangements and would be able to spend time with the Children.

21 The Wife submitted that she had always been the Children's primary caregiver. She pointed out that she did not have a "quest for relocation", and even tried to return to Singapore when the Husband served the papers for the Hague Convention matter on her. She submitted that she had always spent the entire summer in the US. It was always her intention to return to Singapore within the normal timeframe, but was prevented from doing so due to the prevailing travel restrictions on individuals holding dependent and student passes, and the Husband's request that the US Federal Court retain their passports until the Hague Convention application was concluded, as explained at [6] above. She submitted at the hearing that the Husband knew where the Children were and could even have flown over to the US to where they were. The Wife further pointed out that the Husband's request was extreme, and that the impact on the Children would be great. She submitted that the Children were stable in her care and were well-loved and nurtured. On the alternative request, she submitted that the Children are close to each other and separating them for a period of six months would be "devastating" to the Children.

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22 I understood that the Husband felt that after the orders in September 2020 were released, his relationship with [A] deteriorated greatly, with [A] blocking his calls and messages. I was of the view that the cumulative weight of litigation over the past seven years had affected the Children, who are no stranger to the proceedings. Each act, decision and step taken by the parties over the years had contributed to where this family is today. The Children had suffered under the burden of their parents' litigation – *even before* the September 2020 orders were released, [B] was assessed to be at a high risk of suicide. Certainly, the COVID-19 situation (which was beyond the parties' control) added further complications to the situation, including disrupting the Wife and Children's travel to the US and back. However, the actions of both parties had also contributed to the emotional state that the Children are in. I was not prepared to find, in the present case, that only one party's particular act caused a certain reaction and emotional state of a child. Given all that has happened, I had considered carefully what would be in the welfare of the Children.

23 Pursuant to s 128 of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"), the court has the power to vary any order for the care and control of a child where it is satisfied that there has been any material change in the circumstances. Section 125(2) of the Women's Charter provides that the welfare of the child is the court's paramount consideration in applications concerning care and control.

24 In my view, the care and control order should be maintained in the present case. I recognised that the Husband loves and cares for the Children and wished to spend more time with them. He was also aggrieved by the breakdown of his relationship with [A]. However, I urged the Husband to ponder on what an unintended outcome of such a switch could be – for example, will [A], who

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has resisted regular access with him for more than a year now, be even more resentful if care and control is abruptly switched? Further, it was not disputed that the Wife has been the primary caregiver of the Children. They had in recent years lived primarily with her as the parent-caregiver. At this point, I find that the continuity of arrangements for the Children would be the most beneficial for the Children's well-being. I was of the view that their mental and emotional well-being had been gravely affected for many years by the stresses related to their parents' conflict. This must not go on.

25 I also did not think that the Husband's alternative proposal for split care and control for six months served the Children's welfare. It would not be in the Children's best interests to separate the two Children who had grown up together where each is a vital source of support for the other. Losing the unity of both parents had been hard enough, and to lose the only sibling each has by separated living would be a devastating loss.

Access orders

26 In the event that care and control is not switched, the Husband prayed for an order for make-up access. He submitted that he had missed 62 days of access and requested that the make-up access be in an uninterrupted block of time that would be representative of the holiday access he should have had if the Wife had not kept the Children in the US.

27 The Wife submitted that the Husband's proposal would upset the Children's entire routines and would be harmful to the Children's emotional and mental welfare. She pointed out that the Children had been accustomed to long spans of being in the Wife's sole care, even during the marriage, for the Husband travelled often and was not involved in the Children's caregiving. [A] had detached himself from the Husband on his own accord. Furthermore, the

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Husband had sought to vary the holiday arrangements, which she argued would be detrimental to the Children who very much enjoy their winter and summer school breaks in the US.

28 The Wife asked that no make-up time be granted as she did not agree to the Husband's calculation of his lost access time. She submitted that on an hour-by-hour calculation of the lost access time, she had provided the Husband with 40 days of make-up access, including consecutive periods, with the longest being a full month from 16 December 2021 to 16 January 2022. Furthermore, she submitted that the Children want orders that are predictable and reliable. It is a point of stress that the orders have been changing. She also submitted that the Husband contributed to their delay in returning to Singapore, as he prevented her from seeking the necessary assistance from his employer and also asked the US Federal Court to keep her in the US.

29 I found that the Husband's request to have six months of uninterrupted access with the Children is not reasonable. I noted that the Husband had already been given consecutive periods of uninterrupted access time to [B], with the longest being a full month from 16 December 2021 to 16 January 2022, which was what he requested for in his fourth prayer in SUM 370. As the Husband and [A] had been estranged (such that the Husband also sought therapeutic support to repair their relationship), I found that it would not be in the best interests of [A] to be with the Husband for such long periods of time quite abruptly at this stage. While I understood that the Husband sought to have uninterrupted time with [A] to repair his relationship with [A], this repair had to be done in other ways.

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Appointment of therapist for counselling / family therapy / reunification treatment

30 The Husband further requested that a therapist (either [Therapist T of Company 1], [Therapist U of Company 2] or [Therapist V of Company 3]) be appointed to carry out the necessary counselling, family therapy and/or reunification treatment to restore the relationship between the Husband and [A]. The Husband submitted that his relationship with [A] was in "desperate need of help and intervention" as the Wife had alienated [A] from the Husband. He had originally proposed that [A] see [Therapist W], who previously attended to [B] between October 2020 and May 2021, but the Wife objected to this, proposing one [Therapist X] instead. [Therapist W] had since suggested two other therapists to sequester [A]'s issues from [B]'s issues. The Husband also believed that there is no urgency for [A] to see a psychiatrist, but it was important that a therapist be appointed to repair their relationship.

31 The Wife was of the view that [A] needed a therapist and psychiatrist. The Wife submitted that [A] was now seeing [Therapist Y of Company 4]. She submitted that it would make sense for [Therapist Y] to be appointed for therapy sessions for [A] and to clarify that sessions with the parents be limited to those necessary for [A]'s treatment and with his knowledge. She pointed out that the Husband did not consent to [A] seeing [B]'s new psychiatrist, and that the Husband had a tendency to discontinue services with a practitioner who disagrees with him. The Wife also asked that a child psychiatrist be appointed for the Children. She submitted that [A] was also in need of the supervision of a medical doctor. The Wife submitted that the Husband had objected to [A] seeing several psychiatrists, including [Therapist Z] and [Therapist X] (who had been apprised of the family's history).

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32 While I made no specific order directing this, I agreed with the Wife that [A] should continue seeing [Therapist Y of Company 4] if he is comfortable with it. It would be in the best interests of [A] to see a therapist that he is familiar and has a relationship with, rather than to start the process again with a new therapist. The relationship and connection between the child and the therapist are very important. Where appropriate, sessions could be arranged jointly with the Husband to facilitate the repair of the relationship between the Husband and [A]. I dismissed the Husband's application to appoint either [Therapist T], [Therapist U] or [Therapist V].

Appointment of a Parenting Coordinator

33 The Husband submitted that the appointment of a Parenting Coordinator would assist him and the Wife in learning how to co-parent effectively and to communicate in a way that would benefit the Children. The Wife submitted that she was uncertain if this role would benefit their Children and was of the impression that this role would have been more helpful earlier in 2015, when the matters were just commencing.

34 A Parenting Coordinator assists largely with the carrying out of court orders, such as by assisting parties with smoothening out access handovers and assisting parties to implement flexibility in carrying out court orders practically. I did not see the need for such a Parenting Coordinator; a therapist would be more suitable in this case.

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Prayer that neither party shall disclose information relating to the proceedings to the Children or to speak ill of the other party in the presence of the Children

35 The Husband sought an order that neither party shall disclose information relating to the proceedings, including/especially this application, or to speak ill of the other party in the presence of the Children.

36 I was not inclined in the present case to make this legal expectation into a specific court order. Instead, this conduct was already expected of the parties by the law which imposes parental responsibility on both parents.

37 I had stated in my decision of *CLB v CLC* [2022] SGHCF 3 at [39], with respect to an order sought by the husband in that case not to speak to the children about court proceedings:

> … This is an expectation of the law and the parties should certainly not speak poorly of each other in the children's presence, but making this a specific order could potentially cause parties to be overly and unnecessarily focused on what the other parent may have said to the children that is linked to him or her.

Judicial interview with the Children

38 The Wife also requested that the Court speaks to the Children. The Wife asked that the Court interviews [A], to understand [A]'s independent views and feelings towards the Husband. She highlighted that [A] is 14 years old and should be involved in the processes of deciding his future. At the hearing, the Husband strongly resisted this, stating that the Children may be put under greater pressure as a result.

39 I decided not to speak to the Children. I heard the views of both parents in respect of this issue. I noted that when [A] was involved in the Hague

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Convention proceedings in the US, he had expressed his nervousness to the Wife about being involved in the proceedings. Having considered the materials before me, I did not think that it was necessary to further involve the Children this way.

Conclusion and moving ahead

40 SUM 326 and SUM 370 were dismissed. The parties were well aware that the protracted litigation had taken a terrible toll on the Children. In general, children often suffer the "conflict of loyalty" when they try not to hurt either parent by appearing to take sides; they should not have to bear such burdens of their parents' conflict. Children also have to spend time separately with each parent after divorce, which impacts their living arrangements and schedules greatly. This can already be demanding on children, even without the stress of parents who distrust each other and who continue litigating over them.

41 I further penned down some thoughts for both parties' contemplation. They did not constitute my findings or reasons for the orders I have reached above. I had already earlier explained my reasons for my decisions. I offered these thoughts in the hope that they could be of use when the parties try to recast their future and work towards providing the Children a healthy and normal childhood. The Husband could reflect on how any of his acts may have played a part in his now-estranged relationship with [A]; whatever may have been the justification, how might the Children have perceived his applications to prohibit them from travelling to the US in December 2020 and again in May 2021? The Wife could reflect on how her response to the court's decision in September 2020 might have been perceived by the Children, and if she had played a part in how events unfolded thereafter. If the parties are able to desist from finding fault with the other and instead extend grace and flexibility towards each other,

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the Children will sense the increasing harmony and be greatly uplifted by this. They will be able to heal.

Debbie Ong
Judge of the High Court

Linda Joelle Ong and Tan Xin Er, Sylvie (Engelin Teh Practice LLC)
for the plaintiff;
the defendant in person.

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