IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 24

District Court Appeal No 123 of 2021

Between

VYR

… *Appellant*

And

VYS

… *Respondent*

JUDGMENT

[Family Law — Family violence — Orders for protection]

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VYR
v
VYS

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General Division of the High Court (Family Division) — District Court Appeal No 123 of 2021
Aedit Abdullah J
7 April, 25 July 2022

25 August 2022 Judgment reserved.

Aedit Abdullah J:

1 This is an appeal against the decision of the magistrate (the "Magistrate") in declining to grant a personal protection order ("PPO") or a domestic exclusion order ("DEO") under s 65(1) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC"). The full grounds of decision of the lower court are contained in *VYR v VYS* [2021] SGFC 128 (the "GD").

Background

2 The parties were wife and husband. The appellant (the wife) sought a PPO and a DEO against the respondent (the husband). Before the Magistrate, the appellant, who acted in person, contended that she was put in fear of violence based on an incident that occurred on 19 May 2021 which she recorded on her

phone.[1] Two video clips of the incident were provided. In the first clip, the parties were arguing, with the appellant seated with her back against a door, while the respondent advanced towards her and raised his leg for a second before lowering it; he then snatched her phone with his hand. In the second clip, which was filmed after the first clip, the parties continued arguing as the appellant stood up and followed the respondent to the bedroom. The clip ended when the respondent screamed at the appellant to shut up.[2]

3 The respondent accepts that he had raised his leg and explained that he intended to kick the phone away. Realising that he might hit the appellant, he reached out to grab the phone with his hand instead as he did not want to hurt her.[3] The respondent further stated that the appellant had woken him up by switching off the air-conditioning in the bedroom, and had refused to help him find the remote control for the air-conditioner. Instead, she sat by the door and filmed him while questioning him about his financial affairs.[4] After he returned the phone to the appellant, the complainant persisted in questioning him. Frustrated, he screamed at her to get out of his bedroom.[5] On his account, no hurt was caused as he did not kick the appellant. The appellant's conduct also clearly evinced that she was not in fear of hurt.[6]

4 The Magistrate found that no family violence was committed or likely to be committed, and further, that a protection order was not necessary for the

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1 Record of Appeal ("ROA"), Grounds of Decision ("GD") at para 1.

2 ROA, GD at paras 2 and 3.

3 ROA, GD at para 5.

4 ROA, GD at para 5.

5 ROA, GD at para 6.

6 ROA, GD at para 7.

appellant's protection.[7] Specifically, no hurt was caused to the appellant, and the appellant was neither placed in fear of hurt nor continually harassed by the respondent.[8] Furthermore, based on the conduct and relationship dynamics of the parties, a protection order was unnecessary as family violence was not likely to be committed.[9] As such, no PPO or DEO was granted.

Summary of the appellant's case

5 The appellant's case is twofold. First, the appellant contends that the Magistrate failed to comply with r 100(1) of the Family Justice Rules 2014 ("FJR") by relying on the respondent's affidavit of evidence-in-chief ("AEIC") in making findings of fact.[10] This occasioned injustice to the appellant as she was unable to dispute the factual assertions in the respondent's AEIC.[11] The appellant also claims that the Magistrate was "primed" by the written submissions of the respondent in making his findings.[12] Second, the appellant argues that, in the course of her cross-examination of the respondent (which took only about a minute), she was repeatedly cut off and disallowed from completing her sentences and was controlled in the manner in which she could ask her questions. This shows that the Magistrate had little interest in understanding her case.[13] Towards the end of her cross-examination, she contends that the Magistrate conveyed the impression that her case was made out and that she could move on to her closing submissions. The appellant further

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7 ROA, GD at para 1.

8 ROA, GD at paras 16 to 33.

9 ROA, GD at para 34 and 35.

10 Appellant's Case (Amendment No 1) dated 28 April 2022 ("AC") at para 18.

11 AC at para 19.

12 AC at paras 22 to 23.

13 AC at para 25.

suggests that the Magistrate rejected a question she raised during closing submissions as he wanted to conclude the matter hastily.[14] Taken together, the Magistrate's conduct amounts to judicial interference.

6 At the oral submissions, the appellant submitted that r 100(1) of the FJR confines the Magistrate to making findings of fact based only on what was raised in oral evidence. This is because family violence hearings require a mindfulness to the facts, and credence should be placed on oral evidence. The breach of r 100(1) of the FJR was furthered by the Magistrate's interventions in the appellant's conduct of her case. In these circumstances, a re-trial should be ordered.

Summary of the respondent's case

7 The respondent raises three main grounds. First, the respondent's AEIC was properly admitted into evidence.[15] As such, the Magistrate was entitled to consider the evidence therein. Second, the respondent disputes the appellant's interpretation of r 100(1) of the FJR. On the appellant's account, any evidence in an AIEC that is not raised in oral examination is considered unproven.[16] This is incorrect. Rule 100(1) of the FJR only requires any finding of fact that is to be proven at a family violence trial to be done by way of an examination of the witness in court. In other words, only the facts going towards showing that family violence has been committed or is likely to be committed, as well as that the PPO is necessary for the protection of the family member need to be raised in oral evidence.[17] This was done so at the hearing. These facts were put to the

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14 AC at para 28.

15 Respondent's Case (Amendment No 1) dated 27 May 2022 ("RC") at para 15.

16 RC at para 18.

17 RC at paras 19 to 22.

appellant during the respondent's cross-examination of her.[18] Further, the respondent's AEIC was filed a month in advance before the hearing and the appellant had ample opportunity to raise any facts.[19] The respondent also avers that there is no basis for the suggestion that the Magistrate was "primed" by the respondent's closing submissions.[20] Third, the appellant's allegation of judicial interference is unmeritorious. The appellant was given the opportunity to raise any questions she might have had.[21] The interventions of the Magistrate did not amount to interference: he had not cut off the appellant at any point in time, and his rephrasing of the appellant's question was done to assist her.[22]

8 In oral submissions, the respondent reiterated that the appellant's interpretation of r 100(1) of the FJR is unsustainable. Even if the appellant's interpretation is correct, the appellant had failed to establish her case as she chose to conclude her cross-examination after asking one question. If findings of fact may only be based on oral testimony, then the appellant has failed to establish her case. The respondent also confirmed that the findings of fact by the Magistrate were based on either the oral testimony of parties or affidavit evidence.

The decision

9 Having considered the arguments and affidavits, I dismiss the appeal. As for the determination of the costs of the application, directions will be given separately.

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18 RC at para 23.

19 RC at paras 26 and 27.

20 RC at paras 31 to 34.

21 RC at para 51.

22 RC at paras 47, 50, 52 and 53.

Analysis

Whether the Magistrate is in breach of r 100(1) of the FJR

Whether the appellant's interpretation of r 100(1) of the FJR is correct

10 The thrust of the appellant's appeal centres on the interpretation of r 100(1) of the FJR, which is as follows:

> **Evidence for family violence trial**
>
> **100.—**(1) Subject to these Rules, and the Evidence Act (Cap. 97) and any other written law relating to evidence, any fact required to be proved at a family violence trial by the evidence of witnesses must be proved by an examination of the witnesses in Court.

11 The gist of the appellant's interpretation is that anything that is to be proven in a family violence hearing must be proven orally. The implication of this is that the court may not consider evidence contained in an AEIC unless it was raised in oral testimony.

12 A review of r 100 of the FJR shows that the appellant's interpretation is incorrect. Affidavit evidence may be considered by the court, even if it is not raised in oral testimony. To begin, r 100(2) of the FJR states:

> (2) Without prejudice to the generality of paragraph (1), and unless otherwise provided by any written law or by these Rules, at a family violence trial —
>
> (*a*) evidence-in-chief of a witness must be given by way of affidavit; and
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> (*b*) unless the Court otherwise orders —
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> (i) the witness must attend trial for cross-examination; and
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> (ii) in default of the witness' attendance, the witness' affidavit shall not be received in evidence except with the leave of the Court.

13 Rules 100(2)(*a*) and 100(2)(*b*) make clear that the evidence-in-chief of a witness is to be received in evidence by way of affidavit, barring their absence at trial for cross-examination. Rule 100(3) further stipulates that the documents used in conjunction with an affidavit must be exhibited (with a copy to be annexed), suggesting that documents attached to the affidavits may also be considered by the court. Of significance is also r 100(7) of the FJR, which provides an exception to rr 100(2), 100(3), 100(4) and 100(6) ("the Provisions"). Pursuant to r 100(7)(*a*), a court may order a witness to give evidence orally at a family violence trial. This stands in contradistinction against the Provisions, which generally pertain to the use of affidavits of evidence-in-chief in a family violence trial. This further confirms that the evidence of a witness is ordinarily to be given by way of an affidavit. It is thus evident, on a holistic review of r 100 of the FJR, that r 100(1) does not restrict the court to only considering oral evidence.

14 Beyond r 100 of the FJR, a review of the general schema of legislation governing family violence hearings points to the same conclusion. Rule 101(4) of the FJR, which governs the family violence trial process, allows a court to deal with applications seeking a PPO or DEO without any oral testimony or examination of witnesses on fulfillment of two conditions. One of the two conditions is that there is no dispute on the facts stated in the affidavits filed by the parties: r 101(4)(*b*) of the FJR. In such a situation, the court may then rely on the affidavits of parties in determining the relevant facts. This demonstrably undermines the appellant's interpretation of r 100(1) of the FJR. The Family Justice Practice Directions ("FJPD") is also instructive. At paragraph 24(1)(*c*), which concerns family violence proceedings, parties may apply to strike out the whole or parts of affidavits to be used in proceedings. That such applications

are provided for only underscores the significance of affidavits in family violence proceedings.

15 A review of the relevant legislation therefore shows that the appellant's interpretation of r 100(1) of the FJR is untenable. It also bears noting that on the appellant's interpretation of r 100(1) of the FJR, the AEICs that are tendered in family violence hearings are rendered otiose. If they may not be relied on to prove facts (as they are used to do so in other civil proceedings), it is unclear what purpose they serve. When pressed on this point, the appellant suggested, in oral submissions, that the purpose of AEICs in family violence hearings differ from that in other civil proceedings; AEICS in the former delineate the evidence that may be given orally but do not go towards establishing facts while AEICs in the latter may be relied on to prove facts. This distinguishment, however, is without basis or merit.

16 In sum, r 100(1) of the FJR does not restrict a court to only considering oral testimony in making findings of fact. Instead, the court may consider all admissible evidence, including affidavit evidence and oral testimony.

Whether the Magistrate is in breach of r 100(1) of the FJR

17 It follows from the foregoing that the Magistrate is not in breach of r 100(1) of the FJR by making findings of facts based on the evidence contained in the respondent's AEIC. The AEIC of the respondent was admitted into evidence, the appellant provided her account of the events during her examination-in-chief (as she had not filed an AEIC), and both the respondent and appellant tested each other's evidence through cross-examination. The respondent further confirms that all the findings of fact made by the Magistrate are grounded in either affidavit evidence or the oral testimony of parties.

Pertinently, the appellant does not go so far to suggest that the Magistrate has made findings of fact beyond what was contained in affidavit evidence or oral testimony but simply that the Magistrate should not have relied on the respondent's AEIC as part of his consideration.

18 As for the allegation that the Magistrate furthered the breaches of r 100(1) of the FJR through his interventions, this falls away given that it is premised on the appellant's interpretation of the said rule, which I have rejected.

19 However, assuming, *arguendo*, that the appellant's interpretation of r 100(1) of the FJR is correct, there remains no basis for the appellant's complaint against the Magistrate. The general tenor of the appellant's submission is that the Magistrate should have done more to clarify or put forth some pertinent points of the appellant's case to the respondent, notwithstanding that the appellant had chosen to conclude her cross-examination after one question.[23] Oral evidence concerning the appellant's case, as put forth by the Magistrate on behalf of the appellant, may then be relied on to make findings of fact. Beyond a bare reliance of r 100(1) of the FJR, no further reasons have been offered as to why this should be expected of the Magistrate. As conceded by the appellant, neither the notion of therapeutic justice nor the judge-led approach in resolving family disputes lend themselves to justifying the demands she imposes on the Magistrate. Examining paragraph 6(9) of the FJPD, which outlines the key principles of the judge-led approach in resolving family disputes, it is apparent that the judge-led approach is not conceived in such expansive terms such that the court is to advance the cases of litigants-in-person on their behalf. And as further conceded by the appellant, on a traditional umpire view of judicial management, there is no reason why the Magistrate should

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[23] Minute sheet dated 25 July 2022 ("Minute Sheet") at p 2.

advocate on behalf of the appellant. Ultimately, given the appellant's choice not to ask further questions or advance her case (and not by any consequence of the Magistrate's interventions, as explained below at [24]), no fault may be attributed to the Magistrate.

20 Finally, there is no basis for the appellant's suggestion that the Magistrate was "primed" by the respondent's submissions. The appellant relies on paragraph seven of the GD as proof that the Magistrate adopted the respondent's submissions as evidence.[24] This, however, is based on a misapprehension of the GD. Paragraph seven is clearly a summary of the respondent's case. It does not pertain to the findings of the Magistrate.

21 In all, nothing in the conduct of the Magistrate points to a breach of r 100(1) of the FJR.

Whether there was judicial interference in the appellant's presentation of her case

22 The appellant relies on two incidents to suggest that there was judicial interference. The first involves the Magistrate talking over the appellant and reframing her question during her cross-examination of the respondent ("the First Incident"); and the second involves the Magistrate informing the appellant that it was okay if she did not have any further questions in her cross-examination of the respondent, and that they could move on to closing submissions ("the Second Incident").

23 The parties do not differ as regards the law concerning judicial interference as laid down in *Mohammed Ali bin Johari v Public Prosecutor*

[24] AC at para 23.

[2008] 4 SLR(R) 1058 ("*Johari*").[25] Briefly, it is a fact and context specific exercise, with the ultimate question being "whether or not there had been the possibility of a denial of justice to a particular party": *Johari* at [175(d)].

24 In respect of the First Incident, the appellant raises three allegations. First, the appellant was not allowed to complete her sentences. Second, the appellant was controlled in the manner in which she could ask her questions. Third, the Magistrate had little interest in understanding her case.[26] None of the allegations have merit. The Magistrate did not disallow or prohibit the appellant from completing her sentences. There was no hint or suggestion of any compulsion. What had occurred was that the appellant was asked to repeat her question as she was unclear.[27] She was also reminded to direct the question at the respondent.[28] This can hardly be described as the Magistrate controlling the appellant. In so far as the Magistrate rephrased her question, this was done to assist her. In the midst of rephrasing her question, the Magistrate clarified with the appellant twice whether the question, as he had rephrased it, was what she intended to ask.[29] Far from being disinterested, the Magistrate clearly understood the appellant's case.

25 The Second Incident concerns the Magistrate's statement to the appellant towards the end of her cross-examination of the respondent, as follows:[30]

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25 AC at para 29; see also RC at paras 39 and 40.

26 AC at para 25.

27 ROA, Notes of Evidence ("NE") at p 50, line 20 to p 51, line 5.

28 ROA, NE, p 50, lines 24 to 25.

29 ROA, NE at p 50, line 31 to p 51, line 3.

30 ROA, NE at p 51, lines 7 to 12.

Court:	Okay. Next question. Ma'am, if any.
[Appellant]:	On the return—
[Appellant]:	Can I use written submission now or verbally it later?
Court:	No, no, just the questions now. *If you don't have any questions, it's fine, we can move on to the submissions.*
[Appellant]:	Okay. I think I'll move on to the submissions

[emphasis added]

26 According to the appellant, the Magistrate's statement, as italicised, provided an impression to the appellant that her case had been made out, and it evinced that the Magistrate sought to hastily complete the appellant's cross-examination.[31] Plainly, the appellant's characterisation of the statement is unsustainable. It is not within even the penumbra of the meaning of the words used. The Magistrate was merely explaining to the appellant that if she did not have any further questions in cross-examination, parties may move on to their closing submissions. On no account of the Magistrate's statement could it be suggested that he conveyed an impression to the appellant that her case was made out. It further beggars belief on what basis the appellant suggests that the Magistrate sought to hastily complete the appellant's cross-examination of the respondent.

27 Apart from the above incidents, the appellant separately submits that the Magistrate rejected a question she raised during closing submissions as he wanted to conclude the matter hastily.[32] Again, a review of the transcript shows this to be untrue. The Magistrate answered the questions raised by the appellant, and checked with her repeatedly if she had any further submissions before

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31 AC at para 27.

32 AC at para 28.

turning to the respondent.[33] At no point in time did the Magistrate reject any of the appellant's questions, let alone do so because of a desire to conclude the matter hastily.

28 In sum, the allegation that there was judicial interference is baseless.

29 I should add as well as a general observation, and not addressing anything specific to this case or these parties, that while litigants-in-person should be treated civilly, and should be given opportunity to present their cases, and pursue their claims, the latitude to be given is not limitless. Control needs to be exercised by the presiding judge to ensure not just proper use of court time and resources, but also to be fair to the other side: the court cannot give such aid or indulgence that it tilts the scale in favour of one or the other. In the interests of the administration of justice, *pro se* litigants may need to be moved along, or on other occasions, cut off: an appellate court will not be so ready to find interference or conclude that there was any shortcoming in the conduct and management of a case by a judge attempting to control matters that threaten to spin out of control.

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[33] ROA, NE at p 51 line 20 to p 52, line 12.

Conclusion

30 In all, no reasons were raised by the appellant such that the appeal against the decision of the Magistrate should be granted. The appellant's arguments were, I am afraid, wholly unfounded on law or fact, and should not have been put forward at all.

Aedit Abdullah
Judge of the High Court

Rajwin Singh Sandhu (Rajwin & Yong LLP) for the appellant;
Nicolette Lee Wanling (Phoenix Law Corporation) for the respondent.