IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 1

Court of Appeal / Civil Appeal No 29 of 2023

Between

WKM

… *Appellant*

And

WKN

… *Respondent*

In the matter of District Court Appeal No 2 of 2023

Between

WKN

… *Claimant*

And

WKM

… *Defendant*

GROUNDS OF DECISION

[Family Law — Custody — Care and control]
[Family Law — Custody — Care and control — Judicial interviews]
[Family Law — Custody — Care and control — Child welfare reports]

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WKM
v
WKN

[2024] SGCA 1

Court of Appeal — Civil Appeal No 29 of 2023
Sundaresh Menon CJ, Debbie Ong Siew Ling JAD and Judith Prakash SJ
2 November 2023

7 February 2024

Debbie Ong Siew Ling JAD (delivering the grounds of decision of the court):

Introduction

1 The paramount consideration in all proceedings involving children is the welfare of the child. This principle is the "golden thread" that runs through all proceedings directly affecting the interests of children: *BNS v BNT* [2015] 3 SLR 973 at [19]). The welfare principle ensures that the children's interests are not side-lined while their parents litigate over their various disputes. Parental responsibility is crucial in upholding the welfare principle and is a serious *legal* obligation not to be taken lightly. In this appeal, we touch on some aspects of what the application of the welfare principle may practically entail when determining care and control and access arrangements for a young child. In particular, we consider the place of judicial interviews of children and child welfare reports in family proceedings.

Facts

The parties' marriage and divorce

2 The appellant (the "Father") and the respondent (the "Mother") were married on 12 February 2012. Their only child, a daughter, whom we shall refer to as "C", was born on 12 July 2012. At the time of the appeal, C was 11 years old and a Primary 5 student in a local primary school. The Mother works as an administrative executive. She married her current husband on 25 May 2019. The Father runs a business selling stationery and providing delivery services.

3 On 26 September 2016, the Father commenced divorce proceedings. The interim judgment of divorce ("IJ") was granted on 13 December 2016. Orders on the ancillary matters were granted by consent and the IJ was made final on 17 March 2017. At the time the orders were made, C was four years old. The relevant orders relating to C were as follows:

> a. That parties be granted joint custody of the child of the marriage, … with care and control to the [Father].
>
> b. That the [Mother] shall have liberal access to the child and shall have overnight access with the child at … [the "Father's flat"], subject to the child's wishes. The [Mother] shall inform and seek the consent of the [Father] regarding the arrangements for all access at least two (2) days in advance.

Incidents leading up to the summonses in the Family Court

4 In February 2020, the Mother and her current husband moved into their present residence in Punggol. Thereafter, the parties reached an agreement for the Mother to have overnight access to C from Friday after school until 7.00 pm on Sunday.

5 On 5 November 2021, the Father handed C over to the Mother for her overnight weekend access, as agreed. On the same day, he received a call from

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an investigation officer (the "IO") informing him that the Mother had lodged a police report alleging that the helper of the Father's mother had abused C. This police report was filed on 29 October 2021. The IO also informed the Father that he had advised the Mother not to return C to the Father's care until the conclusion of the police investigation and a social worker from the Ministry of Social and Family Development had been assigned to their case.

6 On 7 November 2021, the Mother filed another police report against both the Father and the helper, alleging emotional abuse and neglect of C.

7 On 9 November 2021, the Father made an appointment for C to see a counsellor. He informed the school and picked her up from school. He notified the Mother thereafter. Prior to the counselling session, the Father took C to a nearby café to have lunch. According to the Mother, while at the café, C sent her an "SOS call" using a SOS smart watch purchased by the Mother.

8 Immediately upon receiving the alert, the Mother went to the café by taxi and called the police for assistance. Subsequently, two police officers arrived. After a confrontation between the parties, the police officers and the Father left. Before leaving, the Father informed the Mother that he would return to the café later to pick C up after she had calmed down. However, the Mother took C back to her residence and did not return C to the Father. This change in living arrangements for C was not sanctioned by any court order.

9 On 11 November 2021, the Mother filed a supplementary police report alleging physical, emotional and sexual abuse of C by both the Father and the helper.

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FC/SUM 4128/2021, FC/SUM 4138/2021, FC/SUM 4193/2021 and FC/SUM 4194/2021

10 On 23 November 2021, the Father filed two summonses, FC/SUM 4128/2021 ("SUM 4128") and FC/SUM 4138/2021 ("SUM 4138"). In SUM 4138, the Father sought a mandatory injunction to compel the Mother to return C to his care. In SUM 4128, the Father sought a variation of the orders in the IJ so as to replace the Mother's liberal access with supervised access at the Divorce Support Specialist Agency ("DSSA") in the interim, pending a review after the court received a report from the DSSA with regard to access to the Mother.

11 On 29 November 2021, the Mother filed two summonses, FC/SUM 4193/2021 ("SUM 4193") and FC/SUM 4194/2021 ("SUM 4194"). In SUM 4194, the Mother sought a suspension of the orders concerning care and control and access (see [3] above) pending the conclusion of investigations by the Child Protective Service ("CPS"), and in the interim, for the Mother to have care and control of C. In SUM 4193, the Mother sought a variation of the orders in the IJ for: (a) care and control of C to be granted to the Mother instead; (b) for the Father to be granted supervised access at the DSSA; and (c) for the Father to pay a monthly sum of $1,600 as maintenance for C. On 28 January 2022, the Mother amended SUM 4193, seeking, in addition, sole custody of C.

12 In dealing with SUM 4194 and SUM 4138, the district judge of the Family Court ("DJ") made the following interim orders:

(a) On 9 March 2022, the DJ made an interim order (with effect from 19 March 2022) granting the Father supervised access to C at the DSSA every Saturday from 10.00am to 12.00pm, until the hearing on 27 April 2022.

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(b) On 27 April 2022, the DJ varied the interim order, granting the Father access every Wednesday from 6.00pm to 8.00pm, with effect from 4 May 2022, with access to be supervised by his sister.

(c) On 15 June 2022, following the completion of the DSSA sessions, the DJ further ordered that the Father should have supervised access to C on Sundays from 10.00am to 7.00pm, with effect from 19 June 2022. This access was to be supervised by either the Father's sister or mother, and was in addition to the supervised access ordered on 27 April 2022.

(d) On 28 August 2022, the DJ made a consent order that, pending the determination of SUM 4193 and SUM 4128, the Father was to pay the Mother a monthly sum of $500 for the maintenance of C, with effect from 31 August 2022. Further, until the next court review, the Father was to have access supervised by his mother on Sundays from 10.00am to 7.00pm. In addition, the Father was to have unsupervised access to C every Wednesday from 6.00pm to 8.00pm, in a public place.

13 On 6 January 2023, the learned DJ made the final orders concerning the Father's and the Mother's applications. She declined to interview C and relied on the DSSA and CPS reports. The three key child welfare reports made available to the DJ were the: (a) Child Protection Social Report dated 23 May 2022 ("Child Protection Social Report"); (b) Supervised Exchange and Visitation Programme Report by the DSSA dated 7 June 2022 ("Supervised Visitation Report"); and (c) Psychological Report from the Community Psychology Hub ("CPH") dated 24 August 2022 ("Psychological Report") (collectively, the "Welfare Reports"). In summary, the DJ dismissed the Mother's application in SUM 4193. She also made the following orders:

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(a) The Father was to have care and control of C with effect from Monday, 9 January 2023, after C's dismissal from school.

(b) The Mother was to have dinner access from 5.30pm to 8.00pm on two weekdays (Tuesday and Thursday), with effect from 10 January 2023.

(c) The Mother was to have weekly overnight access from Friday, after C's dismissal from school to Saturday at 8.30pm, with effect from 13 January 2023.

14 The DJ observed that the Mother had filed SUM 4193 for sole custody and a reversal of care and control on the basis of a material change in circumstances, due to the alleged abuse perpetrated by the Father and his mother's helper. However, the DJ noted that there had not been any further action taken by the CPS and the Attorney-General's Chambers ("AGC") against either party. She concluded that there had not been any material change, on a balance of probabilities, that would warrant a change in the custody arrangements and a reversal of care and control. Nevertheless, the DJ decided to vary the access arrangements to include fixed times for the Mother's access as it was in the interests of C to do so. Given that C was now older, the DJ thought that it would benefit her to have some stability and certainty in being able to spend time with the Mother. This was so especially because of the deterioration of the parties' relationship.

Events after the DJ's final orders

15 Between March and April 2023, the Father alleged that the Mother had attempted to disrupt his exercise of care and control. For instance, she did so by calling C's school and informing the school that C was suicidal. On 10 April

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2023, police officers attended at the Father's residence, following the Mother's report that raised concerns about C's safety. C was conveyed to Kandang Kerbau Women's and Children's Hospital's ("KKH") Accident and Emergency Department as she had self-harmed. The Mother accompanied her in the ambulance. C was discharged a week later on 17 April 2023.

Decision below in HCF/DCA 2/2023

16 The Mother appealed in HCF/DCA 2/2023 ("DCA 2") against the DJ's decision, seeking sole care and control of C. She contended that the non-prosecution by the CPS and the AGC did not mean that there was no sexual abuse perpetrated against C by the Father and his mother's helper. She claimed that the allegations of sexual abuse were made by C herself who had confided in her. The Mother also argued that there were other facts supporting a change in circumstances in addition to the alleged sexual abuse, which may be broadly classified as: (a) physical and emotional abuse; (b) the Father's neglect; (c) C's needs, considering her age and gender; and (d) C's wishes, that had not been considered by the DJ. The Mother urged the court to exercise its discretion to conduct a judicial interview of C to ascertain her wishes directly.

17 The Father sought to highlight the events that had occurred after the DJ's final orders which, in his view, demonstrated the Mother's "unscrupulous conduct, … toxicity and hostility being faced by [the] Father" (see [15] above). He also pointed to the Mother's barrage of unsubstantiated allegations of abuse perpetrated by him and the helper. The Father requested the court to direct that further child welfare reports be submitted and supported the Mother's call for the Judge to conduct a judicial interview with C, albeit in the presence of a psychologist who was known to C.

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18 The Judge heard the parties' submissions on 3 May 2023. He conducted a judicial interview of C on 4 May 2023. On the same day, he allowed the Mother's appeal and reversed the order on care and control from the Father to the Mother. The Judge's grounds of decision can be found at *WKN v WKM* [2023] SGHCF 25 (the "GD"). He granted the Father access to C on Tuesday and Thursday nights from 5.30pm to 8.00pm, and on Friday, after school to Saturday at 8.30pm. The Judge's decision was largely based on C's responses during the short judicial interview, where she had "made it clear that she prefer[red] to live with the Mother". He noted that C, being 11 years old, was sufficiently mature to decide which parent she wished to live with. He observed that she had articulated her opinions with firmness and maturity and was "adamant that she would be happier if the care and control arrangements were reversed". The Judge also opined that C did not appear to be coached or under the influence of either parent (GD at [8]).

19 On 4 May 2023, after the Judge delivered his decision, the Father's solicitors wrote a letter urging the court to call for and review the updated reports on C from DSSA, CPS and CPH, which were ready to be tendered to the court. Further details were provided in a follow-up letter dated 8 May 2023.

20 On 10 May 2023, the Judge declined to make directions for any further updated reports and directed that his orders should stand. That same day, C was handed over to the Mother. On 12 May 2023, the Father filed an application in HCF/SUM 136/2023 for a stay of execution of the Judge's orders ("SUM 136"). SUM 136 was subsequently heard and dismissed by the Judge on 5 July 2023.

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The application for permission to appeal in AD/OA 30/2023

21 On 16 May 2023, the Father filed an application to the Appellate Division of the High Court ("AD") for permission to appeal in AD/OA 30/2023 against the Judge's decision in DCA 2.

22 On 23 June 2023, the AD allowed the Father's application on the ground that the matter involved questions of public importance upon which further argument and a decision of a higher tribunal would be to the public advantage. The AD observed that the present case directly engaged with "issues arising out of the interaction of the various avenues through which a child's wishes and his/her best interests may be ascertained". In particular, there were two broad areas which raised questions of public interest:

(a) In relation to the judicial interview process, the AD noted that it would be beneficial for an appellate court to consider what, if any, further guidance should be provided on the use of the judicial interview process, including its role *vis-à-vis* other sources of information available to the court (the "Judicial Interview Question").

(b) In relation to child welfare reports, the AD noted that it would be beneficial to consider the significance and weight to be accorded to the content of the reports prepared by child welfare professionals, which confidential nature is such that they are provided to the court but not to the parties (the "Child Welfare Reports Question").

23 The matter was then transferred to the Court of Appeal for determination.

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The parties' submissions on appeal

24 On 31 August 2023, we directed that updated child welfare reports were to be submitted to the court and that an oral hearing be convened.

25 We heard the parties on 2 November 2023. Apart from repeating his submissions in the court below, the Father, through his counsel, made two key points at the hearing. First, he did not object in principle to the conduct of a judicial interview. However, he submitted that a judicial interview should only form part of the overall picture in assessing what was in the best interests of C. Reliance should also be placed on the child welfare reports prepared by professionals who had worked with C, as they would have a good sense of what was going on in her life. Second, based on C's self-harming behaviours, it was evident that there was a need for serious action in order to address the healing needs of C. The Mother, through her counsel, stressed that particular weight should be placed on the judicial interview, as it gave effect to the autonomy of C, and it was entirely up to the court's discretion whether to allow an expert to sit in and/or have regard to any child welfare reports prepared. She argued that in the present case, this was not necessary.

The issues

26 The issue before us concerned the care and control and access arrangement that was in the welfare of C. In determining this issue, we considered the two important legal questions of public interest identified by the AD, namely, the Judicial Interview Question and the Child Welfare Reports Question.

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Judicial Interview Question

The use of judicial interviews in Singapore

27 Section 125(2)(*b*) of the Women's Charter 1961 (2020 Rev Ed) ("Women's Charter") provides:

> **Paramount consideration to be welfare of child**
>
> …
>
> (2) In deciding in whose custody, or in whose care and control, a child should be placed, the paramount consideration is to be the welfare of the child and subject to this, the court is to have regard —
>
> …
>
> (*b*) to the wishes of the child, where he or she is of an age to express an independent opinion.

28 Ascertaining the wishes of the child may be facilitated through the process of a judicial interview of the child. Whether or not to employ this process is a matter for the court to decide in the exercise of its discretion.

29 In *ZO v ZP and another appeal* [2011] 3 SLR 647 ("*ZO*"), this court acknowledged that judicial interviews were an important avenue for the views of children to be taken into account (at [15]):

> We also ordered that, if there is an application to vary the orders relating to custody in the future, then *the views of the children* are to be taken into account – if appropriate, by way of *interviews with the judge concerned*. In our view, this is both logical and commonsensical (especially where the parents are at odds with each other to begin with, as is the case in the present appeal) – provided that the children are mature enough to convey their views *independently*. There is no particular age when this may be appropriate as different children may mature sufficiently at different ages. … Such an approach is also consistent with – and, indeed, embodied in – the Women's Charter … in particular, s 125(2)(*b*) of the Act … [emphasis in original]

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The court noted that such a process should not be applied in a mechanical fashion (at [16]):

> … such a procedure must not itself become ossified by being applied in a mechanical fashion. The possible fact situations are too numerous for general guidelines to be laid down. All that can be said is the judge concerned should – absent exceptional circumstances – be not only aware of this procedure but (more importantly) also be prepared to implement it as this would facilitate his or her decision.

30 The utility of judicial interviews was echoed in the grounds of decision of the Family Division of the High Court in *AZB v AZC* [2016] SGHCF 1 ("*AZB*"), where the judge had a conversation with three children who were the subject of an application for the variation of access orders (at [35]). Indeed, there have been numerous cases where the courts have exercised their discretion to speak with the children. Judicial interviews were also carried out in the cases of *AMB v AMC* [2014] SGHC 169, *UFZ v UFY* [2018] SGHCF 8 and *TOE v TOF* [2019] SGHCF 19, to name a few.

31 Despite the benefits of the process, concerns have been expressed about the reliability of the views expressed by the child during the judicial interviews, where for instance, the child might have been coached by his or her parent. In *ZO* at [16], the court said:

> We do acknowledge, however, that there is always the possible concern that a child (or children) might be primed or coached prior to the interview with the judge. We should think that parties would be sufficiently wise not to indulge in such a practice and that their counsel would advise them against such action as well.

The court added that this concern should not of itself negate the implementation of such a process (*ZO* at [16]):

> … we are confident that the judge concerned would, given the very nature of his or her vocation, be sufficiently astute to

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> discern whether or not the child concerned has in fact been so primed or coached. In any event, to allow such a possibility to *completely* negate the implementation of such a helpful as well as practical procedure would be to throw out the legal baby together with the bathwater.

32 In *AZB*, the court observed that the "issue of the desirability of judges speaking directly to children in parenting disputes has been debated in common law jurisdictions" (at [14]) and highlighted a few concerns surrounding the issue (at [15]):

> … One is that judges are not trained to ascertain the views of children. … Communication is not confined to the words spoken by the child but by the child's body language as well. The views expressed at the interview must also be understood in the context of what is currently going on in the child's life. Further, a judge may not have had the time to establish a relationship of trust with the child which may be necessary for the child to feel safe in expressing her own views. There are also concerns that the child may be uncomfortable and feel intimidated by the court process and the judge in the formal environment of the court. Yet another concern is that children may be coached by the parents and pressurised by the parents to convey the coached views. Judges have also been reluctant to speak to children due to the view that the adversarial process, which does not promise confidentiality of the interview, hampers the effectiveness of the interview …

33 The court pointed out that the process can fit into our current conception of the family justice system (*AZB* at [23]):

> While legal systems which are traditionally adversarial in character may find it more difficult to cope with keeping part or all of judicial interviews confidential, our current family justice system has taken on a more robust approach to protecting the welfare of the children.

34 We agree that judicial interviews are useful and emphasise that whether such interviews should be conducted, how they should be conducted and the weight to be placed on their content depend on the precise facts and circumstances of each case.

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35 There are also cases where judges have declined to conduct such interviews. In *UBQ v UBR* [2022] SGHCF 13 ("*UBQ*"), the wife had urged the court to interview the elder child as he was 14 years old and "should be involved in the processes of deciding his future". The husband had strongly resisted this, emphasising that the children "may be put under greater pressure as a result" (at [38]). The judge in *UBQ* declined to speak to the children (at [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 Convention proceedings in the US, he had expressed his nervousness to the [mother] 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.

36 The most recent legislative development in this area is the amendment to s 46 of the Family Justice Act 2014 (2020 Rev Ed) ("FJA"), following the passage of the Family Justice Reform Act 2023 (No 18 of 2023) ("FJRA") on 8 May 2023. Section 12 of the FJRA amended s 46(3) of the FJA, permitting the Family Justice Rules 2014 ("FJR") to set out the modes by which the wishes of a child may be determined by the court:

> **Amendment of section 46**
>
> **12.** In the Family Justice Act, in section 46(3), after paragraph (*h*), insert —
>
> > '(*ha*) prescribing the modes by which the wishes of a child may be determined by the Family Division of the High Court or a Family court;'.

37 This amendment implemented some of the recommendations in the Report of the Committee to Review and Enhance Reforms in the Family Justice System ("RERF Committee"), which was published in September 2019. The RERF Committee was an inter-agency committee formed in November 2017 to "buil[d] on the work of the Committee for Family Justice, which had culminated in the enactment of the Family Justice Act and the establishment of the Family

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Justice Courts in October 2014". One of the recommendations of the RERF Committee Report was to make "clear that the judge-led approach allows for a judge to interview a child to make orders that serve the interests of the child". The RERF Committee cited the court's views in *AZB*, stressing that "Part 3 of the FJR obliges a judge to place the welfare of a child as its paramount consideration", and in so doing, the "court is empowered to adopt a proactive approach to make orders that serve the interests of the child". This judge-led approach included the use of judicial interviews of children. The committee further noted that there "are a variety of methods that can be used to inform children about, and give them a voice in, proceedings that affect them". Apart from judicial interviews, this included the assessments carried out by mental health professionals, Child Representatives or other professionals.

38 During the Second Reading of the Family Justice Reform Bill (Bill No 15/2023) ("FJRB") in Parliament in May 2023, it was noted that a judicial interview may not be appropriate in every case (Singapore Parl Debates; Vol 95, Sitting No 102; [8 May 2023] (Rahayu Mahzam, Senior Parliamentary Secretary to the Minister for Law):

> It should be noted that each case is unique, with different considerations applying to each family and each child. It is not in every case that a judicial interview of children is suitable. In some cases, the Court may assess that it would be more appropriate to appoint a Child Representative, who is a trained professional appointed by the Court to represent the voice of a child and present an objective assessment of care arrangements which are in the child's best interest, or other professional, to hear from the child.

39 It is clear from recent sources of law and parliamentary debates that the practice of conducting judicial interviews is now firmly established in family proceedings conducted by the Family Justice Courts (the "FJC"), and is a key aspect of the judge-led approach. However, recourse to it in a given case is to

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be assessed in the light of all the facts and circumstances, and by taking into account the considerations set out in these grounds.

Judicial interviews are part of the "Therapeutic Justice" journey

40 The confidential character of judicial interviews where the court is privy to information not known to the parties, may not sit comfortably in an adversarial system. In our family justice system, "Therapeutic Justice" ("TJ") underlies the entire approach to the resolution of family disputes. Guided by the notion of TJ, our family justice system adopts a model that is different from the traditional adversarial model of litigation. The path of family justice shaped by TJ envisions that parties are not adversaries in court. It recognises that parties in divorce proceedings are required to co-parent their child even after divorce and seeks to facilitate their co-operative discharge of parental responsibility. Parental conflict is harmful to the children; children should never be weaponised to serve the parents' own needs to obtain what they perceive to be a "victory" over the other parent.

41 TJ "is a lens of 'care', a lens through which we can look at the extent to which substantive rules, laws, legal procedures, practices, as well as the roles of the legal participants, produce *helpful* or *harmful* consequences" [emphasis in original]: Justice Debbie Ong, Presiding Judge of the Family Justice Courts, "Today is A New Day", speech at FJC Workplan 2020 (21 May 2020) <https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-debbie-ong-speech-delivered-at-the-family-justice-courts-workplan-2020>.
The entire journey after divorce "should allow the healing, restoring and recasting of a positive future", which provides the parties "time to grieve over the loss of the marriage and be supported through this" in a multi-disciplinary environment encompassing "counselling, therapy, mediation and adjudication".

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42 Judicial interviews are now also referred to in the FJC as "Judge and Child" sessions, which reflects a two-way conversation between the judge and the child. Not only does the Judge and Child session enable the court to listen to the children's views and concerns, but the process also *assures* the children that there is a neutral and authoritative person who is *concerned* about their welfare and who prioritises their best interests above all else. This process is part of TJ.

43 To ensure that the children are able to freely express their honest views without worrying about hurting either parent or being torn by a conflict of loyalty, it is crucial that the court maintains the confidentiality of these sessions. Children should not be subjected to parental pressure (whether in the form of express coaching or unspoken coercion) to say what the parents desire them to tell the judge. Even if they are not pressurised by either parent to take on a certain position, they should not bear the burden and responsibility for any decision that is ultimately reached. The Family Division of the High Court in *CLB v CLC* [2022] SGHCF 3 captured the essence of the need for confidentiality in such matters (at [41]):

> When the children are grown and look back at how their past behaviour, words and reactions captured as evidence were used by one parent against the other, will feelings of guilt, self-blame and betrayal arise and affect *them* in some way, as well as *their relationships* with each parent then? [emphasis in original]

44 This is not to say that judges may not make reference at all to any of the content in a judicial interview. Rather, judges should be circumspect and avoid quoting directly what was said by the child, and any observations or conclusions about the child's views should be expressed sensitively. We emphasise that the children should not bear the responsibility of the ultimate decision on their custody and care arrangements, and should not be made to perceive or feel that

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they were responsible for them. This point is explained (and illustrated) further at [78].

Guidance on the conduct of judicial interviews

Whether and when a judicial interview should be conducted

45 The assessment of whether a judicial interview should be conducted must be made with utmost sensitivity to the facts of each case. The court should be mindful of a host of factors, including but not limited to:

(a) the age, emotional and intellectual maturity of the child;

(b) the relationship between the child's parents and whether there are concerns about excessive gatekeeping or the conduct of one parent alienating the child from the other parent;

(c) the child's general wellbeing and the consequences for the child should such an interview be conducted;

(d) the nature of the dispute and the stage of the proceedings, including the specific matters in issue; and

(e) the availability of other relevant material, such as reports by social workers and mental health professionals.

46 We elaborate on each factor in turn.

47 Section 125(2)(*b*) of the Women's Charter provides that the court is to have regard to a child's wishes, "where he or she is of an age to express an independent opinion". It was noted at the Second Reading of the FJRB that "the ability to communicate can differ across children of the same age, [and] a different approach may be required for each child".

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48 The relationship between the parents is pertinent. In cases where the parents are in an acrimonious relationship, the child may be triangulated into their dispute. This gives rise to a risk that a child may also be coached or influenced by parents to express certain views to the judge. In cases where there is evidence that a parent is alienating the child from the other parent, the child may only express the views of that parent. Where some alienating conduct is apparent, a judicial interview may provide a useful opportunity for the judge to explain to the child that the court's role is to make orders in the child's best interests, and this would, in many cases, include ensuring that each parent is able to play a part in the child's life: see Nicholas Bala *et al*, "Children's Voices in Family Court: Guidelines for Judges Meeting Children" (2013) 47(3) Family Law Quarterly 379 ("*Children's Voices*") at pp 16–20. In cases where the parents are at total loggerheads, it may be that the "answer … lie[s] with the child's perspective": Fiona E. Raitt, "Hearing children in family law proceedings: can judges make a difference?" (2007) 19(2) Child and Family Law Quarterly 204 at p 208. There may be cases where a child's voice is effectively drowned out by the cacophony of his or her parent's self-interested proclamations of *their* view of where the child's best interests lie.

49 The child's general wellbeing should of course be taken into account. The court should consider whether the child may suffer any adverse emotional consequences arising from the conduct of a judicial interview. Considerations include whether the parents are likely to place pressure on the child to take a certain position during the interview, or whether the child has already participated in too many interviews with different professionals. A child may have also expressed aversion to being embroiled in court processes (for example, see *UBQ* at [35] above) or expressed worries that he or she may be choosing one parent over the other.

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50 In addition to the various factors concerning the *child's situation*, there are also *case specific* factors which should be taken into account. The nature and stage of the proceedings, including the specific issues before the court, are relevant. For example, if the dispute between the parties is a narrow one concerning the sole issue of relocation of the children to another country, a judge could consider conducting a judicial interview to hear the children's views on relocation, or direct the submission of a "Specific Issues Report" (see [67(a)] below) by the court family specialists, or both. A Specific Issues Report will focus on the children's views on relocation and highlight any concerns surrounding this specific issue.

51 The court should also have regard to the stage of the proceedings and whether conducting a judicial interview at that juncture is appropriate. For example, at the earlier stages in the proceedings, material on the child's wishes or the assessment of his or her wellbeing may be scarce. The court could consider at that juncture whether to speak with the child, direct child welfare reports to be submitted, appoint a Child Representative or proceed with a combination of these options. On the other hand, at a later stage in the proceedings, the child may have already been interviewed by a number of professionals such that it may be prudent to avoid yet another interview. These are but examples of relevant considerations.

52 It is important to consider whether there is any material available to the court which already provides independent evidence of the child's views and preferences. This may include any child welfare reports previously prepared and tendered to the court. Examining such available reports will usually be very helpful in determining whether a judicial interview is appropriate or necessary.

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How should a judicial interview be conducted?

53 In the FJC, judicial interviews are largely conducted solely by the judge, or conducted jointly by the judge and a court family specialist from FJC's Counselling and Psychological Services ("CAPS"). In situations where a judge has suspicions about excessive gatekeeping and possible alienating conduct, it would be prudent for the judge to consider the use of the latter option.

54 The manner in which the judicial interview is conducted and the content of the questions asked are crucial to maximising the value of such a process.

55 We affirm the broad approach suggested in *AZB* (at [20] and [25]):

> … judicial conversations with children are very useful, and the way forward must be to equip judges with the necessary skills, provide an environment most conducive to an effective process and eliminate or reduce as many of the risks as possible. Judges ought to be aware of the limitations and give the appropriate weight to the views expressed in judicial conversations with children.
>
> … I have found the suggestions in Nicholas Bala *et al*, 'Children's Voices in Family Court: Guidelines for Judges Meeting Children' (2013) 47(3) Family Law Quarterly 379 to be helpful. There is a reminder to the judge to ask open-ended questions and to avoid leading questions or those which may cause the child to choose between her parents. A judge should consider the age and maturity of the children, whether the children have indicated their wish to speak to the judge, and whether they were pressurised by a parent to do so. A judge is exhorted to seek to listen to the children as much as possible, bearing in mind that children often feel loyalty conflicts or guilty about their parents' separation. Children may also be expressing strongly negative views about one parent which has been alienated from him or her by the other parent.

56 From a survey of academic literature concerning this subject, we highlight some important points for judges to bear in mind when conducting a judicial interview.

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57 We think it of utmost importance that the judge should convey with clarity to the child that it is the judge who is deciding the case, based on the judge's assessment of what is in the child's welfare. It should be explained to the child that while the child's views as expressed during the interview will be considered by the judge, they are not determinative of the outcome. This may alleviate, to some extent, the stress suffered by children who are pressurised by their parents to "take sides", and may also encourage a more honest sharing of their views: Rachel Birnbaum and Nicholas Bala, "Judicial Interviews with Children in Custody and Access Cases: Comparing Experiences in Ontario and Ohio" (2010) 24(3) Int. J. Law Policy Family 300 ("*Judicial Interviews with Children*") at p 328 and *Children's Voices* at p 8.

58 We also think it important that during the interview, open-ended questions that "allow the child to respond by using his or her free recall of events or give unencumbered responses in relation to feelings and emotions" should be posed: Katy Macfarlane, "Interviewing children – a special skillset?" (2018) 154 Fam. L.B. 3 at p 3. We have concerns that questions that appear to, or indeed do, directly seek the child's preferences in custody, care and control or access arrangements may "induce feelings of guilt or disloyalty": *Children's Voices* at p 14. Where children do express their preferences, it is important for the judge to explore the underlying reasons, in order to allow a proper evaluation of those preferences: *Judicial Interviews with Children* at p 329.

59 As a matter of practice, it is also important that judges record confidential notes of the judicial interview. These notes serve as crucial records, not only for the judge, but also for the appellate court reviewing the matter.

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Reliance on contents of a judicial interview

60 The reliance that a judge places on the content of a judicial interview depends on the facts and circumstances of the case. Some of the factors discussed above are relevant in this exercise, such as the age, emotional and intellectual maturity of the child, the relationship of the child's parents, whether there are concerns of alienating conduct and whether there is existing material before the court, such as child welfare reports.

61 In cases where there is suspicion of alienating conduct, children may articulate strongly negative views about one parent, which reflects the unfortunate effect of such conduct. It is important for the judge to ascertain the root of the negative emotions and whether these originate from the children themselves based on their lived experience, or whether these originate from the influence of the other parent. In the latter situation, it may be appropriate for the judge to discount the child's stated views in coming to a decision: *Children's Voices* at pp 14–15.

62 Judges should also exercise special care when the child's views expressed at the judicial interview contradict other evidence before the court, such as the observations of the child welfare professionals in their reports.

63 It must be borne in mind that a judicial interview is but one of a number of options in the family justice system which the court may employ to ascertain a child's views. The contents of a judicial interview should be assessed together with all other relevant information available to the judge. In *AZB*, the court emphasised that judges are not compelled to interview children, and may consider other options to ascertain a child's views (at [24]):

> … However, judges are not compelled to interview children. There may be legitimate concerns if a judge is uncomfortable

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> with speaking to a child, or is unaware of the limitations of such judicial interviews. Interviewing children may not always be the best way to proceed, for much depends on the specific circumstances. There are limitations to such an exercise, and it is prudent to bear in mind that useful information can also be obtained from the parents, lawyers, a Child Representative or a mental health professional. The availability of such options should also assuage any concerns that judges may have in 'drawing children into the fray' of contentious legal proceedings through interviewing them directly. The court can order reports such as a Social Welfare Report, Custody Evaluation Report, Access Evaluation Report, Assisted Access Report to be produced with the assistance of professionals from the appropriate disciplines. Further, ss 27 and 28 of the Family Justice Act 2014 (No 27 of 2014) give judges the powers to appoint assessors. It can appoint a registered medical practitioner, psychologist, counsellor, social worker or mental health professional to examine and assess the child for the purposes of preparing expert evidence for use in proceedings. Rule 30 of the Family Justice Rules allows the court, if it thinks it is in the children's best interests, to appoint a Child Representative, whose role is to "represent the child's views and best interests in court proceedings, thus helping to ensure that the decisions eventually made by the court are in the child's best interests" (The Committee Report at para 163). Through these various avenues, children can express their views to the judges directly or through professionals entrusted by the court to represent their interests and views. These are not mutually exclusive, and all are important options in giving the court reliable information about the children's views and wishes.

64 The judicial interview should *not* become a step where the court takes a snapshot of an emotional position at a particular point in time and reaches a decision based on that momentary picture. Information obtained through other sources would enable the court to have a longitudinal view of the history of the case and a fuller understanding of the family's relationships and issues. One of these alternative sources of information is the child welfare report prepared by child welfare professionals, a matter to which we now turn.

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Child Welfare Reports Question

The use of child welfare reports in Singapore

65 Rule 36 of the FJR provides that the court may direct that a child be examined or assessed by a person with a view to obtaining a report on the welfare of the child:

> **Examination of child directed by Court**
>
> **36.** When considering any question relating to the welfare or interest of, or relating to the custody, care and control of and access to any child, the Court may, on its own motion and with a view to obtaining a report on the welfare of the child, direct that the child be examined or assessed by a person, whether or not a public officer, who is trained or has experience in matters relating to child welfare.

66 Section 130 of the Women's Charter and s 11A of the Guardianship of Infants Act 1934 (2020 Rev Ed) ("GIA") both provide that the court may have regard to the advice of any person trained or experienced in child welfare, although the court is not bound to follow such advice. Section 130 of the Women's Charter provides:

> **Court to have regard to advice of welfare officers, etc.**
>
> **130.** When considering any question relating to the custody, or the care and control, of any child, the court is to, whenever it is practicable, have regard to the advice of a person, whether or not a public officer, who is trained or experienced in child welfare but is not bound to follow such advice.

Section 11A of the GIA is similarly worded.

67 There is a range of investigative and therapeutic reports that a court may obtain to aid in its decision-making in relation to children's issues. Some of these include:

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(a) Custody Evaluation Reports (CER), Access Evaluation Reports (AER), and Specific Issue Reports (SIR) prepared by FJC's CAPS;

(b) Child Protection Social Reports (CPSR) prepared by the CPS;

(c) Supervised Visitation (SV) or Supervised Exchange (SE) Reports prepared by Family Service Centres;

(d) reports by a Child Representative;

(e) reports by a Parenting Co-ordinator; and

(f) court expert reports.

68 Reports by Child Representatives, court expert reports and certain CPS reports tendered in Youth Court proceedings are disclosed and available to the parties. In our current practice and system, there is no disclosure of the other categories of child welfare reports to the parties; this includes CPS reports tendered in divorce proceedings.

69 The confidential nature of some categories of child welfare reports has raised concerns. The effect of this confidential character is that the parties are unable to challenge the findings, observations or recommendations therein, or even to know the contents of the reports that concern their own child. Cross-examination of the report writer is not provided for, and the report is in effect admitted into evidence without the means to challenge its veracity.

70 In our view, there are strong reasons not to disclose these child welfare reports to the parties. Considering the circumstances and interests at play, it is in the child's best interests that these reports are kept confidential and accessible only by the court. In the House of Lords decision in *Re D (Minors) (Adoption*

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Reports: Confidentiality) [1996] AC 593, Lord Mustill explained the need for child welfare reports to be confidential, albeit in the different context of adoption proceedings (at p 604):

> … First, in a process where the judge is dependent to a great extent on second-hand knowledge of the circumstances it is in the interests of all those who are potentially affected by his decision that the information furnished to him shall be as full and candid as possible; and candour is promoted if those who investigate and report their findings and opinions can do so with a degree of confidence that the dispute will not be exacerbated, and hence the welfare of the child imperilled, by the disclosure of material which may arouse resentment. Secondly, where the child has made allegations or expressed wishes to the author of the report, there may be circumstances where full disclosure may put at risk the welfare of the child: including, in this term its physical and psychological security. For these and other reasons adoption has traditionally been regarded as unique, or nearly so, in the degree of confidentiality maintained, and the practical reasons for making sure that disclosure does not create unnecessary risk have been given statutory reinforcement by section 1 of the Children Act 1989, with its insistence that, in determining questions with respect to its upbringing the welfare of the child shall be the court's paramount consideration.

71 These reasons for maintaining confidentiality also apply to proceedings involving the custody, care and control and access of children. These reports contain information obtained through confidential interviews with the child, his or her parents, caregivers and other significant individuals. They may contain observations on the child's interactions with the parents, observations on family dynamics and recommendations on certain courses of action. Ensuring the confidentiality of such reports is required to provide a safe environment for the child to express his or her views honestly. The nature of family disputes is such that emotions often run high, and it is quite foreseeable that resentment may ensue from reading candid reports that are unfavourable to a parent. This could negatively impact not only the parent's relationship with the child, but the relationship with the other parent as well. Children are at risk of suffering a

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conflict of loyalty and being emotionally stressed by parents unhappy with the content of an open report. Reports may sometimes also contain sensitive information that could impact ongoing criminal investigations, *eg*, allegations of child abuse. Open reports that allow for the cross-examination of report writers may give the parties an opportunity to turn the child proceedings into a destructive battlefield. Should report writers practise defensive reporting as a result, their reports will become far less useful to the court.

Reliance on child welfare reports

72 In *ABW v ABV* [2014] 2 SLR 769*,* the High Court recognised the utility of child welfare reports as independent sources of information (at [48]):

> It is … very useful to have an account from an objective third party as to the interactions of parents and children. In this case, there was no reason to doubt the objectivity of the various reports or the accuracy of their contents, much of which were echoed in the parties' affidavits.

73 In *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430, this court had acknowledged the confidential nature of child welfare reports. It was said there that although welfare reports contained hearsay, they should remain admissible as any constraints by the hearsay rule may result in the exclusion of relevant information (at [36]):

> … In the United Kingdom, the courts have held that a court welfare officer's report is admissible, even though it contains hearsay – see *Thompson v Thompson* [1986] 1 FLR 212, *H v H (Minors) (Child Abuse Evidence); K v K (Minors) (Child Abuse Evidence)* [1990] Fam 86. We were of the view that a similar stance should be taken in Singapore. In child proceedings, a welfare officer directed by the court order to investigate and report has a duty to give to the court all the information which he considers to be relevant and should not be constrained by the hearsay rule from including relevant but otherwise inadmissible information. He may consider it necessary to provide the judge with a full picture of the family, and investigates many sources and interviews many people,

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> including grandparents and other relatives, teachers, doctors and the children themselves. What the children have to say may be relevant not only as to their state of mind but as to important facts derived from the child which the court should know. Unless he is entitled to present this information, it would be extremely difficult for him to comply with the task he is directed by the court to perform. Equally, his usefulness to the court would be substantially diminished. Social welfare reports must, by their very nature, contain a certain amount of hearsay, and the courts which rely heavily on these reports, have accepted them without any hesitation. Thanks to the judgment and discretion of welfare officers, it rarely leads to difficulty, because care is taken to keep it to a minimum and, so far as possible, to confine it to non-controversial matters. The reliance upon the report and the weight to be attached to any information contained therein is, of course, a matter for the judge.

74 In the process of generating their reports, the professionals would have engaged directly with the relevant persons involved in the child's life and observed some of their interactions with the child. Their observations serve as crucial insights into the child's world and greatly assist the court by presenting the realities of the child's situation. Given their expertise, they are well suited to identify issues, such as excessive gatekeeping behaviour by the parents and even possible signs of abuse. The judge, on the other hand, does not have the benefit of such extended interactions with the child or other family members. The court should, nevertheless, be very mindful that the information in the reports remain untested by cross-examination. Such reports must thus be carefully considered. Where there are observations made in the reports which contradict the narrative presented in the parties' affidavits, it is important that the court carefully considers whether the observations in the reports are clearly explained and the factual bases for the observations and assessments. The court may also seek clarification from the professionals who had submitted the report or ask further questions in respect of the content in the report.

75 If the judge chooses to place reliance on child welfare reports in the court's decision-making process, this should be included in the court's grounds

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of decision. We emphasise that references to the content of the reports must be made in an appropriate manner that will not compromise the child's interests, bearing in mind the confidential nature of these reports. For example, a court may state that it accepts the observations in the report that a parent has attempted to alienate the child from the other parent and provide instances of the factual bases for such observations which are facts already known to both parties. Such a manner of referencing avoids disclosing details that the child may have provided in confidence.

Our decision

76 We allowed the appeal and reversed the order on care and control from the Mother to the Father. We now set out our reasons.

The judicial interview

77 In the court below, the Judge reversed the DJ's order, and granted care and control to the Mother. His reasoning was largely based on C's responses during a short judicial interview, which the Judge summarised as follows (GD at [8]):

> … The Child, being 11 years old, is sufficiently mature to decide which parent she wishes to live with. At the interview, she was initially shy, but calmly answered my questions. She articulated her opinions with firmness and maturity. She made it clear that she prefers to live with the Mother. She seems clearly happier to be with her. The Child also said that she is comfortable living with the Mother's current husband, and she 'talks to [him] about many things'. Nonetheless, she was adamant that she would be happier if the care and control arrangements were reversed. She did not appear to be coached or under the influence of either parent. …

78 We emphasise that great caution should be exercised when reflecting a child's views expressed during a judicial interview in the court's grounds of

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decision. Judges should avoid reproducing a child's answers, especially where the answers relate to his or her preference in arrangements for care and control and access. In the present case, the references in the GD that C "made it *clear* that she prefer[red] to live with the Mother" and that "she was *adamant* that she would be happier if the care and control arrangements were reversed" [emphasis added] should have been avoided. A child should not be placed in a position where he or she feels responsible for making the choice to prefer one parent or to reject the other.

79 It appeared that the Judge placed critical weight on what C expressed in the judicial interview. It was not at all clear from the GD that the Judge had considered the various Welfare Reports which were available to him. No updated reports were directed to be submitted. C's views in the judicial interview ought to have been considered against the contents of the Welfare Reports. This was especially important given the level of conflict and instability surrounding C in the previous two years, where the *de facto* care of C had been shifting between the parties. Had this been done, it would have been clear that C's answers in the judicial interview were strongly influenced by the Mother, and that directing updated reports was the appropriate course to take.

The child welfare reports

80 As mentioned above at [24], in addition to the Welfare Reports tendered before the DJ, we directed that updated reports be prepared and submitted for our consideration prior to the hearing of the appeal.

81 Having considered both sets of reports, we were deeply troubled by the picture of instability and conflict they revealed and the negative consequences it has had on C's life.

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82 First, there were a number of examples which pointed towards unreasonable gatekeeping on the part of the Mother. In fact, her conduct went far beyond gatekeeping to wilfully carrying out a campaign to damage C's relationship with the Father. It is clear from the reports that C had shared a loving relationship with the Father prior to this "campaign". C had been cared for by the Father since she was four years old. The Mother's unfounded allegations of abuse and neglect in the slew of police reports she filed and in her communications with C, seriously undermined C's relationship with the Father. The Mother actively sought to turn C against him. She instilled in C an unwarranted fear and distrust of the Father by peddling a constant negative narrative of him, whilst insisting that her actions were necessary for the protection of C. We were particularly disturbed by the messages between the Mother and C exhibited in the affidavits before us which demonstrated the Mother's encouragement of C's disrespectful remarks made in respect of the Father. This was part of the behaviour that aimed to alienate C from him. Unfortunately, it only served to cause damage to C's emotional and psychological wellbeing and perpetuated feelings of divided loyalty towards her parents. Further, during the time that C resided with the Mother, following the Judge's reversal of care and control, it was observed that C's negative feelings towards her Father increased steeply. It was plain to us that this shift was attributable to the Mother's polarising behaviour.

83 In our view, it was in the best interests of C for her to be given an opportunity to heal and rebuild her relationship with the Father without any interference from the Mother. Until the Mother had gained greater insight into the negative impact of her destructive behaviour, we ordered that she should only be allowed limited interaction with C. This may be increased gradually, subject to her progress in gaining insight on how her conduct and the conflict

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had adversely affected C, and in committing to co-operative co-parenting with the Father. While we understood that this would be difficult for both C and the Mother in the short term, we were of the view that this would ensure that C is able to maintain a healthy relationship with both of her parents. We elaborate further on the phased nature of our orders below at [86]–[90].

84 Second, it was no overstatement to say that the past two years were a tumultuous and unsettling period for C. She faced much disruption in her life, having had to change her primary residence three times during this period, while coping with school work and dealing with her parents' acrimonious relationship.

85 We note that C was warded in the hospital following her attempt at self-harm. The Mother's counsel submitted that C had done so because of the DJ's order allowing the Father to retain sole care and control. In our view, this submission only served to demonstrate the Mother's failure to appreciate her own part in damaging C's wellbeing. It was important for the parties to recognise that "it [was] their divorce that [had] ultimately taken the greatest toll on [C]": *TAU v TAT* [2018] 5 SLR 1089 ("*TAU*") at [34]. Having said that, our priority was to support C in moving forward positively. The reports also emphasised that what C needed was structure, stability and order in her life. We therefore encouraged the parties to work together to establish consistent routines and structure for C in order to facilitate her physical, mental and psychosocial development.

The orders

86 We allowed the Father's appeal and reversed the order made by the Judge granting care and control to the Mother. We were of the view that the care and control and access arrangements for C should be understood in phases

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structured to enable the family to progressively work towards re-establishing each parent's relationship with C, while providing her with a strong and stable structure in her life. This would help to set a strong foundation for her to manage her academic work well and enter her teenage years with a good and supportive relationship with both parents.

87 We ordered that:

(a) The Father was to have sole care and control of C.

(b) In the initial phase, the following arrangements were ordered:

(i) The Mother was to have no contact with C, including no telephone, messaging, e-mail or personal contact with her for at least four weeks from the handover of C to the Father.

(ii) Both parents were to undergo mandatory individual and/or joint counselling at FAM@FSC as may be arranged by the counsellor.

(iii) C was to undergo mandatory individual counselling at FAM@FSC; joint counselling with either or both parents may also be arranged as deemed appropriate by FAM@FSC.

(iv) The counselling directives were to continue until they are reviewed as contemplated at [87(h)] below and would then be subject to such further orders as may be made.

(c) At the end of four weeks, subject to satisfactory progress being made: (i) in restoring stability and order in C's life, and (ii) in both parents making progress in fostering a co-operative attitude towards C's future, the Mother may apply by letter to the court for permission to have

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monitored video calls with C. These would be for up to an hour between 6.00pm and 8.00pm on a day to be agreed, up to twice a week, and would be hosted by the counsellor.

(d) After eight weeks from the handover of C, and subject to further satisfactory progress being made, the Mother may apply by letter to the court for permission to have supervised access, once a week, for up to two hours at FAM@FSC at a date and time to be arranged.

(e) Until further order, C was not to have a mobile phone and her access to a computer should be monitored and supervised by the Father. We recognised the need for C to have access to a computer for her schoolwork, but we remained extremely concerned over her ability to manage the challenges that inhere in the inappropriate use of social media.

(f) Neither party shall demean, denigrate or speak negatively of the other party in the presence of C, whether physically or remotely. Neither party was to exercise any undue influence over C, the objective of which was to cause her to view the other parent negatively.

(g) C was to be handed over to the Father at 6.00pm on the evening of the appeal hearing and both solicitors or their representatives were to be in attendance.

(h) The access arrangements shall be reviewed by the Family Court in six months. The Family Court would be entitled to ask for further reports from FAM@FSC or other family specialists from the FJC as it shall require, and to make such further adjustments to the access

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arrangements and the counselling orders as it may find to be in C's best interests.

88 The first phase of our orders, *ie*, the first four weeks following the handover, were intended to serve as a "reset". During this period, the Mother was to have no contact with C, so as to allow the Father the space to supervise C and set up a stable structure without interference by the Mother. The parties and C were directed to undergo mandatory counselling. In this regard, the parents ought to prioritise obtaining therapeutic services to work through their emotions and gain insights into C's needs and how to co-parent effectively. We stressed that they should take the counselling sessions seriously with the aim to become stronger parents who are able to provide a stable environment for C. As for C, counselling would help with healing and equipping her with the skills necessary to cope with the present and future challenges.

89 The second and third phases of our orders contemplated allowing the Mother to apply for permission to have increased levels of access at certain time intervals. The second phase provided that after four weeks, the Mother may apply for permission to have monitored video calls with C; the third phase allowed the Mother to apply for permission after eight weeks to have supervised access to C at FAM@FSC. Such incremental access was conditional upon satisfactory progress being made in restoring stability and order in C's life and the parents making progress in co-parenting co-operatively.

90 The fourth and final phase of our orders involved a review of the access arrangements by the Family Court in six months' time. To be clear, the review is *not* the forum to seek changes to our substantive order awarding care and control to the Father. The Family Court may adjust the access arrangements,

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such as by ordering regular unsupervised access for the Mother or adjusting the days, timings and periods of access.

Concluding remarks: Parental responsibility

91 We reiterate the importance of parental responsibility and what the law demands of every parent. In *TAU*, it was emphasised that parental responsibility is one of the most fundamental family obligations in family law (at [1]). It is enshrined in s 46 of the Women's Charter:

> **Duty to cooperate**
>
> **46.** A husband and wife are mutually bound to cooperate with each other in —
>
> …
>
> (*b*) caring and providing for the children.

Section 46 imposes on every parent the legal obligation to co-operate with the other in raising their children even after the termination of their marriage. Indeed, "fundamental to parental responsibility is the law's expectation that parents must continue, post-divorce, to 'place the needs of their children before their own'": *AZB* at [2].

92 During the hearing, we addressed both parties directly and reminded them of their parental responsibility. This salient reminder was also captured in *VDX v VDY and another appeal* [2021] SGHCF 2 (at [42]):

> Parental responsibility is a personal responsibility. The Court is the last resort for the resolution of parenting matters, for parents should intentionally endeavour to make these decisions for their children themselves. They should strive hard not to mire the family, including the children, in litigation, nor should their resources and the court's resources be spent on litigation to deal with an emotionally-driven conflict. This will involve some measure of compromise; it may involve being bigger, wiser and kinder – which must be very difficult when relationships have broken down, yet this is the legal responsibility placed on

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> all parents. Parenting is not perpetual, and such sacrifices, painful as they may be, are not demanded of parents indefinitely for children do grow up to be adults – their chance to have a normal childhood should not be lost due to their parents' conflict.

93 Both parents share joint custody of C. This requires them to "recognise and respect each other's joint and equal role in supporting, guiding and making major decisions for their child". It also "assures the child that both her parents continue to be equally present and important in her life": *VJM v VJL and another appeal* [2021] 5 SLR 1233 ("*VJM*") at [20]. "[T]he child's best interests is intimately entwined with the proper discharge of parental responsibility": Justice Debbie Ong, Presiding Judge of the Family Justice Courts, "Keep it up!", speech at FJC Workplan 2023 (2 March 2023) <https://www.judiciary.gov.sg/news-and-resources/news/news-details/justice-debbie-ong-speech-delivered-at-the-family-justice-courts-workplan-2023>. Indeed, it is "ironic that a parent who thinks himself or herself the stronger and better parent would undermine the other parent's involvement in their child's life, for a *truly strong parent* is one who *actively supports* the child in having a close *relationship with the other parent*. This ensures that the child does not suffer the 'conflict of loyalty' of being caught between two parents jealous of each other's relationship with her" [emphasis in original]: *VJM* at [20].

94 C is a young child who will be entering her teenage years soon. The teenage years will bring on challenging "growing up" issues. What she requires most at this stage is stability and a healthy relationship with both parents. We expressed concern that any effort to prevent or undermine C's relationship with either parent would be extremely damaging to her wellbeing. We also urged the parties to reflect on their individual and collective parental responsibilities to ensure that their actions and words reflected a co-operative stance which would encourage C to form strong and meaningful bonds with both parents.

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Costs

95 We were heartened that in the spirit of moving forward co-operatively, the parties agreed to bear their own costs of the appeal.

Sundaresh Menon
Chief Justice

Debbie Ong Siew Ling
Judge of the Appellate Division

Judith Prakash
Senior Judge

Anuradha d/o Krishan Chand Sharma (Winchester Law LLC) for the appellant;
Low Wan Kwong Michael and Gulab Sobhraj (Crossbows LLP) for the respondent.

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