**IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHCF 8**

Registrar's Appeal from the Family Justice Courts No 23 of 2022

Between

VRI

… *Appellant*

And

VRH

… *Respondent*

In the matter of Divorce No 4126 of 2013

Between

VRH

… *Plaintiff*

And

VRI

… *Defendant*

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# JUDGMENT

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[Contempt of Court — Civil contempt]

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# VRI
# v
# VRH

**[2023] SGHCF 8**

General Division of the High Court (Family Division) — Registrar's Appeal from the Family Justice Courts No 23 of 2022
Choo Han Teck J
20 February 2023

1 March 2023 Judgment reserved.

**Choo Han Teck J:**

1 The appellant (the "Mother") and the respondent (the "Father") obtained final judgment of their divorce on 25 June 2015. They have two daughters, aged 11 and 13 presently. Since their divorce, there have been multiple variations of the orders pertaining to access to the children. The latest variation order, FC/ORC 4813/2021 (the "Access Order"), was made on 15 September 2021. The Access Order provides that:

> The Plaintiff shall have access to the children as follows–
>
> Until the conclusion of PSLE 2021, every Saturday from 10am to 5pm.
>
> After PSLE 2021, during school terms, every alternate weekend (counting from the second weekend) from Fridays when the children are released from school, to Monday mornings when the children go to school. If either child or both children are not able or are required to attend school on Monday morning during the time the children are with the Plaintiff, the Plaintiff shall return the children to the Defendant at 7pm on that Monday.

> In addition, the Plaintiff shall have access every Monday to Thursday after the children are released from school to 7pm. ("**Order 1**")
>
> The first half of every school vacation. ("**Order 2**")
>
> The eve of Chinese New Year from the time that the children are released from school to 10pm and the second day of Chinese New Year from 9.30am to 8pm on even years; ("**Order 3**")
>
> The first day of Chinese New Year from 9.30am to 10pm on odd years; ("**Order 4**")
>
> Other than Chinese New Year, alternate public holidays from 9.30am to 8pm. ("**Order 5**")
>
> On the Plaintiff's birthday, if it does not fall within one of the access days stated above, for a period of 3 hours from 12pm to 3pm unless the parties agree otherwise and on Father's Day from 12pm to 3pm unless the parties agree otherwise; ("**Order 6**")
>
> The children's birthdays, if it does not fall within one of the Plaintiff's access days stated above, for 3 hours from 12pm to 3pm; ("**Order 7**")
>
> The Defendant shall not arrange for the children to have any activities during the Plaintiff's access periods. ("**Order 8**")
>
> The Plaintiff is allowed to purchase and maintain mobile phones for the children and the Defendant shall not prevent the children from using the mobile phones to communicate with the Plaintiff. ("**Order 9**")
>
> The Plaintiff is to return the children to the Defendant at Bedok MRT station. ("**Order 10**")

As the order of court extracted was not numbered, I have numbered them as indicated above in bold for ease of reference.

2 On 24 March 2022, the Father took out a summons for leave to commence committal proceedings against the Mother, alleging that she had breached the Access Order on multiple occasions. Leave was granted and the hearing was before District Judge Sheik Mustafa (the "DJ"). The DJ found that the allegations raised by the Father were made out and committed the Mother on seven counts of contempt of contempt for breach of the Access Order. The



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DJ ordered the Mother to pay a fine of $3,500 within one month but suspended the committal order indefinitely. The breaches on which the DJ found the Mother guilty of contempt are as follows:

| S/N | Date of Breach | Brief Description of Breach | Order Breached |
|---|---|---|---|
| 1 | Tuesday, 5 October 2021 | The elder daughter was on home-based learning. The Mother did not bring the daughter to Bedok MRT at 1.30pm as required by the Access Order | Order 1 |
| 2 | Wednesday, 6 October 2021 | The Mother failed to bring both daughters to Bedok MRT at 1.30pm as required by the Access Order despite the Father's reminder at 10.59am in the morning. | Order 1 |
| 3 | Thursday, 7 October 2021 | The Mother failed to bring both daughters to Bedok MRT at 1.30pm as required by the Access Order. | Order 1 |
| 4 | Friday, 12 November 2021 | This was a school holiday and thus Order 2 applied. Parties agreed that the Father would have access from 9am to 2pm. However, the Mother claimed that the younger daughter was unwell and, on that basis, did not bring the children to Bedok MRT. The Father did not have access that day. | Order 2 |
| 5 | Tuesday, 16 November 2021 | The children were supposed to take the school bus to the Father's residence after school as it was his stipulated access time. However, the Children did not go to his home but instead went back to the Mother's residence. | Order 1 |



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| | | | |
|---|---|---|---|
| 6 | 17 November 2021 | 17 November 2021 was the elder daughter's birthday and a weekday. Accordingly, pursuant to Order 1 and 7, the Father was entitled to have access after school until 7pm. However, the Children did not make their way to the Father's residence after school. | Order 1<br>Order 7 |
| 7 | 14 October 2021 onwards | The Mother imposed rules relating to the child which restricted their use of mobile phones given to them by the Father such that the Father was not able to communicate with the Children. | Order 9 |

3 On appeal, the Mother asks for the DJ's committal order to be set aside in its entirety. Counsel for the Mother, Mr Mansurhusain Hussein, says that the findings of the DJ were against the weight of the evidence. He says that for contempt of court to be made out, there must be a subjective intention of the Mother to breach the order of Court.

4 For an alleged offender to be held in contempt of court, it must be first shown that the offender's act or omission was in breach of what the underlying court order required the offender to do (*VFV v VFU* [2021] 5 SLR 1428 at [10]). Second, the necessary intention must be established, which is that the act or omission must have been intentional and carried out with knowledge of the facts which made it a breach of the court order (*Monex Group (Singapore) Pte Ltd v E-Clearing (Singapore) Pte Ltd* [2012] 4 SLR 1169 at [30]). The motive or reasons for the offender's breach are not the focus of this *mens rea* inquiry (*PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 at [47]-[48]). Instead, it is sufficient that the act or omission was intentional, and at the time of doing so the offender had knowledge of the underlying court order. Accordingly, I disagree with the submission made by



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the Mother's counsel that there must be a subjective intention to breach the order.

**The 5 October 2021 to 7 October 2021 Breaches**

5 As the nature of the Mother's breaches on 5 October 2021 to 7 October 2021 are similar, I will consider them together.

6 In relation to the younger daughter, the Father had access to her on 5 October 2021 after picking her up from school, but not on 6 and 7 October 2021. As for the elder daughter, the Father did not have access to her on all three days. This was not disputed by the Mother. Instead, the Mother's argument was that the Father did not have any right to access under Order 1 of the Access Order in the first place at those times, because the Children were on home-based learning ("HBL") instead of going to school physically. According to the email she wrote to the Father dated 2 October 2022 (at page 319 of the Record of Appeal), she says that because the Children were on HBL at the relevant time periods, there was no stipulated time that school would end. Accordingly, she says that Order 1 does not apply because Order 1 is that the Father shall have access "after the children are released from school".

7 The first issue is whether the wording of Order 1 is clear as to what it requires of the Mother. As a rule of fairness, an offender cannot be held liable for contempt of court for non-compliance with an order of court if the way it is framed makes it unclear as to what is expected of the offender: *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [78]. In my view, there is nothing unclear about what Order 1 requires. Order 1 stipulates that the access time shall be when the Children are released from school, meaning when school hours are over for the particular day, until 7pm. The time at which the Children are



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released from school may differ during HBL, but they are still, at some point, released from school. At which time, the Plaintiff's access begins until 7pm. The Mother's counsel suggested that "released from school" can only mean the physical release of the Children from the school premises. I do not agree with this technical interpretation of the order which is contrary to the purpose of the Access Order, which is to allow access to the Father on weekdays after the Children's schooling hours have ended. If I were to adopt the Mother's interpretation, this would mean that the Father would not have access on weekdays if the Children were dismissed from the site of a school excursion, or from a sports stadium if the school were to gather for sports day, or if the Children's teacher were to lead the students out of the school premises before dismissing. This would be an absurd interpretation of the Access Order.

8 The time at which the Children are released on HBL days is something that the Mother, being the parent having care and control of the Children, ought to know. The Mother says that it is for the Father to prove that the HBL hours ended before 7pm to make out the breach of the order. While the Mother is correct in saying that the burden of proof is on the Father, I am of the view that the evidence adduced by the Father shifted the evidential burden to the Mother, such that her failure to offer any explanation satisfied the DJ below that the Father had discharged his legal burden of proof: see the Court of Appeal decision of *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [60]. In particular, on 5 October 2021 at 1.39pm, the Father had sent a screenshot to the Mother of the reply he received from the Ministry of Education ("MOE") when he sought clarification as to whether HBL were considered school days. The reply from MOE read that "HBL days are considered school days where our students engage in learning activities at home". If HBL days are school days, then logically, school hours would apply



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as per normal. Even if I accepted that there were variations, it would be incredible for school on HBL days to start in the morning and end past 7pm. Having reviewed the record of proceedings, I am not satisfied that the Mother had offered any sufficient explanation. Accordingly, I see no basis to disturb the DJ's finding that the Mother had failed to comply with the Access Order for the breaches on 6 to 8 October 2021.

9 I am also satisfied that the Mother possessed the requisite intention. The breach was an intentional act as opposed to an accidental one. In particular, the Mother's WhatsApp message to the Father on 6 October 2021 at 10.59am which read "[elder daughter] and [younger daughter] won't be coming" shows that the lack of access was an intentional act of the Mother. As I have said above, it is not necessary to show that the Mother intended to act in contempt of the court order. It is sufficient that the Mother had knowledge of the court order, and the act that she was doing would contravene the court order.

10 Counsel for the Mother submitted that in any case, the defence of honest and reasonable non-compliance under s 21 of the Administration of Justice (Protection) Act 2016 (2020 Rev Ed) ("AJPA") applies to excuse the Mother's breach of the Access Order. Section 21 of the AJPA reads:

> 21. A person is not guilty of contempt of court under section 4(1), (2) or (3) if the person satisfies the court that the failure or refusal to comply with a judgment, order, decree, direction, writ or other process of court or any undertaking given to a court was wholly or substantially attributable to an honest and reasonable failure by that person, at the relevant time, to understand an obligation imposed on the person bound by the judgment, order, decree, direction, writ, process or undertaking and that that person ought fairly to be excused.

11 I am of the view that the Mother cannot avail herself of this defence. For this defence to be applicable, the Mother must have honestly and reasonably



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failed to understand the obligations of the Access Order. The Mother's counsel submitted that the Mother had been consistent in her testimony that she had always thought that HBL days were not caught under the Access Order. However, an obstinate adherence to an incorrect belief in the face of truth cannot exculpate an offender from the breach of a court order. In this case, there was ample opportunity presented to the Mother that should have prompted her to clarify her wrongly-held belief. I found the Mother's refusal to inquire into the nature of HBL to be particularly troubling. First, every parent with care and control ought to know the timetable of their children, as that is one of the fundamental expectations of a parent. Second, in the face of the email clarification from MOE, it ought to have put the Mother on notice to at least clarify with the Children, or the school, as to what time school would end.

12 Even if I did not find the Mother's non-compliance to be dishonest, I am of the view that it was not reasonable. An objective parent who is familiar with the Singapore education system would not expect school hours to range from the early morning when school begins to 7pm in the evening, except where children attend extra-curricular activities, which is not what the Mother is saying here.

13 Thus, I am of the view that s 21 of the AJPA does not apply. I affirm the DJ's finding that the Mother is guilty of contempt on the October breaches.

**The 12 November 2021 Breach**

14 As for the alleged breach on 12 November 2021, the Mother does not dispute that the children were not at the handover point. Neither does she dispute that she intended for the Father to not have access. Her explanation was that the younger daughter was unwell and accordingly, access could not take place. In



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my view, this was highly unsatisfactory. First, even if the younger daughter was sick, this does not affect the elder daughter's ability to be with the Father. Second, if the younger daughter was indeed sick, then it would be logical for the Father to spend his access time to bring her to see a doctor. Third, the Father's evidence on affidavit shows that the younger daughter's transport card was used to take public transport on 12 November 2021 at 12:04pm, 3:20pm and 5:11pm. This point was unrebutted by the appellant. In contrast, the Mother's assertion that the younger daughter was sick was a bare assertion. She did not produce a medical certificate.

15 For these reasons, I see no basis to disturb the DJ's finding that the 12 November 2021 breach was made out beyond a reasonable doubt. Even if I were to wholly discount the younger daughter's absence from access, there is nothing to explain the elder daughter's absence.

**The 16 November Breach**

16 As for the breach on 16 November 2021, the Mother does not dispute that the Father did not have access to the Children. However, she says the lack of access was due to a unilateral decision on the part of the Children, as opposed to an act or omission on her part. I do not agree with her. In her email to the Father sent on 16 November 2021 entitled "Incident on 16 October (*sic*) 2021", the Mother conceded that she received a video call from her domestic helper's handphone, during which she saw the elder daughter. The email further read "After ascertaining that they were safe and sound, I immediately informed you their whereabouts (*sic*)". However, there was no mention of the Mother's efforts to ask the Children to go over to the Father's place. As the parent who has care and control over the Children, and having full knowledge of the court ordered access arrangements, the Mother had a duty to take positive steps to enforce the



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Access Order after learning that the Children were not acting in compliance with it. The Mother's argument on appeal was that she had done all she could to facilitate access by making the arrangements for the Children to be dropped off at the Father's place. Even if this was the case, as soon as she realised that her plans did not materialise, the Mother should have taken further steps to ensure the Children went to the Father's residence. This she did not do. Instead, she merely informed the Father that the Children were at home, without any effort to procure their attendance for access. Accordingly, I am of the view that this omission was sufficient to constitute a breach. The mental element is not in question as the Mother herself wrote in her email that she was "surprised to see [the elder daughter]" in the video call. This meant that she knew full well that the Children were meant to be with the Father, but yet did nothing to make them go to his residence. Accordingly, I uphold the DJ's finding that the 16 November 2021 breach is made out beyond a reasonable doubt.

**The 17 November 2021 Breach**

17 As for the 17 November 2021 breach, the Father was entitled to access from the time which the Children finished school until 7pm. The Mother does not deny that the Father did not have access at all that day. However, she says that it was the Children who, by their own volition, did not want to visit their Father. The more accurate question is not whether the Children did not want to visit their Father, but whether the Mother failed to take reasonable steps to facilitate access. I accept that for the first part of the day when the Mother was at work, the evidence is inconclusive. However, it was not disputed that the Mother took the Children out for dinner that night to celebrate the elder daughter's birthday. What was pertinent was the Mother's confirmation at trial that she had tapped into Tanah Merah MRT station at 6.17pm with the Children, which corroborated the transport fare history of the younger daughter as



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exhibited by the Father in his affidavit. This meant that the Mother had knowingly taken the Children for dinner during the Father's stipulated access time. It is further reasonable to assume that the Mother was with the Children for some time after she got home from work before 6.17pm when they tapped into Tanah Merah MRT station. The correct thing to do in accordance with the Access Order was for the Mother to instruct the Children to go to their Father's residence. However, when asked during cross-examination whether she made any attempt to tell the Children, the Mother's reply left much to be desired. She maintained that she could not recall what conversations happened, and she only remembered that the younger daughter went out with her friends in the afternoon. The fact that she did not remember telling the Children to go to spend time with the Father demonstrates her lack of regard for the authority of the Access Order. The moment the Children were in non-compliance with the Access Order, alarm bells ought to have been ringing. Yet, all the Mother could remember were the plans that the Children had, but not her admonishment of their non-compliance with the Access Orders.

18 For the above reasons, I am satisfied that the 17 November 2021 breach was also made out beyond reasonable doubt.

**The Denial of Handphone Access Breach**

19 Finally, the Father alleges that the Mother has been denying him handphone access as required by Order 9 of the Access Orders since 14 October 2021. Order 9 provides unequivocally that:

> The Plaintiff is allowed to purchase and maintain mobile phones for the children and the Defendant **shall not prevent the children** from using the mobile phones to communicate with the Plaintiff.
>
> [emphasis added]



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20 By the Mother's own email to the Father on 5 October 2021, she imposed rules on the Children's handphone usage, which limited their use of the handphone during term time to Saturdays only, and from 6pm to 10pm daily during vacation periods. Counsel for the Mother says that the plain and ordinary meaning of Order 9 only forbids the Mother from preventing the Children from using their handphone to communicate with the Father. He says that this does not prevent the Mother from restricting the use of the handphone for other purposes. I do not agree. The effect of the Mother's rules was that the Children did not even have access to their mobile phones, which completely frustrates the purpose of Order 9. The Mother claims that these rules were imposed for the Children's welfare, and that the Father only need inform her if he wished to contact the Children and she would facilitate such handphone access. She further promised that the Children knew that if they wanted to use their handphone to talk to the Father, they only needed to ask. In my view, this does not exonerate her from the plain non-compliance with the Order 9. In any case, I have my doubts as to whether these undertakings were sincere or just empty promises. The Mother had not been forthcoming about facilitating access all along, resulting in the need for this committal proceeding. The Mother could have done many things to restrict handphone usage without frustrating the order, such as installing applications which she could use to monitor the Children's usage. Instead, she chose the option that was most damaging to the Father's access rights, which was to wholly deny the Children's phone usage throughout the week except on Saturdays during term time, and only from 6pm to 10pm during the holidays. I am of the view that the Mother's self-imposed rules on handphone usage are in plain violation of the Access Order, and there is no doubt as to the intentionality of this violation. Accordingly, I see no reason to disturb the DJ's findings on liability.



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**Sentencing**

21 For the Mother's breaches, the DJ imposed a total fine of $3,500, but suspended payment indefinitely until the Children turn 21. They are now aged 11 and 13. In this regard, I agree with Mr Hussein that the period of suspension is too long. One year's suspension, on the facts of this case, is sufficient. The Mother would have been advised by her counsel that future contempt may not just result in her paying the fines already imposed, but she may also suffer a higher punishment.

22 Although it is true that post-divorce child arrangements require mutual give and take, this was a situation where one party kept taking but never gave. In such situations, committal proceedings serve as an avenue of last resort to impress upon parties not only the gravity of a court ordered access regime, but more importantly, the fundamental need for children to have the presence of both sets of parents feature strongly in their lives.

23 Accordingly, I dismiss the Mother's appeal except that I vary the suspension of the contempt to one year starting from the date on which the DJ's judgment was delivered. Costs are to be paid by the Mother to the Father, to be taxed if not agreed.

- Sgd -
Choo Han Teck
Judge of the High Court

Mansurhusain Akbar Hussein (Jacob Mansur & Pillai) for the appellant;
Grace Chacko (Grace Chacko Law Practice) for the respondent.



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