

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 46

Registrar's Appeal from the Family Justice Courts No 7 of 2024

Between

TTZ

... Appellant

And

TTY

... Respondent

JUDGMENT

[Contempt of Court — Civil contempt — Lifting of suspension of committal order]

TABLE OF CONTENTS

INTRODUCTION	1
ISSUES TO BE DETERMINED	2
THE DECISION BELOW	3
THE PARTIES' SUBMISSIONS	5
THE FATHER'S SUBMISSIONS	5
THE MOTHER'S SUBMISSIONS	8
DECISION	9
THE LAW	9
ANALYSIS	12
<i>The seven occasions when C was present but refused to leave with the Father</i>	12
<i>The ten occasions when access did not take place because the Father was not on time</i>	17
<i>The eight remaining occasions when access did not take place</i>	17
<i>The submissions on specific errors made by the DJ</i>	22
THE WAY FORWARD	29
CONCLUSION	30

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

TTZ

v

TTY

[2024] SGHCF 46

General Division of the High Court (Family Division) — Registrar's Appeal
from the Family Justice Courts No 7 of 2024

Teh Hwee Hwee J

18 September 2024

29 November 2024

Judgment reserved.

Teh Hwee Hwee J:

Introduction

1 This appeal concerns access to a teenage boy whose relationship with his father has become estranged. At the heart of this matter is the question of whether the parent with care and control of the child had exercised all reasonable efforts to compel the child to comply with the terms for access.

2 The Appellant (the “Father”) and the Respondent (the “Mother”) were married in 2007. Their divorce was filed in 2011 and interim judgment was granted in 2012. The only child to the marriage (“C”) was born in 2010 and is now 14 years of age.

3 The parties have been engaged in a string of litigation since their divorce more than a decade ago. The Father appeals against the decision of the learned

District Judge (the “DJ”) in *TTY v TTZ* [2024] SGFC 57 (the “Judgment”), dismissing the Father’s application to lift the suspension of a committal order (FC/ORC 1295/2023) made against the Mother on 9 February 2023 on account of her failure to take reasonable steps to facilitate the Father’s access to *C* on 38 occasions between 2 October 2017 and 4 November 2021 (the “Committal Order”). Counsel for the Father submitted at the hearing of the appeal that the Mother had failed to comply with para 3a and para 3b of the Committal Order,¹ which state:

3. The Committal Order is suspended pursuant to Rule 763 [of the Family Justice Rules 2014] on the following conditions:

a. [The Mother] complies with the terms of access provided for in HCF/ORC 13/2022;

b. [The Mother] exercises all reasonable effort[s] to compel the Child to comply with access terms and ensures that the Child is present at the lift lobby of the 2nd floor of her residence when handing over the Child for access[.]

...

4 The Father further alleged that the Mother had engaged in excessive gatekeeping and alienating conduct since 2012. In the course of the hearing of the application before the DJ, the Father requested for the reversal of the order granting the care and control of *C* to the Mother. The DJ disallowed the Father’s request.

Issues to be determined

5 The appeal turns on whether the DJ had erred in finding that there was no breach of access orders by the Mother on any of the occasions cited by the

¹ Record of Appeal dated 19 August 2024 (“ROA”) at pp 420–421: FC/ORC 1295/2023 at paras 3a and 3b.

Father and in refusing to lift the suspension of the Committal Order against the Mother. Related to this is the issue of whether, as contended by the Father, the DJ had erred by placing excessive weight on the following:²

- (a) the Mother’s transcripts of what transpired in a series of CCTV recordings which captured the Father’s interactions with *C* at the second-floor lift lobby outside the Mother’s residence;
- (b) a judicial interview on 2 December 2022 (the “Judge and Child session”);
- (c) the perception that the Mother’s messages with the Father on 27 August 2023 indicated that the Mother’s behaviour had changed significantly after the Committal Order was made against her; and
- (d) the perception that the Father’s approach to restoring the relationship with *C* is intended to punish the Mother through repeated litigation.

The decision below

6 The DJ found that the Father had not proven that the Mother was in breach of the Committal Order.³ Of the 27 occasions originally cited by the Father as instances where the Mother had denied the Father access to *C*, he proceeded with only 25 occasions, as it transpired that he did not have access on two of those 27 occasions due to his own failure to show up for access, thereby effectively standing up *C*.⁴

² Appellant’s Submissions dated 19 August 2024 (“Appellant’s Submissions”) at para 23.

³ *TTY v TTZ* [2024] SGFC 57 (“Judgment”) at [2].

⁴ Judgment at [15] and [39].

7 Of the remaining 25 occasions, *C* turned up for access on the second floor of the lift lobby outside the Mother's residence on seven occasions.⁵ On those seven occasions, *C* refused to leave with the Father, which the Father attributed to the influence of the Mother. In the absence of specific proof that the Mother had done anything to undermine the Father's opportunity for access, the DJ found that there was no basis to conclude that the Mother was responsible for that.⁶ The DJ observed during the Judge and Child session that *C* clearly had a mind of his own and that *C* had turned away from the Father due to the escalating acrimony, altercations and protracted litigation between the parties. Pertinently, the DJ found that the Father's persistent actions of triangulating *C* in the parties' conflict had contributed to the deterioration of the father and son relationship.⁷

8 The DJ found that on ten occasions, the Father did not get access because he was not on time. On the one occasion that the Father was early, he arrived 23 minutes before the appointed time and messaged upon arrival to inform the Mother that he would leave if *C* did not come out in five minutes to meet him. He was late on nine occasions (by 15 minutes, 18 minutes, 30 minutes, 34 minutes, 37 minutes, 38 minutes, 57 minutes, two hours 43 minutes and six hours). On eight of these nine occasions, the Father messaged upon arrival that he would leave if *C* did not come out in five minutes to meet him. I pause here to note that on the ninth occasion (when the Father was late by 6 hours), he gave *C* a ten-minute grace period.⁸

⁵ Judgment at [29]–[30].

⁶ Judgment at [31]–[32].

⁷ Judgment at [32]–[33].

⁸ Judgment at [38] and [41].

9 On four occasions, the DJ accepted the Mother’s explanation that she could not persuade *C* to attend access because he was upset by either the Father’s behaviour at the preceding meeting between the Father and *C*, or by the Father’s demand that *C* was to appear within five minutes when the Father was himself late.⁹ On three other occasions, access did not take place due to misunderstandings borne out of miscommunications between the parties,¹⁰ and the DJ found that the incidents, while regrettable and avoidable, did not demonstrate an intention on the Mother’s part to deny the Father’s access.¹¹ On the remaining one occasion, the DJ took the view that the Father had unreasonably insisted on the handover of *C* taking place at *C*’s previous address despite being informed that *C* had moved. The DJ found that the Father should have turned up at Khatib MRT station, the location for the handover, as communicated by the Mother.¹² In summary, the DJ did not make a finding of a breach of the access orders on any of the 25 occasions relied on by the Father.

The parties’ submissions

The Father’s submissions

10 The Father contends that the Mother had undermined his access by alienating *C*, and places considerable emphasis on his assertion about the Mother’s conduct of “excessive gatekeeping and alienating conduct since 2012”.¹³ In support of that submission, the Father refers to the Mother’s history of not facilitating access and the Committal Order that was made against the

⁹ Judgment at [42] and [45].

¹⁰ Judgment at [46].

¹¹ Judgment at [49], [51] and [53]–[54].

¹² Judgment at [56]–[57].

¹³ Appellant’s Submissions at para 7.

Mother for intentionally breaching access orders on 38 occasions between 2 October 2017 and 4 November 2021.¹⁴ The Father also relies on *C*'s hesitation to leave with him for access and the erosion of the father-son relationship since the Father last had proper access in 2020. In addition, the Father cites the unsuccessful counselling programmes as evidence of the Mother's gatekeeping.¹⁵

11 At the hearing of the appeal, counsel for the Father submitted that the Committal Order requires the Mother "to compel [*C*]" to comply with the terms of the access orders, such that the Mother must "force" *C* to go for access.¹⁶ Counsel for the Father also submitted that the Mother did not exercise all reasonable efforts to compel *C* to comply with the terms of the access orders. He argued that if the Mother had genuinely intended to facilitate access, she would have packed the child's bag for overnight access, escorted the child to the Father's car and encouraged him to spend time with the Father.¹⁷ In this regard, the Father's position is that the Mother is using the child's alienation, which she had caused, as an excuse to obstruct the Father's access.¹⁸

12 The Father submits that the DJ erred in placing too much weight on the transcripts of the CCTV recordings, and should have relied on the CCTV recordings themselves, which would have showed the Father's tone and demeanour to be "cordial and loving".¹⁹ According to him, the CCTV

¹⁴ Appellant's Submissions at paras 34(a)–34(b); ROA at p 414: Oral grounds for FC/SUM 670/2022 at [1].

¹⁵ Appellant's Submissions at paras 34(c)–34(e).

¹⁶ Minute Sheet (18 September 2024).

¹⁷ Appellant's Submissions at para 30.

¹⁸ Minute Sheet (18 September 2024).

¹⁹ Appellant's Submissions at para 24.

recordings were also conveniently truncated by the Mother to only show the portions the child showed reluctance in meeting or talking to the Father.²⁰

13 The Father further avers that given the suspicion of alienating conduct, the DJ should have discounted C's perceived refusal to engage the Father for access, as ascertained from the Judge and Child session.²¹ In addition, the Father contends that the DJ erred in faulting the Father for not communicating with C directly on occasions when C refused to turn up for access; the Father says he had refrained from doing so because he did not want to triangulate C into the dispute between the Father and the Mother. After all, it is "the Mother's responsibility to comply and facilitate access".²² The Father also takes issue with the DJ's observation, made based on the Mother's messages to the Father on 27 August 2023, that the Mother's behaviour had changed following the Committal Order against her; the Father says that the DJ should have considered her earlier acrimonious messages to the Father.²³ In addition, the Father complains that the DJ had erred in giving too much weight to the perception that the Father's approach to restoring the father-son relationship, in the form of repeated litigation, is intended to punish the Mother.²⁴ It is the Father's case that a punishment was necessary to deter the Mother from committing further breaches.²⁵

²⁰ Appellant's Submissions at para 27.

²¹ Appellant's Submissions at para 38.

²² Appellant's Submissions at paras 42–43.

²³ Appellant's Submissions at paras 46–47.

²⁴ Appellant's Submissions at paras 23, 49–50.

²⁵ Appellant's Submissions at para 51.

The Mother's submissions

14 The Mother submits that the parties' acrimonious relationship and past events had caused much distress to *C*, leading to *C* refusing to have any form of communication with the Father.²⁶ She cites an incident on 23 August 2020 (where the Father and his family allegedly shouted outside the Mother's doorstep),²⁷ and a second incident in early 2023 (where the Father's family allegedly joined a video call between the Father and *C*, and told *C* to run away from the Mother's home),²⁸ as the reasons for the child's reluctance to attend access.

15 The Mother also submits that the Father's aggressive and hostile behaviour, as seen from the CCTV recordings, made the child feel unsafe around the Father.²⁹ The Father's actions as seen in the recordings, such as berating *C* over past events, accusing *C* of lying and making false police reports, and offering to bring *C* to the police station so that *C* could make further police reports,³⁰ have been another source of tension between them.³¹ The Mother points to the fact that even after the Mother purchased a phone for *C* in 2020 and gave *C*'s number to the Father for ease of communication, the Father hardly called or messaged *C*.³² The Mother submits that *C* would not see anyone if he did not feel safe and that she did not turn *C* against the Father.³³ She avers that

²⁶ Respondent's Affidavit dated 5 September 2024 ("Respondent's Submissions") at paras 5–6.

²⁷ Respondent's Submissions at para 7.

²⁸ Respondent's Submissions at para 8; Minute Sheet (18 September 2024).

²⁹ Respondent's Submissions at para 9; Minute Sheet (18 September 2024).

³⁰ Respondent's Submissions at para 9; ROA at p 561; Transcript of 26 February 2023.

³¹ Respondent's Submissions at para 9.

³² Respondent's Submissions at paras 12–13; Minute Sheet (18 September 2024).

³³ Respondent's Submissions at para 12.

she had spent “countless hours” repeatedly preparing C to meet the Father,³⁴ but the attempts to rebuild the relationship were unsuccessful as the Father chose to continuously bring up the past.³⁵

Decision

The law

16 Generally, an appellate court will intervene only where the lower court has misdirected itself as to the law or where the lower court has made findings of fact which are plainly wrong or against the weight of the evidence. These usual grounds for appellate intervention apply when an appellate court is reversing findings of contempt or setting aside or varying committal orders (see *Tan Beow Hiong v Tan Boon Aik* [2010] 4 SLR 870 at [45]–[46]). The Father must thus satisfy the appellate court that the lower court had misdirected itself as to the law, or made findings of fact which are plainly wrong or against the weight of the evidence, in order to succeed in this appeal.

17 Here, the Father is alleging that the Mother was in breach of the conditions for the suspension of the Committal Order and in further contempt of court. As the criminal standard of proof is applicable, the burden is on the Father to prove beyond reasonable doubt that the relevant conduct of the Mother was intentional and that she knew of all the facts which would make such conduct a breach of the relevant order of court (*ie*, HCF/ORC 13/2022) (see *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [85]–[86], citing *Pertamina Energy Trading Ltd v Karaha Bodas Co LLC and others* [2007] 2 SLR(R) 518 at [31]–[32] and [51]).

³⁴ Respondent’s Submissions at para 10.

³⁵ Respondent’s Submissions at para 16.

18 To determine whether the alleged contemnor’s conduct amounts to contempt of court, the court will adopt the following two-step approach (see *UNE v UNF* [2019] SGHCF 9 at [3], citing *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 4 SLR 828 at [46]):

(a) First, the court will decide what exactly the order of court required the alleged contemnor to do. In determining what the order of court required, the court will interpret the plain meaning of the language used. It will resolve any ambiguity in favour of the person who had to comply with the order.

(b) Second, the court will determine whether the requirements of the order of court have been fulfilled... To establish that there has been a contempt of court, the complainant will need to show that in committing the act complained of or omitting to comply with an order of court, the alleged contemnor had the necessary *mens rea*.

This was applied by the DJ (at [25] of the Judgment) and the parties have not disputed the application of this approach.

19 The Mother has a positive duty to act in compliance with the access terms set out in HCF/ORC 13/2022 under para 3a of the Committal Order (see [3] above). Similarly, under para 3b of the Committal Order (see [3] above), there is a positive duty on the Mother to act by “exercis[ing] all reasonable effort[s] to compel [C] to comply with access terms and [ensure] that [C] is present at the lift lobby of the 2nd floor of her residence when handing over [C] for access”. The Mother is required to do in good faith what she reasonably can to facilitate the access, and achieve the outcome, envisioned by the order of court. This gives effect to the fundamental legal obligation of parents, as enshrined in s 46(b) of the Women’s Charter 1961 (2020 Rev Ed), to cooperate

with each other in caring and providing for their children. The legal obligation to cooperate continues even after the termination of their marriage. (*WKM v WKN* [2024] 1 SLR 158 (“*WKM*”) at [91], citing *TAU v TAT* [2018] 5 SLR 1089 (“*TAU*”) at [1] and *AZB v AZC* [2016] SGHCF 1 at [2]).

20 Practically speaking, this involves taking all reasonable steps that a caring and determined parent, acting with a view to facilitating the other parent’s access and anxious to procure the court ordered outcome, would have taken. In determining whether a parent is in breach of a court order to exercise all reasonable efforts to facilitate access, the court applies an objective test, taking into account all the facts and circumstances of the case, such as whether the parent against whom the order was made had acted in the best interests of the child, including the need of every child for “love and care from both parents in order to grow up and achieve their fullest potential as balanced individuals” (emphasis from original omitted) (*VDZ v VEA* [2020] 2 SLR 858 at [79]). It must be borne in mind that a court order to exercise all reasonable efforts is not a stipulation for a guarantee that the court ordered outcome would indeed materialise. In this regard, I refer to the decision of the Court of Appeal in *KS Energy Services Ltd v BR Energy (M) Sdn Bhd* [2014] 2 SLR 905 (at [46]–[47] and [62]), which cited *Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 (at [22]), where similar propositions of law were laid down, *albeit* in the context of the interpretation of a best endeavours contractual clause.

21 Upon a review of the evidence and applying the above principles, it is my judgment that no appellate intervention is warranted. The Father has failed to meet the threshold required to prove that the Mother had failed to comply with the access terms, or that she did not exercise all reasonable efforts to

compel *C* to comply with the access terms on the 25 occasions that the Father eventually relied on. I explain.

Analysis

22 Of the 25 occasions, *C* attended on seven occasions but refused to leave with the Father. On ten occasions, access did not take place because the Father was not on time. For the remaining eight occasions, either the Father or *C* was not present for access. I will consider each set of occasions in turn.

The seven occasions when C was present but refused to leave with the Father

23 In my judgment, on the seven occasions where *C* refused to leave with the Father, the Mother had met her obligation to comply with the access terms when she facilitated *C*'s attendance at the lift lobby of the second floor of her residence for access with the Father. The Father's contention that the Mother was obliged to take further steps, such as packing *C*'s bag for overnight access or escorting *C* to the Father's car, in order to show her sincerity in facilitating access, falls beyond the scope of her obligations under the access terms. I am also of the view that the Father did not prove beyond a reasonable doubt that *C* refused to leave with the Father due to a failure on the Mother's part to take all reasonable efforts to compel *C* to comply with the access terms. I come to this view based on the interactions between the Father and *C* on those seven occasions. In this regard, I find it appropriate, in addressing the Father's arguments, to set out in some detail, what transpired during the seven occasions and make some observations that I hope will assist the Father to reflect on how the way he interacted with *C* might have caused further damage to their relationship, and to consider alternative approaches to communicating and parenting to pave the way for meaningful access to occur in future.

24 The Father argues that the DJ erred by placing excessive weight on the transcripts of the series of CCTV recordings of the Father’s interactions with *C* at the second-floor lift lobby outside the Mother’s residence and that the DJ should have relied on the recordings themselves, which show that the Father’s behaviour was “cordial and loving”. At the hearing of the appeal, counsel for the Father played two of the CCTV recordings taken on 18 and 26 February 2023 in court, and sought to argue that there was no aggression or hostility exhibited by the Father. Upon viewing both CCTV recordings, I find that the recordings portray an even more negative situation than that conveyed by the transcripts. The conversations between the Father and *C* were antagonistic, and have a subtle belligerent tone; the emotional toll of these encounters on *C* is palpable.

25 On 18 February 2023,³⁶ when speaking with the Father, *C* constantly looked downwards, shuffled his feet, fidgeted with his shoes, and kept his distance from the Father. When the Father brought up how the Mother “beat [the Father] in public [and] attacked [the Father] in public”, *C* told the Father to “just go” and to “please go home”. As the conversation began to turn to the Father’s interactions with the Mother, with the Father describing the Mother’s messages as “all kinds of rubbish”, *C* noticeably shrugged and deflected that it was because the Father was late for a previous scheduled access session. Then father and son exchanged words about whether the Father had turned up late for access with *C*. The Father’s counsel described this recording as showing that the Father was “cordial and loving” because the Father had his hands behind his back and was “laughing and smiling”, speaking with “some cynicism but it was

³⁶ CCTV recording dated 18 February 2023, titled “18 02 2023 – [Father’s] conversation with [C].”

said in jest”.³⁷ Given the words used and the tone taken, I am unable to agree with counsel’s characterisation of the interaction between the Father and *C* on that occasion.

26 The CCTV recording of what transpired when *C* attended for access with the Father on 26 February 2023³⁸ shows the Father insinuating that the son had made up stories in a police report and committed a crime. The Father can also be seen asking pointed and rhetorical questions, such as “Want to bet? When you lie, it’s a crime”, insinuating that *C* had lied in police reports. The Father then proceeded to ask *C* how many police reports *C* would want to make, and asked *C* whether *C* would want to go to the police station. The Father also offered to send *C* there such that *C* could tell the police that the Father was harassing *C*. When *C* said that the Father created a problem, the Father proceeded to question *C* rather intensely on this, asking “What problem? What problem? Tell me, tell me, tell me. Tell me what problem. Tell me what problem.” When *C* did not engage and asked the Father to “please go home”, the Father continued to interrogate and confront *C* about what problem the Father was supposed to have created. Whilst the Father could have been insistent because he wanted to know what he had done wrong, his words and actions could be understood differently in view of discordant tone of the conversation. The Father eventually told *C* that he was a “jailbird in a bl—dy jail” whose words were “controlled”, and that *C* “had retracted himself from society”. The Father declared that “that is poison inside his brain”. Counsel for the Father submitted that this video showed “cordial and loving” behaviour as the Father had his hands behind his back and was squatting on the floor to speak

³⁷ Minute Sheet (18 September 2024).

³⁸ CCTV recording dated 26 February 2023, titled “26 02 2023 – [Father’s] conversation with [*C*].”

to *C*, reflecting the Father's humility.³⁹ Once again, I am unable to agree with counsel's characterisation of the interaction between the Father and *C* on that occasion. I find, on the contrary, that the Father's words were caustic and hurtful, and his tone confrontational and intimidating, making *C* uncomfortable and putting *C* on the defensive.

27 In both videos, and from a review of the other recordings adduced by the Mother, *C*'s unwillingness to engage the Father is evident. The conversations were fixated on the ongoing conflicts between the Father and the Mother, and could not move beyond that. The Father could be seen to be: (a) calling *C*'s home a "sh—thole"⁴⁰ and "blo—dy jail"⁴¹; (b) asserting repeatedly that the Mother's residence was not *C*'s home;⁴² (c) using sarcasm that could have the effect of belittling *C*;⁴³ and (d) making accusations and criticisms against the Mother.⁴⁴

28 While the Father professes his concern for *C* and demonstrates a strong desire to maintain a relationship with *C*, his words and actions could have led to *C*'s reluctance to spend time with him. Positive change can start with the Father recognising his own contributions to *C*'s resistance to engage him on

³⁹ Minute Sheet (18 September 2024); Appellant's Submissions at para 26.

⁴⁰ CCTV recording dated 8 April 2023, titled "08 04 2023 – [Father] speaking to [C] and saying that is not his home".

⁴¹ CCTV recording dated 26 February 2023, titled "26 02 2023 – [Father's] conversation with [C]."

⁴² CCTV recording dated 7 May 2023, titled "07 05 2023 – [Father] shouting that is not your home"; CCTV recording dated 8 April 2023, titled "08 04 2023 – [Father] speaking to [C] and saying that is not his home".

⁴³ CCTV recording dated 18 February 2023, titled "18 02 2023 – [Father's] conversation with [C]".

⁴⁴ CCTV recording dated 18 February 2023, titled "18 02 2023 – [Father's] conversation with [C]".

those occasions when *C* was present for scheduled access but refused to leave with him, and on the other occasions when scheduled contact did not occur. His previous attempts at engaging *C* have proven to be unproductive and not yielded the desired results. I encourage him to adopt a new approach and redirect his focus on more positive topics, such as shared interests and hobbies, and to get professional guidance on how he could foster a loving relationship with *C*.

29 Related to the seven occasions when *C* was present for access but refused to leave with the Father, the Father also submits that the recordings have been truncated and selectively adduced to support the Mother's narrative.⁴⁵ His counsel later clarified this to mean that the videos only showed what happened during the period of the recordings themselves, and did not show the full period of time from when the Father entered and left the lift lobby.⁴⁶ Considering the recordings as a whole, I accept the Mother's evidence that she did not have a full recording of the entire time that the Father was at the lift lobby on each occasion because the CCTV camera triggers only when there is motion, and that the Mother had not edited the footage.⁴⁷ The Father also submits that the videos had been altered or appeared to jump ahead at times, but his counsel retracted this submission at the hearing after he was unable to point to any specific videos with those issues.⁴⁸ I thus reject the Father's submissions that the CCTV recordings have been altered or selectively adduced.

⁴⁵ Appellant's Submissions at para 27.

⁴⁶ Minute Sheet (18 September 2024).

⁴⁷ ROA at pp 234–235: Notes of Evidence ("NE") dated 19 March 2024 at p 17 line 10 to p 18 line 16; ROA at p 727: Plaintiff's Written Submissions for FC/SUM 3087/2023 dated 29 April 2024 ("Plaintiff's Written Submissions for FC/SUM 3087/2023") at para 16(a)(5).

⁴⁸ Minute Sheet (18 September 2024).

The ten occasions when access did not take place because the Father was not on time

30 On ten occasions, the Father failed to get access because he was not on time. On one occasion, the Father was 23 minutes early. On nine occasions, the Father was late by between 15 minutes and 6 hours. Despite that, he messaged upon arrival to state that he would leave if *C* did not present himself within five minutes (on nine occasions) or within ten minutes (on one occasion). I agree with the DJ that in the circumstances of this case, it would not be fair to require the Mother to cause *C* to be present for access within five or ten minutes after the Father's arrival, or be found in contempt of court, when the Father chose to appear at a time other than at the appointed time. The Father's departure from the appointed time by intervals ranging from 15 minutes to six hours, and the Father's unreasonable insistence on being granted access within five or ten minutes of his demand, either caused or contributed to the unsuccessful access on these ten occasions. Therefore, the unsuccessful access cannot reasonably be attributed to the Mother's failure to comply with access terms, or the Mother's failure to exercise all reasonable efforts to compel *C*'s compliance with the access orders. The Father has therefore failed to discharge his burden to prove beyond a reasonable doubt that the Mother had breached the Committal Order.

The eight remaining occasions when access did not take place

31 In two out of the eight remaining occasions, the Father had assumed that the Mother was denying him access, and as a result, did not turn up for access on both occasions. On another occasion, *C* was not present as he was attending a school event, which the Mother had assumed the Father was aware of through his access to the Parent's Gateway, a platform used by the school to inform

parents of school activities.⁴⁹ I find that the DJ did not err in finding that there was a genuine miscommunication between the parties and there was no breach of access terms by the Mother, nor a breach of her obligation to compel C's compliance with the access terms, on those three occasions. The circumstances did not show that the Mother had the necessary *mens rea* to breach the orders for access.

32 Regarding another four occasions where C failed to turn up for access, the Father has similarly not established beyond a reasonable doubt that the Mother failed to take positive actions to comply with the access terms, or exercise all reasonable efforts to compel C's compliance with the access terms. The Mother explained that she was not able to compel C to attend access on the four occasions because C was upset. On one occasion (16 April 2023), C was upset because the Father had repeatedly insisted that the Mother's residence was not C's home, and referred to the Mother's residence as a "sh—thole"⁵⁰ during the last access session on 8 April 2023.⁵¹ C was also upset on three other occasions in which the Father demanded that C turn up for access in five minutes when the Father was himself late.⁵² Given the Mother's explanation, I find no reason to interfere with the DJ's decision. Under such circumstances, it is not unreasonable to come to a view that the Mother's efforts to compel C to comply with the access terms were futile. The Committal Order requires the Mother to

⁴⁹ ROA at p 171: NE dated 6 March 2024 at p 57 lines 25–27.

⁵⁰ CCTV recording dated 8 April 2023, titled "08 04 2023 – [Father] speaking to [C] and saying that is not his home".

⁵¹ Judgment at [42]–[45]; ROA at pp 728–729 and 731: Plaintiff's Written Submissions for FC/SUM 3087/2023 at paras 17(c) and 18(j) (16 April 2023).

⁵² ROA at pp 731–733: Plaintiff's Written Submissions for FC/SUM 3087/2023 at paras 18(l) (for 29 April 2023), 18(n) (for 13 May 2023) and 18(v) (for 15 July 2023).

exercise all reasonable efforts to facilitate access, and does not require the Mother to guarantee a successful outcome.

33 I come to this conclusion after having viewed the CCTV recordings of the exchange between the Father and *C* on 8 April 2023 concerning whether the Mother's residence was *C*'s home, and the Father's assertions that "someone need to get [*C*] out of this sh—thole" and that it was a "bad place for [*C*]".⁵³ The Father's suggestion that the Mother's residence is not *C*'s home appears to have hit a raw nerve. I observe that when this suggestion was raised, *C* would shortly thereafter terminate the meeting at the lift lobby and slip back into the Mother's residence, such as on 11 March 2023⁵⁴ or 8 April 2023.⁵⁵ I further considered certain actions that the Mother has taken to facilitate access, such as supporting professional counselling for *C* with a psychologist from the Panel of Therapeutic Specialists, which would involve therapeutic interventions to mend damaged familial ties, and also the Mother's attempts at communicating with the Father on how to improve his relationship with *C* (see [39] below).

34 As regards the eighth and last occasion (27 August 2023), the Father alleged that the Mother did not facilitate access when the Father had waited for *C* at Khatib MRT station but *C* did not turn up.⁵⁶ In this regard, contrary to the DJ's observation that the Father had insisted on the exchange taking place at the Mother's former residence, the Father had in fact turned up at Khatib MRT that

⁵³ CCTV recording dated 8 April 2023, titled "08 04 2023 – [Father] speaking to [A] and saying that is not his home".

⁵⁴ CCTV recording dated 11 March 2023, titled "11 03 2023 – [Father] speaking to [*C*] and him leaving".

⁵⁵ CCTV recording dated 8 April 2023, titled "08 04 2023 – [Father] speaking to [*C*] and saying that is not his home".

⁵⁶ Appellant's Submissions at para 45.

day.⁵⁷ There is evidence that the Father was present at Khatib MRT station on 27 August 2023 at 9.30am and 9.36am.⁵⁸ This, however, does not change the outcome for the reasons I set out below.

35 In the evening of 26 August 2023, the Father contacted the Mother about the access arrangement for 27 August 2023. The Mother replied and notified the Father of her change of residence, indicating that “we have already moved to yishun. message [C] and arrange with him”.⁵⁹ In the morning of 27 August 2023, the Mother contacted the Father again to ask him to “establish a respectful polite conversation” with C, with a forwarded message showing that the Mother had asked C to unblock the Father’s messages when C informed the Mother that C had blocked the Father’s messages.⁶⁰ However, there is no evidence that the Father had attempted to contact C to make access arrangements on either 26 or 27 August 2023, even after the Father was informed that C had unblocked the Father’s messages. C did not turn up at the MRT station in the morning of 27 August 2023. The Mother explains that C was absent because he felt unsafe around the Father.⁶¹

36 I find that the evidence does not prove beyond a reasonable doubt that the Mother had not taken positive actions to comply with the access terms or exercised all reasonable efforts to facilitate access. It was on 27 August 2023 itself that the Mother told C to unblock the Father’s messages when she found out that C had blocked the Father’s messages. She even suggested to the Father

⁵⁷ Judgment at [56].

⁵⁸ ROA at pp 514–515: Father’s affidavit filed in support of FC/SUM 3087/2023 at pp 108–109 (images of Khatib MRT at 9.30am and 9.36am on 27 August 2023).

⁵⁹ ROA at p 452.

⁶⁰ ROA at p 452.

⁶¹ Minute Sheet (18 September 2024).

that the parties have lunch together with *C* to make *C* feel safe, only to be rebuffed. The relevant part of the exchange between the parties on 27 August 2023 is reproduced below:⁶²

Mother	(Shows screenshot of conversation between the child and her, which states: Mother: I told him that he will msg you ok Child: but Child: I think I blocked him Mother: ok unblock him)
	make sure you establish a respectful polite conversation. he has unblocked you. start slow, not aggressive.
Father	I have no interest I Your rubbish, he doesn't come with me means no access.
	I didn't come to talk to my son, I came to fetch him
Mother	you need to start slow. why don't we go for lunch together so he feels safe?
	you went to his school. I wasn't there. Did he want to see you? you need to ask yourself that it is not about me.
Father	Sin rejecting father is absurd when care and control is given to the mother. Mother deliberately alienating her son is abused, a sin and morally wrong. Mother dragging the matter and obstructing access for long periods the 3rd time is absurd. Mother dancing up a drama of trauma, abuse, aggression is absurd.
	I don't want you around when I am with [C]
	You deliberately drag it so that he grows up and can only have minute influence from me and all from you. Your trophy

37 The conversation deteriorated from there into an argument. Nonetheless, the evidence shows that the Mother had made efforts to ensure that the Father could contact *C* through the phone and offered to facilitate a lunch between the Father and *C* with her present, to help *C* feel safe around the Father. In this

⁶² ROA at pp 452–453.

regard, her suggestion for a meal together with her present was consistent with her explanation in court that *C* was not present at the MRT station because he did not feel safe around the Father. The Father's objection to the Mother's suggestion of a meal with her present, while certainly a product of the tumultuous history between the parties, did not discount the Mother's attempt to facilitate the Father's access to *C* on 27 August 2023. I am therefore of the view that the Father has not satisfied his burden to demonstrate that the Mother had breached the Committal Order on this occasion.

The submissions on specific errors made by the DJ

38 I deal next with the specific errors that the Father submits the DJ had made. The Father submits that the DJ had erred in his perception that the Mother's messages between her and the Father on 27 August 2023 indicated that her behaviour had changed significantly following the passage of the Committal Order,⁶³ pointing to the Mother's earlier messages showing her acrimonious behaviour towards the Father.⁶⁴

39 A review of the *entire* record of the conversations between the parties that is in evidence suggests, however, that the Mother had made repeated attempts to communicate with the Father on improving his relationship with *C* between the period that the Committal Order was made on 9 February 2023 and the application was taken out by the Father to lift the suspension of the Committal Order on 26 September 2023. I set out below, examples of the Mother's messages to the Father that demonstrate the Mother's attempts to offer practical suggestions on how the Father may improve his relationship with *C*:

On 26 February 2023:

⁶³ Appellant's Submissions at para 23(c).

⁶⁴ Appellant's Submissions at para 47.

[C] will be an adult real soon. you stop your nonsense and stop scolding him. be nice. if you are intelligent like what you tell me the judge said, then take a different approach⁶⁵

On 16 April 2023:

you have to stop shouting at [C] and telling him this is not his home. this is his home. and I am his mother. you have to stop threatening him. don't be aggressive towards him⁶⁶

On 7 May 2023:

so what you should do is then to stop shouting and scolding him when you see him ... call him and msg him over the week ... instead of talking like a fool⁶⁷

On 27 May 2023:

you know you will end up the biggest loser if you don't let go of the past and establish a positive relationship with [C] .. i can only advise you. you have to put in your own effort. he will be an adult soon. don't wait until it's too late.⁶⁸

On 15 July 2023:

he is not a child, he is a teenager. ask him out for lunch. msg him. treat him with respect. stop scolding him. by doing this, you are not going to get him. what is your priority. revenge against me or establishing a relationship with [C]?⁶⁹

On 29 July 2023:

he is no longer a child. he is a teenager. you need to message him, call him over the week, ask him out for lunch, do it slowly⁷⁰

On 27 August 2023:

you need to start slow. why don't we go for lunch together so he feels safe?⁷¹

⁶⁵ ROA at p 428: Mother's message dated 26 February 2023.

⁶⁶ ROA at p 434: Mother's message dated 16 April 2023.

⁶⁷ ROA at p 437: Mother's message dated 7 May 2023.

⁶⁸ ROA at p 440: Mother's message dated 27 May 2023.

⁶⁹ ROA at p 445: Mother's message dated 15 July 2023.

⁷⁰ ROA at p 448: Mother's message dated 29 July 2023.

⁷¹ ROA at p 452: Mother's message dated 27 August 2023.

40 While the Mother's messages were not couched in the most conducive language, and I encourage the Mother to show restraint in future communications with the Father, they demonstrate that the Mother was making repeated efforts to re-establish the relationship between the Father and *C*. Her advice to the Father to put in the effort to contact *C* more regularly and in a non-confrontational manner, treat *C* with respect and establish a positive relationship with *C*, and to do it slowly, are hardly the words of a parent intentionally trying to alienate a child from the other parent.

41 The Father also submits that the DJ erred in relying on the Judge and Child session and accepting the Mother's explanation for *C*'s refusal to turn up for access,⁷² and erred in faulting the Father for not communicating with *C* directly regarding the cancellations of access as such communication would triangulate *C* into the dispute.⁷³ In my judgment, neither argument holds water.

42 First, the Father appears to rely on the Mother's alleged alienation of *C* to contend that *C*'s views should have been discounted in coming to a decision, citing *WKM* at [61].⁷⁴ However, the Court of Appeal explained in *WKM* at [61] that it is important for the judge to ascertain the root of the negative emotions that a child may have about one parent, and whether these originate from the children themselves based on their lived experience, or whether these originate from the influence of the other parent. It is in the latter situation that it may be appropriate for the judge to discount the child's stated views in coming to a decision.

⁷² Appellant's Submissions at para 33.

⁷³ Appellant's Submissions at para 42.

⁷⁴ Appellant's Submissions at paras 33–38.

43 Although the parties have a troubled history and the Mother was previously found in the committal proceedings to have failed to facilitate access on 38 occasions between 2 October 2017 and 4 November 2021, I find that the evidence points to the conclusion that *C*'s views did originate from his own lived experience, such as his own interactions with the Father and the difficult environment in the Father's household involving conflicts between the Father and his current wife.⁷⁵ Further, the DJ had the benefit of interviewing *C* firsthand with the assistance of a specialist counsellor in coming to his determination that *C* had a mind of his own. Indeed, this should come as no surprise, given that *C* is at an age where he can come to a view and form an opinion on the relationships he shares with his family members.

44 Second, I am unable to see how the DJ erred in his finding that the Father should have communicated with *C* and ascertained *C*'s intent on occasions when *C* did not turn up for access, instead of assuming that the Mother had undermined his access by alienating *C* from him.⁷⁶ In fact, the Father could also have coaxed *C* to meet him, as opposed to relying solely on the Mother to compel *C* to attend access with him or risk facing a finding of contempt of court against her. As the DJ had noted, direct mobile communication was encouraged between the Father and *C*, but the Father had made no effort after these alleged cancellations to communicate with *C* to persuade *C* to attend access with him.⁷⁷ Given the deteriorated state of the relationship between the Father and *C*, the lack of any attempt made by the Father to ascertain why *C* refused to turn up, and the Mother's attempts to advise the Father on how to connect with *C* (see

⁷⁵ Minute Sheet (18 September 2024); ROA at p 279; NE dated 19 March 2024 at p 62 lines 21–26.

⁷⁶ Judgment at [45].

⁷⁷ Judgment at [44].

[39] above), which went towards facilitating access, it is not unreasonable for the DJ to accept the Mother's explanation for *C*'s refusal to attend access.

45 As set out at [20] above, to determine whether the obligation to exercise reasonable efforts to facilitate access has been fulfilled, the court will consider all the fact and circumstances of the case, such as whether the person against whom the order was made had acted in the best interests of the child. It is the child's welfare, and not the interests or wishes of either parent (if they do not serve the child's welfare), which is paramount (see *TAU* at [14]). Therefore, if access is meant for the welfare of the child, the child's willingness (or unwillingness) has to be taken into account in the analysis of the measures that the Mother here could have taken, including the risk of breaking the one functional parental bond available to *C*. The efforts required of the Mother have to be considered in this light.

46 That said, I should put it beyond doubt that this case is not authority for a proposition that a child's refusal to attend access would in itself excuse the care and control parent from that parent's obligation to exercise all reasonable efforts to facilitate access. Further, in cases where a parent is influencing a child not to return to the other parent, the court is prepared to find that such influence is evidence of an intention not to comply with access orders (see *CSW v CSX* [2023] SGHC(A) 23 ("*CSW*") at [63], [64] and [73]). *CSW* demonstrates that the court can and will step in forcefully where a parent is acting in breach of access orders and seeking to rely on a child's refusal as a veil for that parent's own disruption of access.

47 In *CSW*, the husband had care and control of the children and the wife had access. The wife alleged that the husband was physically and mentally abusing the children, and on this basis, the wife refused to return the children to

the husband after her access ended, alleging that the children did not want to return to him (at [8] and [14]). She also applied for a personal protection order and an expedited order, and made complaints that were considered by the Child Protective Service (at [8], [9] and [12]). The applications for the expedited order and personal protection order were dismissed (at [13]), but the children refused to return to the husband. The Appellate Division of the High Court found that there was sufficient evidence to show that the wife had influenced the children not to return to the husband, given the following matters: (a) the children had a sudden and complete change in attitude and refused to return to the husband despite having clearly demonstrated a close relationship with the husband just hours prior to the refusal (at [69]); (b) there was an incident where the children initially appeared keen to go to the husband's brother's house, but turned cold and quiet and refused to engage the husband's brother, after a phone call with the wife (at [70]); and (c) the wife did not comply with the Judge's direction to disclose her communications with the children, leading to the drawing of an adverse inference against her (at [71]). The Appellate Division of the High Court thus found that the wife played an active role in influencing the children not to return to the husband, and affirmed the Judge's finding of contempt of court and imposition of a suspended sentence of one week's imprisonment accordingly (at [42], [73], [79] and [91]).

48 The question of whether a parent with care and control has exercised all reasonable efforts to compel a child to comply with access terms is necessarily a fact-intensive inquiry. While the court can use the compulsion of law to order a parent to make all reasonable efforts to facilitate access, the court can do little in the realm of personal and emotional bonds between a parent and a child. As recognised by Choo Han Teck J in *WOZ v WOY* [2024] SGHCF 11 at [4], the building of a meaningful relationship between the parties is not amenable to judicial commands, but requires time, effort and patience on both sides:

I have no doubt that the Husband is appealing because he desires for a better outcome during his limited access time with the Child. But the Child is turning 12 this year, and she is thus at a sufficiently mature age to evaluate how a parent-child relationship should develop in their case. Relationship building requires time, effort, and patience from both sides. Above all, it is unique in each relationship. It is not amenable to judicial commands, and the courts must leave it to the parents to develop their own bond with their children, each in his or her own way. Sometimes, the court might offer a nudge here and there, but in the end, it must be left to the parent to find the formula...

49 Ultimately, as Debbie Ong J (as she then was) observed in *TEN v TEO and another appeal* [2020] SGHCF 20 at [43], it is the responsibility of the parent with care and control to *facilitate* the reunion between the children and the access parent, but the law *does not* “force” children to love a parent. The law does, however, expect a parent *not* to engage in alienating behaviour, and to support the reunification efforts as far as that parent can. Indeed, it is in this spirit that access orders are made to help parties move on past the divorce, and provide a scaffolding upon which parents can build a strong and lasting relationship with their children after the divorce, by ensuring that they have the time and space for bonding.

50 It is my judgment that an objective assessment of the evidence and the circumstances of this case does not support a finding beyond a reasonable doubt that the Mother did not take all reasonable steps that a caring and determined parent, acting with a view to facilitating the other parent’s access and anxious to procure the court ordered outcome, would have taken. It is at this fundamental hurdle that the Father’s case has fallen short. The Father’s reliance on the Mother’s previous failure to facilitate the Father’s access to C on 38 occasions between 2 October 2017 and 4 November 2021, which formed the basis of the Committal Order, does little to advance the Father’s case. There is plainly insufficient evidence to support a finding of any breach of the Committal Order

by the Mother. I mention for completeness that, putting aside whether the issue of reversing the order granting the care and control of *C* to the Mother was even before the DJ, the Father's challenge against the DJ's refusal to reverse the order for care and control is without merit given my decision above.

The way forward

51 Although the relationship between the Father and *C* has faced challenges, a silver lining emerges in the form of the parties' commitment in supporting professional counselling for *C* with a psychologist from the Panel of Therapeutic Specialists. The Mother's evidence is that the counselling has given *C* a safe space to process his emotions and start to heal, resulting in *C* "smiling so much more" and a considerable reduction in *C*'s anger.⁷⁸ This is a very promising start and I encourage the parties to continue in their support for *C* in this regard.

52 The path ahead requires the parties to abandon approaches that have proven ineffective and instead adopt new ones that address the underlying issues rather than perpetuate entrenched positions. As set out in paras 7B(2)(c) and (d) of the Family Justice Courts Practice Directions 2015,⁷⁹ the objectives of therapeutic justice under the Family Justice Courts Therapeutic Justice Model include a focus on the resolution of the parties' underlying issues in the long-term interests of the family and the children, putting the welfare of the children first. To build on the progress that *C* has made, I would also encourage the Father to seek professional assistance from *C*'s psychologist or other counsellors to explore how the Father can adopt a different approach to

⁷⁸ Respondent's Submissions at para 11.

⁷⁹ This is similarly set out in para 90B(2)(c) and (d) of the Family Justice Courts Practice Directions 2024.

communications and parenting. It is my hope that with professional support, the Father will better understand the difficulties of the dynamics at play and the importance of taking ownership of his individual contributions to the father and son relationship, and start working towards fostering a healthy relationship with *C*.

53 I would also encourage the Father and Mother to individually seek professional guidance on ways to improve on their communications with each other, so as to minimise negative behaviours which may affect *C*'s wellbeing. Their acrimony has exacted a heavy emotional toll on *C*, who has lived a large part of his life at the centre of their conflict. As Judith Prakash J (as she then was) recognised in *ABW v ABV* [2014] 2 SLR 769 at [26], it has been said that the child is the unseen and unheard victim of a marital breakdown. Whatever vindication the parties may gain from engaging in vitriolic exchanges, however justified they may feel their responses might be, I urge the parties to consider that the ultimate victim of the ongoing parental conflict and litigation is *C*. In this respect, the Father should refrain from disparaging the Mother's communications with him in his interactions with *C*, and the Mother should stop allowing *C* to read the messages between her and the Father, if she has not already done so.

Conclusion

54 Relationships are like gardens, requiring consistent care, attention and nourishment to flourish. Building and maintaining a strong relationship with a child after marital dissolution requires each parent to prioritise nurturing his or her individual bond with the child. This will involve the investment of time, dedicated effort and patience for regular and open communication, as well as

spending quality time together to grow roots of trust, stems of emotional security, and fruits of love and affection.

55 As the Father has not shown that the DJ had erred in finding that the Mother was not in breach of the Committal Order, there is no justification for lifting the suspension of the Committal Order in the Father's favour. I dismiss the Father's appeal.

Teh Hwee Hwee
Judge of the High Court

Patrick Fernandez (Fernandez LLC) for the appellant;
The respondent in person.
