

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 44

Divorce (Transferred) No 2566 of 2021 (Summons No 1745 of 2023)

Between

DDO

... Applicant

And

DDN

... Respondent

GROUNDS OF DECISION

[Family Law — Custody — Access]

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DDO

v

DDN

[2023] SGHCF 44

General Division of the High Court (Family Division) — Divorce
(Transferred) No 2566 of 2021 (Summons No 1745 of 2023)
Chan Seng Onn SJ
30 August 2023

24 October 2023

Chan Seng Onn SJ:

Introduction

1 Parties married on 24 June 2006. They have two children. Interim Judgment was granted on 13 October 2021 on the basis of the parties' unreasonable behaviour.

2 Following a series of mediation sessions, parties agreed to a "By Consent" order ("the Access Orders") as recorded in the Interim Judgment, granting the father generous access to the children. Briefly, the Access Orders provided for the father's access to the children on Thursdays (after school) to Sundays before noon and school holidays. The Access Orders also allowed the father to have both overnight access within the stipulated days and the right to take the children overseas during the June and November/December school holidays.

3 The mother commenced FC/SUM 1745/2023 (“SUM 1745”) to vary the Access Orders. She sought significant variations to reduce the father’s access to the children on the following terms:

- (a) reasonable access to the father in the form of weekly outings on weekends to be arranged directly with the children; and
- (b) no more overseas and overnight access to the father.

4 On 30 August 2023, I heard SUM 1745 together with other ancillary matters in HC/DT 2566/2021 (“DT 2566”) relating to, among other things, the division of parties’ matrimonial assets and issues of maintenance.

5 Having considered the parties’ submissions and the evidence in SUM 1745, I agreed with the mother that the father’s access ought to be reduced. I arrived at my decision on the essential ground that it was in the children’s welfare having regard to the evidence placed before the court to reduce the father’s access by removing principally his overseas and overnight access to the children. As the father has appealed against my decision in SUM 1745, I set out my reasons below.

Background

6 The salient facts in relation to the Access Orders sought to be varied in SUM 1745 can be briefly stated.

The family

7 Both parties are 43 years old. “[DDO]” is the mother and applicant of SUM 1745. She is presently employed as a teacher. The father, “[DDN]”, works as a doctor.

8 The first child to the marriage (their daughter, “[B]”) was born on [x] September 2008 and is presently 15 years old. The second child to the marriage (their son, “[C]”) was born on [x] February 2011 and is presently 12 years old.

The litigation

9 The mother commenced divorce proceedings on 1 June 2021.

10 Parties subsequently underwent mediation sessions at the Child Focused Resolution Centre. They agreed to let the divorce proceed on an uncontested basis¹ and agreed to the entry of a “By Consent” Order with respect to the issues of custody, care and control of and access to the children. The agreed terms were recorded in the Interim Judgment.²

11 More crucially for our purposes, I set out in full the Access Orders, which were made in the following terms:³

b. The [father] shall have access to both children as follows: -

i. Thursdays (after school) to Sundays before noon;

ii. Liberty to place calls to children on days where he has no access;

iii. Parties to share June and November/December school holidays equally. If parties are unable to agree, the default arrangement would be the [mother] having the second half from 2021 and on odd years while the [father] to have the first half in 2021 and on each odd year. From 2022, the [mother] to have the first half and the [father] to have the second half and this shall be the arrangement on the even years;

¹ Defendant’s Written Submissions Ancillary Matters Hearing (“DWS”) at para 3.

² Affidavit of Mother dated 1 June 2023 at p 20.

³ Affidavit of Mother dated 1 June 2023 at pp 20–21.

- iv. Both parties are at liberty to travel overseas during their respective half share of the June and November/December holidays;
- v. The [father] to give reasonable notice of at least one month before each trip together with confirmed bookings and the passports shall be handed to him at least two days before departure and to be returned to the [mother] within two days after each trip with the children;
- vi. Both parties to have telephone access when the children are overseas with the other parent; and
- vii. That any additional time, ad hoc arrangements, or changes to the times agreed, dates or pickup places for access shall be discussed and mutually agreed between parties.

12 In SUM 1745, the mother sought to vary the Access Orders as set out in sub-paragraphs 3(b)(i) to 3(b)(vii) of the Interim Judgment. The mother alleged that material developments had occurred since the Interim Judgment was granted justifying a variation of the Access Orders. She requested that the Access Orders be varied as follows:⁴

- a. That there be reasonable access in the form of weekly outings on weekends to be arranged directly with the children.
- b. That there be no overseas or overnight access.

The parties' cases

13 Counsel for the mother argued that the material change of circumstances would be the father's conduct following the recording of these by-consent orders at mediation.⁵

⁴ Summons for variation of judgment / order dated 1 June 2023 at prayer 1.

⁵ Certified Transcript dated 30 August 2023 at p 8 lines 10–11.

14 According to the mother, the variation should be granted for the following reasons:⁶

(a) Since the granting of the Access Orders, the father had not utilised any of the overnight or overseas access, spending very little time with the children.⁷

(b) The father's true intentions in seeking generous overnight access were, in fact, part of a scheme to reduce his maintenance liability to them.⁸

(c) The liberal access given placed the children at risk by virtue of the negative influence of the father's promiscuous lifestyle.⁹ The mother cited instances such as the father's unhealthy obsession with pornography, his procurement of sexual services from employees of a local public hospital and his leaving of various sexual objects around the house where they could be seen by the children.

15 In resisting the variation application, the father submitted that the mother had not adduced any evidence to support her allegations of there being a material change in circumstances to justify a reduction of his access.¹⁰ The father stressed that the burden was on the mother to prove such a material change in circumstances.¹¹ In any event, even if there had been such evidence, the father maintained that the Access Orders should remain as it would still be

⁶ Affidavit of Mother dated 1 June 2023 at para 18.

⁷ Affidavit of Mother dated 1 June 2023 at para 18(a).

⁸ Affidavit of Mother dated 1 June 2023 at para 18(b).

⁹ Affidavit of Mother dated 1 June 2023 at paras 18(c)–18(e).

¹⁰ DWS at para 195.

¹¹ DWS at paras 191–193.

in the children's best interests for their father to continue spending as much time as possible with them.¹²

The issue to be determined

16 The key issue for determination was whether there had been a material change in circumstances to warrant a variation of the Access Orders.

Should the matter be heard before the Family Court or the Family Division of the High Court if a dispute arose as to whether the pool of matrimonial assets crossed the \$5m threshold?

17 Preliminarily, an issue was raised by counsel for the father that the present matter (*ie*, SUM 1745), including all the other ancillary matters, should not have been fixed for hearing before the Family Division of the High Court (the "Family Division").¹³ This was because there was a dispute as to whether the pool of matrimonial assets had crossed the threshold of \$5m for the matter to be heard by the Family Division.

18 As a matter of practicality, where a dispute arises in the course of the ancillary hearing as to whether the value of the matrimonial assets exceeds the \$5m threshold, the case can continue to be heard in the Family Division. It is, after all, the superior court. The rationale for this can be seen in the following hypothetical. Let's say, one party takes the position that the pool of matrimonial assets ought to be valued at \$3m. The other party disputes this, arguing that the value should be \$8m instead. Let's assume that the case is then adjourned by the Family Division to be transferred to and re-fixed for hearing before the Family Court. Should the Family Court determine the pool to be \$3m, *ie*, below

¹² DWS at paras 9 and 196.

¹³ Certified Transcript dated 30 August 2023 at p 2 lines 16–19.

the threshold of \$5m, then all is well and the hearing for the ancillary matters may proceed before the Family Court. However, should the Family Court find that the value ought to be \$8m, *ie*, above the \$5m threshold, what then? The Family Court would have to adjourn the hearing and transfer the ancillary matters to be re-fixed for hearing before the Family Division. We would be back to square one with the case eventually being pushed back to the Family Division. Thus, as a matter of practicality, it cannot be right that where the ancillary matters have already been placed before this court to be heard and the registry has already allocated the date and time for the Family Division to hear them that the ancillary matters should now be transferred back down to the Family Court merely because of an issue raised by one party over whether the value of the matrimonial pool exceeds the \$5m threshold. The present case having come before this court – the superior court – the matter should thus be heard and settled here and now. This would be both an expeditious and efficient usage of judicial resources. The date and time already allocated for the hearing by the Family Division would also not be wasted.

19 Any concern that this approach may prejudice either party is allayed when we consider that costs may be awarded on either the High Court or the Family Court basis depending on the finding of the Family Division on the true total net value of the matrimonial asset pool. On the one hand, should it be found that the net value of the matrimonial asset pool is above the \$5m threshold, costs would accordingly be assessed on the High Court basis. On the other hand, should it be found that the net value of the matrimonial asset pool falls below the \$5m threshold, then depending on the particular facts and circumstances of the case, the costs could be assessed on the Family Court basis at the discretion of the judge hearing the ancillary matters.

Whether a variation of the Access Orders should be granted

20 I turn now to the merits of the variation application. The law in this area is settled. The court is empowered to vary an access order where there has been a material change in the circumstances pursuant to s 128 of the Women's Charter 1961 (2020 Rev Ed) ("WC"). It is trite that the applicant, being the mother in this case, bears the burden of establishing a material change in circumstances justifying this court's intervention with the Access Orders. In making this determination, this court must be mindful that the children's welfare is the paramount consideration: see *BNS v BNT* [2015] 3 SLR 973 at [19].

21 As Professor Leong explains in her seminal text in Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 584 (cited with approval by Debbie Ong JC (as she then was) in *AZB v AZC* [2016] SGHCF 1 at [28]), the underlying basis for the court's power to vary or discharge a custody, care and control and access order is as follows:

An order of 'care and control', 'custody' or 'access' is of continuing nature. Indeed, unless the order expressly limits its duration, any of these orders lasts until the infant ceases to be an infant ... upon his or her 21st birthday. A continuing order is always subject to variation or even discharge. Whenever an application is made to court that circumstances have changed and in particular, *the welfare of the infant is no longer as well served by the order, there is opportunity for consideration of variation of any or all of its terms and, if necessary, its discharge.* [emphasis added]

22 From the discussion above, the principal question that I was confronted with was this: was it in the children's welfare for their father to now have less time and, more particularly, to have no more overseas and overnight access to them? I turn now to the allegations raised by the mother in support of her application.

The father's failure to utilise his overnight and overseas access

23 According to the mother, since the granting of the Access Orders, the father had not utilised any of the overnight or overseas access, spending very little time with the children.¹⁴ After the Access Orders were granted, the father reverted to his promiscuous lifestyle by checking into “sleazy” hotels such as Hotel 81 and Fragrance Hotel on the same weekends he was supposed to have access to the children.¹⁵ According to the mother, the father appeared even to be proud of his sexual escapades when he insulted the mother in his submissions for FC/SUM 537/2023 (*ie*, his application to strike out certain portions of the mother’s 1st affidavit of assets and means dated 31 January 2022), by referring to her as someone who was “asexual with low libido”.

24 Based on the foregoing, the mother essentially sought to make the point that the father’s access ought to be reduced on account of him not utilising any of the overseas or overnight access granted to him.¹⁶ Furthermore, the father’s pride in relation to his promiscuous ways ought to be taken against him as it would show that allowing the generous Access Orders to persist would be detrimental to the children’s best interests.¹⁷

25 As I had indicated to counsel for the mother during the hearing, the rights of access were ultimately conferred for the father’s benefit, though I recognised that it would also be in the interest of the children to interact with their father, which access enabled. The father was, however, conferred a wide

¹⁴ Affidavit of Mother dated 1 June 2023 at para 18(a).

¹⁵ Affidavit of Mother dated 1 June 2023 at para 15.

¹⁶ Plaintiff’s Written Submissions for Ancillary Matters and FC/SUM 1745/2023 Hearing on 30 August 2023 (“PWS”) at para 145.

¹⁷ PWS at para 149.

discretion to determine for himself how much of his allowed access he wished to utilise. He could not be forced to utilise all his rights of access if he did not wish to make full use of them. While there had been allegations of the father visiting “sleazy” establishments (to use the mother’s words) even during times of his access,¹⁸ how the father chose to spend his time was his private affair. However, that did not mean that the father’s non-utilisation of his access rights was *completely* irrelevant to the issue of variation. Where the father had completely or substantially failed to exercise any of his access rights, it would be relevant to my consideration as to whether there were material changes in circumstances warranting a variation of the Access Orders. Specifically, it raised the question of whether the father even required such access in the first place. Unutilised access served no purpose. The children should not be kept waiting to be picked up by the father for such access only to be disappointed by the father who failed to turn up on every occasion for access as stipulated in the Access Orders. The mother should also not be put to the unnecessary burden of preparing the children for such access by the father. In this regard, I was guided by the decision of the court in *UUV v UUU* [2020] SGHCF 7 (“*UUV*”), where Tan Puay Boon JC (at [28]) had varied the access granted to the father on account of him having failed to exercise his access. In the words of Tan JC, the “consistent failure to fully utilise his access suggests that the Husband is, at the very least, unable to spend time with the Children.” The granting of access in circumstances where the access would not be utilised could not possibly be in the interests of the children.

26 According to the mother, the father’s overnight and overseas access ought to be removed as he did not utilise a single overnight or overseas access

¹⁸ Affidavit of Mother dated 1 June 2023 at para 15.

over the past two years since the Interim Judgment was granted.¹⁹ In his defence, the father claimed, in relation to his failure to utilise his overnight access, that it was not the case that he had not even attempted to exercise his overnight access. He had, in fact, stayed over at the children's home from 23 June 2019 to 26 December 2021. He had only stopped staying overnight from 26 December 2021, the day when the mother assaulted him. In support of this, the father referred to a police report which had been lodged over this incident.²⁰ The father had since stopped staying over to avert further domestic violence.²¹

27 Upon reviewing the parties' submissions, I was persuaded that the father's persistent failure to exercise his overnight or overseas access was an important consideration operating against any claim by the father that his overnight and overseas access rights should be retained. Putting aside the truth of the father's defence that his attempts at exercising his overnight access had been impeded by the mother's violent tendencies (which I noted was in any case disputed by the mother),²² I was unable to see how this would have completely precluded the father from utilising his overnight access to the children over the long period of two whole years. In fact, if the father's allegations were true, the risk of domestic violence erupting provided an even greater reason for the father *not* to stay over at the mother's place during his overnight access to the children but for him to properly exercise his right to have the children stay over at his own place of residence instead during his period of access. It would also not be in the interest of the children's welfare to observe any more alleged domestic violence of the mother assaulting the father, which might occur if the father was

¹⁹ PWS at para 33(e).

²⁰ Affidavit of Father dated 20 June 2023 at para 40.

²¹ Affidavit of Father dated 20 June 2023 at para 41.

²² PWS at para 151.

going to stay at the mother's place during the period of his overnight access to the children.

28 Notwithstanding the above, I was nonetheless cognizant that the court's decision in *UUV* to reduce the father's access did not hinge *solely* on the father's failure to fully utilise his access. According to the court (*UUV* at [31]), apart from the father's failure to utilise his access, the additional difficulties in implementing the liberal access terms and the eventuality of the parties not staying together under the same roof warranted a reduction in the father's access. Accordingly, it was relevant to consider the *other* allegations raised by the mother to justify depriving the father of his overseas and overnight access. On this front, the mother's allegation that the present generous access would place the children at risk by virtue of the negative influence of the father's sexual promiscuity deserved closer scrutiny.²³ According to the mother, the father's sexual promiscuity manifested in the following manner:

(a) *An unhealthy obsession with sex with underage girls and pornography:*²⁴ The father had an unhealthy obsession with sex with underage girls and pornography, watching obscene videos without having the decency of using headphones. He would even watch pornography in the car before visiting his mother, after dropping off his friend and before picking the children up.

(b) *Procurement of paid sex services:*²⁵ The father had procured sexual services on multiple occasions with unknown female individuals (including employees of a local public hospital). He would also have

²³ Affidavit of Mother dated 1 June 2023 at paras 18(c)–18(e).

²⁴ Affidavit of Mother dated 1 June 2023 at para 18(c); PWS at para 146(b).

²⁵ PWS at para 146(c).

conversations with his former junior college teacher (“[E]”), where they would discuss their sexual conquests of various women, most of whom were underage girls.

(c) *Nonchalant attitude towards the leaving of sexual objects around the house:*²⁶ He had left condoms, sexual stimulation pills and lubricants around the house in places easily seen by the children.

(d) *Risk of putting the children in harm’s way by leaving them in the care of his similarly promiscuous friends:*²⁷ The father was outsourcing the care of their children to his friends, namely, [E] and [F]. According to the mother, these were the same friends who had not only encouraged the father on his sexual escapades but also introduced underage girls to him for sex.²⁸

29 I deal with these allegations in turn.

The father’s promiscuous lifestyle and the risk posed to the children’s safety

30 Dealing first with the mother’s allegation that the father had left condoms and various sexual stimulants around the house in full view of the children, I was not persuaded that the mother has discharged her burden of proving this allegation based on the evidence.

31 The father denied leaving “condoms, sexual stimulation pills (eg, Cialis) and lubricants lying around the house (in full view of our children)”. The only

²⁶ Affidavit of Mother dated 1 June 2023 at para 18(e).

²⁷ Affidavit of Mother dated 1 June 2023 at para 11(c); PWS at para 146(a).

²⁸ PWS at para 146(a).

evidence adduced by the mother²⁹ was the email found at pages 126 to 127 of the mother's affidavit dated 1 June 2023. This email from a "Dr [K]" referred to the contents of an anonymous feedback by the mother (writing under the pseudonym "Citizen Concerned") sent to the father's previous employer.³⁰ This email quoted allegations that the father had "repeatedly engaged in paid sexual services of a foreign nurse" employed in a public hospital and that "[s]uch a practice has been happening for years with other working staff". None of the mother's allegations regarding the father's acts of leaving condoms, sexual stimulation pills and lubricants around the house were mentioned in that email.³¹ However, what was clearly suggested was that the father had procured the sexual services of unknown female individuals.³² This was evident from the email referred to above, where the father appeared to have acknowledged that he had "not done any more of these actions [*ie*, the engaging of paid sex with a foreign nurse employed in a public hospital and with other working staff] ever since the matter had been escalated" and that the "above incidents did not happen during [his] official work hours". While these were strictly events which occurred in the past and might arguably be said to not reflect any *change* in circumstances, I nonetheless considered this to be a relevant consideration for the present variation application. After all, the mother's core case centred on her concern that the father posed a negative influence on the children moving forward, given his history of sexual promiscuity. Indeed, I was satisfied that the mother's various allegations of sexual promiscuity on the father's part must be considered in their *totality* when determining whether the father would exert a

²⁹ Affidavit of Mother dated 1 June 2023 at para 18(e); PWS at para 146(d).

³⁰ Affidavit of Mother dated 1 June 2023 at pp 126–127.

³¹ Affidavit of Father dated 20 June 2023 at para 63.

³² Affidavit of Mother dated 1 June 2023 at Tab-2 pp 31 and 37; Affidavit of Mother dated 1 June 2023 at p 126.

negative influence on the children such that a reduction of his access was warranted in the interest of their welfare. This being the case, it was thus appropriate to consider the mother's *other* allegations and to consider whether in *totality*, these allegations showed that the children would be placed at risk due to the negative influence of the father's promiscuous ways.

32 To recapitulate, two other allegations remained to be considered: first, the father's unhealthy obsession with sex with underage girls and pornography;³³ and second, the potential risk of the children's care being outsourced to the friends of the father, [E] and [F], the friends who had encouraged the father on his sexual escapades and connected him to underage girls for sex.³⁴ To my mind, these were crucial allegations going to the heart of whether there was a material change justifying a variation of the Access Orders in the interest of the children's safety.

33 In support of her allegations, the mother adduced highly probative transcripts of audio recordings of conversations involving the father. The authenticity of these audio recordings was not disputed. It was readily apparent from a review of these transcripts that the mother's allegations in so far as they were based on these transcripts were *prima facie* made out. To my mind, the transcripts spoke for themselves.

34 I turn first to address the mother's allegation of the father's unhealthy obsession with pornography. From the transcripts, the father's appetite for pornography was plain to see. It appeared that the strength of his appetite was such that his pangs of hunger for pornography could strike at any moment of

³³ Affidavit of Mother dated 1 June 2023 at Tab-2 pp 24, 26 and 33.

³⁴ Affidavit of Mother dated 1 June 2023 at para 11(c); PWS at para 146(a).

the day. There were various instances where the father had been recorded to have indulged in pornography. For instance, while he was in the car on his visit to his mother³⁵ and right after dropping off a friend.³⁶ In a particularly egregious instance, it appeared that the father had even watched pornography right after sending the children off into their rooms. Although it was unclear from the transcripts if the father had watched pornography while “in front of the children” as submitted by counsel for the mother,³⁷ it was however evident that the father had been watching pornography immediately after sending the children off to their rooms. In the transcripts, the sounds were transcribed as “[l]oud moaning of people engaged in sexual activity”. From the above, the father’s consumption of pornography could reasonably be said to border on an obsession and to be reflective of his lustful nature. Indeed, this cohered with the numerous instances, as laid out above, of the father’s sexual escapades. Again, whatever the father’s pornographic tendencies, this was generally a matter falling within his private life. The same applied to the father’s alleged patronage of the services of prostitutes.³⁸ Obviously, the father was no saint. Although the law would not go so far as to expect him to live up to saintly standards, the law would expect the father not to place his children in harm’s way.

35 It was with this expectation of the law in mind that I turn to address the mother’s allegation that allowing the father continued generous access would place the children in harm’s way. According to the mother, there was a risk that the children’s safety would be imperilled by the father’s promiscuous ways. This risk was borne out by the transcripts recording a discussion between the

³⁵ Affidavit of Mother dated 1 June 2023 at p 26.

³⁶ Affidavit of Mother dated 1 June 2023 at p 24.

³⁷ Certified Transcript dated 30 August 2023 at p 27 lines 19–28.

³⁸ Certified Transcript dated 30 August 2023 at p 18 line 24; Affidavit of Mother dated 1 June 2023 at para 30.

father and his friend, namely, [E], to outsource the care of the children to [E] and [F]. The mother stressed that these were the very same friends who had encouraged the father on his sexual escapades and who had even introduced underage girls to him for sex. It must be said in no uncertain terms that the mother's allegations in this regard were extremely serious. If true, they would disclose criminal offences under the WC and the Penal Code.³⁹ With this in mind, a careful review of the evidence was imperative. Counsel for the father rightfully conceded that should the mother's allegations be proven true, it necessarily followed that the father's overnight and overseas access must be restricted in the interest of the children's safety.⁴⁰ I agreed. This court could not simply stand idly by in the face of such a risk. The paramount consideration of the children's welfare and safety must mandate a reduction of the father's access.

36 Having reviewed the relevant transcripts of the audio recordings, I was satisfied that some of the mother's assertions were sufficiently borne out by the evidence such that the removal of the father's overnight and overseas access was justified. The risk of harm to the children especially to the 15-year-old daughter B appeared to be real and not one which might be disregarded because it was wholly fanciful in nature.

37 Essentially, the mother's evidence hinged on the transcripts of conversations between the father and his friend, [E]. [E] was stated to be the father's former Tamil teacher from his junior college days. I turn now to the relevant transcripts. First, there was a conversation between the father and [E]

³⁹ Certified Transcript dated 30 August 2023 at p 13 lines 12–14.

⁴⁰ Certified Transcript dated 30 August 2023 at p 33 lines 8–16.

where the following remarks were exchanged regarding two 14-year-old girls, [H] and [J]:⁴¹

[E]: *Hmm... Now... after coming here, I'll introduce you; you should have sex with that [H].*

[Father]: *Hmm...*

[E]: *You should have sex with [J]. (*Inaudible) The girl came here, right... A young girl of 14 years also came here, right?*

[Father]: *Ah Okay.*

[E]: So, no, no...this girl... Can't tell...

[Father]: Ah yeah, now cannot...

[E]: I said, "Let her go to toilet, then I'll tell". Then when that girl went to toilet, I asked her to tell the joke which she wanted to tell me. She was very eager to listen to 'A jokes'...

[Father]: Yes. Correct.

[E]: I said in the class, "you keep shouting and you are mischievous...please roll up your tail (mischievousness), otherwise I'll cut it". Immediately another one says...look at how much wish the girl has... she said he doesn't have tail on her back, sir, it is in the front. Hahahha (*Laughs) ... aiyoyoh... The jokes are super...She asked if he had such a big tail. I said, "When do I get to see that?"

(*Laughs) That kind of a girl she is...

*Song playing in the background

[E]: Likes "A Jokes" that much...

[Father]: Hmm...

[emphasis added]

38 The implications of the words exchanged above were self-evident: the father's lustful desire extended not just to prostitutes and pornography – it even extended to his desire to have sex with underage girls. It was unknown precisely how many underage girls with whom the father had expressed a desire to have sex. However, what was apparent from the face of the excerpts was that at least

⁴¹ Affidavit of Mother dated 1 June 2023 at p 37.

two underage girls by the names of [J] and [H] were being introduced to the father by his friend [E] so that the father could have sex with them. According to counsel for the mother, [H] was a student in [E]’s Tamil class.⁴² From the above, there was even a suggestion that the father had, in fact, already met [J] and perhaps also [H] stating that “[t]he girl came here, right... A young girl of 14 years also came here, right?”⁴³

39 In another undated conversation between the father and [E], it could be seen that [E] had been introducing underage girls of around 14 to 15 years of age to the father. According to [E], the father was still interested in underage girls. [E] said to the father, “If it is eighteen, it will be okay...but you are still in for fourteen and fifteen”, to which the father acknowledged by laughing. One of these underage girls introduced to the father went by the name of [G]. To this, the father had even sought the contact number of [G] from [E]:⁴⁴

[E]: A lot of girls have been telling they want to come with us. But if it’s you and [F], then it is fine. *We can ask them to come.*

[Father]: Oh, okay. As in...Are you referring to the evening or?

[E]: Evening, evening only. Who? *Our [G], [H], this group...*

[Father]: Oh, okay.

[E]: *And there is another young damsel. Young one.*

[Father]: *Hmm....*

[E]: *I have told her about you too. She is of fourteen, fifteen years of age.*

[Father]: *Hmm...*

[E]: *They also want to meet.*

[Father]: *Okay.*

⁴² Certified Transcript dated 30 August 2023 at p 20 line 18.

⁴³ Certified Transcript dated 30 August 2023 at p 20 lines 26–28.

⁴⁴ Affidavit of Mother dated 1 June 2023 at p 31.

[E]: Okay, I'll tell. Firstly, I will go and come back. Then you can meet up when I am coming back. *If it is eighteen, it will be okay...but you are still in for fourteen and fifteen...*

[Father]: Ha..ha (Laughing)

[E]: They are good girls and wonderful girls. They don't know how much love to show. They will show that much of love, lovely children. *That day [G] asked, "Even I thought of meeting the doctor, but then I will leave it as I did not want to disturb him".* Okay, no problem.

[Father]: *I don't have the number. Later you can message the number*

[E]: Yes. Yes.

[Father]: *If you have WhatsApp, share the contact.*

[E]: *Yes, I have. I'll do it after alighting.* Stuck in the pants...

[emphasis added]

40 Turning next to another conversation between the father and [E], there was even a suggestion for the children to be placed in the hands of either [E] and [F]:⁴⁵

[E]: Those are not of any issues. There are so many people in this world for that. We engage one of such and today everything on phone is via Zoom... you can talk nicely. Have you studied, okay? Have you done everything, okay... I'll come now and bring you with me...like that... *Okay, let's say a situation like this has come... I will come, I will take care of the children, I will bring them... Even though I am not able to be there often, whenever I come, I can consider and bring them for dinner? Why are you thinking?*

[Father]: *Okay.*

[E]: *No, you can also tell [F]. If [F] is free, you can ask him to bring them out to eat; he will bring them.*

[Emphasis added]

41 As stated above (see above at [36] to [39]), the words exchanged were evident of the father's lustful desire which extended not merely to prostitutes

⁴⁵ Affidavit of Mother dated 1 June 2023 at pp 27–28.

and pornography but also to sex with underage girls. Even if I were to accept that the father's predilection for underage girls was a private matter of his, putting aside the question of whether it would amount to a crime, the conversation above at [40] at least established that the father had been open to the possibility of placing the care of his children in the hands of [E] and [F]. [E], apparently a close friend of the father for many years, had been introducing underage girls to the father for sex and had been encouraging the father to have sex with them. It would be a dereliction of this court's duty to turn a blind eye to the potential risk that this arrangement being explored of placing the children under the care of [E] and [F] would pose to the safety of the children. One would readily understand the mother's concern in relation to the potential risk of harm to both her young children, a daughter and a son, being placed in the hands of middle-aged men such as [E], a Tamil teacher who had been introducing underage girls, sourced from his own students, to other men for sex.

42 Accordingly, it was clear from the excerpts referred to above that the evidence from the audio recordings substantially supported the mother's allegations against the father. The critical question then was whether the father could credibly rebut the audio recordings produced by the mother. While the father had initially suggested in his affidavit that the audio recordings of his pornography use⁴⁶ and conversations with [E]⁴⁷ which the mother relied on had been "fabricated", counsel for the father had since conceded the authenticity of the recordings.⁴⁸ Accordingly, the *contents* of the audio recordings were undisputed. What remained in dispute was the *intended meaning* behind the

⁴⁶ Affidavit of Father dated 20 June 2023 at para 55.

⁴⁷ Affidavit of Father dated 20 June 2023 at para 57.

⁴⁸ Certified Transcript dated 30 August 2023 at p 16 lines 3–26.

conversations in these recordings. In this regard, counsel for the father sought to explain away these recordings on two bases:

(a) First, there was no truth to the allegations because the mother had omitted to highlight all the transcripts of the audio recording and therefore, the father's words had been "taken out of context".⁴⁹

(b) Second, while the audio recordings were authentic, the father had intended his words to be a "joke"⁵⁰ or mere "locker room talk".⁵¹ As counsel for the father rightfully acknowledged, if it was found that the words were not intended to be a joke and that the father had meant what he said, this was sufficient justification to grant a variation of the Access Orders in the interest of the children's safety.⁵²

43 I was not satisfied that the father provided a credible explanation for the audio recordings on either basis.

44 Regarding the first basis that the transcripts had been taken out of context, I observed earlier at the hearing that any such argument must be backed up with evidence.⁵³ Having produced the relevant snippets of the transcripts setting out the father's obsession with sex with underage girls and pornography and his conversations with [E] on outsourcing the care of the children to [E] and [F], the evidential burden shifted from the mother to the father to produce the

⁴⁹ Certified Transcript dated 30 August 2023 at p 16 lines 24–26; Certified Transcript dated 30 August 2023 at p 30 line 14; Certified Transcript dated 30 August 2023 at p 31 line 20 to p 32 line 3.

⁵⁰ Certified Transcript dated 30 August 2023 at p 32 lines 5–13.

⁵¹ Certified Transcript dated 30 August 2023 at p 16 line 11.

⁵² Certified Transcript dated 30 August 2023 at p 33 lines 8–15.

⁵³ Certified Transcript dated 30 August 2023 at p 30 lines 14–17.

other parts of the transcripts revealing the so-called “context” upon which he relied. A bare assertion that his words or the conversations were taken out of context was insufficient. That said, counsel for the father conceded that there was no other evidence showing the purported “context” which would have clarified the father’s words or the conversations in those transcripts.⁵⁴ Instead, counsel for the father sought to advance his fall-back position that the words were intended to be a “joke”.⁵⁵ This led me to the second basis relied on by the father.

45 Regarding the second basis, I was not satisfied that the father’s words or the conversations in the relevant audio recordings could be taken as mere “jokes” or “locker room talk”. As I observed above (see above at [36] to [39]), the transcripts of the audio recordings of the conversations were, on their face, highly probative evidence as to the father’s sexual proclivity towards underage girls. The father’s argument that the conversations were intended to be jokes might have been given more credibility had the words exchanged formed part of a one-off conversation with nothing else happening and with no further action intended to follow through on those words. However, such an argument lost all force when I considered that in one conversation [E] mentioned that the father had actually met up with the underage girl [J] and perhaps also with [H], and in another conversation the father appeared also to be so interested in having the contact details of another underage girl [G] that he in fact asked [E] for the contact details of [G] to which [E] said would be provided to the father later on. Given the nature and context of the conversations, I was not able to regard these conversations as mere jokes or “locker room talk”. I could also not see how [E]’s conversation with the father on the possibility of outsourcing of the

⁵⁴ Certified Transcript dated 30 August 2023 at p 31 line 22 to p 32 line 13.

⁵⁵ Certified Transcript dated 30 August 2023 at p 31 line 22 to p 32 line 13.

children to the care of [E] and [F] (presumably on occasions of access when the father was not free to take care of them) could be a mere joke or “locker room talk”. There was nothing funny in that conversation.

46 Next, counsel for the father submitted that it did not lie in the mouth of the mother to rely on the conversations considered above given that she had previously accepted the father’s words to be mere jokes. In support, counsel referred me to communications made between the parties during mediation.⁵⁶ However, even if such communications showed that the mother had accepted the father’s words and the conversations to be jokes, it should be ultimately borne in mind the bedrock principle that communications made in the course of mediation were subject to the protection of confidentiality: see ss 9 and 10 of the Mediation Act 2017 (2020 Rev Ed). Accordingly, I declined to consider any evidence of what the mother had purportedly said during the mediation, and I therefore rejected the argument that the mother herself had accepted during the mediation that the father’s words and/or the conversations were meant to be mere jokes. In any event, whether the conversations between the father and [E] in the audio recording amounted to jokes would have to be objectively considered by the court and would not be dependent on the opinion of or interpretation by the mother as to whether the father and [E] were joking at that time.

47 Counsel for the father then ventured further to submit that even accepting the allegations to be true, these audio recordings were all known to the mother at the time she consented to the Access Orders.⁵⁷ Again, I did not

⁵⁶ Certified Transcript dated 30 August 2023 at p 35 lines 23–28.

⁵⁷ Certified Transcript dated 30 August 2023 at p 30 lines 18–25; see also Affidavit of Father dated 20 June 2023 at paras 49, 55 and 60.

accept counsel's submission that her prior knowledge of the contents of the audio recordings which were in her possession prior to the making of the Access Orders by consent would preclude her from succeeding in this application for variation. Disregarding whatever had been communicated at the mediation sessions, the mother had since affirmed in her affidavit filed in relation to these proceedings that she had been willing and able "to put aside [her] reservations" in consenting to the Access Orders.⁵⁸ Now that this court was made aware of the risk to the children's safety, this court's intervention in varying the Access Orders in the interest of the children's welfare would have to follow. For one, I was unable to see how the mother's concession that she was willing "to put aside [her] reservations" in agreeing to the Access Orders necessarily meant that she had consented to waive all her future rights *following* the entry of the Access Orders to apply for a variation of the Access Orders should the circumstances warrant it. Indeed, the gravamen of the mother's concern really was that prior to parties agreeing to the Access Orders, she had consented to the father's request for generous access as she believed that it would have been in the interest of children to spend meaningful time with the father. The mother had held out hope that with generous access, the father would spend time with the children and also mend his ways and devote more time to care for them. However, immediately after the Access Orders were granted in October 2021, the father reverted to his old ways and stopped his regular visits to their children.

48 Putting aside the question of the mother's prior knowledge of the father's promiscuous ways before she consented to the Access Orders, the overall welfare and best interests of the children would remain paramount in such variation applications. This was stated in *ATS v ATT* [2013] SGHC 156 at [11], where the court referred to s 125 of the WC, which states that the child's

⁵⁸ DWS at para 208; Affidavit of Mother dated 1 June 2023 at para 15.

welfare is the “paramount consideration”. In the same vein, it was stated by the learned authors of *Law and Practice of Family Law in Singapore* (Valerie Thean J and Foo Siew Fong eds) (Sweet & Maxwell Asia, 2nd Ed, 2022) (“*Law and Practice of Family Law in Singapore*”) at para 7.4.39 that “[t]he court can deny access if it is established that access will not be in the best interests of the child”. As I had stressed to counsel for the father at the hearing,⁵⁹ even if the mother had both knowledge of and accepted the father’s lasciviousness, this Court could not stand idly by in the face of evidence pointing to a real risk that the children might be placed in harm’s way (see above at [41]).

49 For the reasons stated above, I agreed with the mother that the removal of the father’s overseas and overnight access was justified, given the father’s non-utilisation of such access and more importantly, the risk of harm posed to the children by the father’s negative influence and his discussion with his friend [E] for both [E] and [F] to take care of the children [B] and [C] from time to time, bearing particularly in mind that [E] had been introducing underage girls to the father (and possibly other men too) for sex. What remained clear to me, however, was that the removal of the father’s overseas and overnight access would be in the best interests of the children in all the circumstances of this case.

50 This leaves me to address one last point raised by the mother: the father had all along been scheming to reduce his maintenance liability.⁶⁰ In support of this, the mother adduced two transcripts of conversations between the father and his friend, [E].⁶¹ I accepted that there had been, at the very least, some discussion between the two of the possibility of the father reducing his maintenance

⁵⁹ Certified Transcript dated 30 August 2023 at p 31 lines 13–19.

⁶⁰ Affidavit of Mother dated 1 June 2023 at para 18(b); Certified Transcript dated 30 August 2023 at p 26 lines 2–17.

⁶¹ Affidavit of Mother dated 1 June 2023 at pp 29–30.

liability as seen from the following statement by the father: “if I strategize a bit, I can save some money, that’s all...” However, it was not altogether clear to me that the brief discussion between the father and [E] showed that a scheme along the lines as alleged by the mother had thereby been concocted. For this reason, I would disregard the mother’s allegation on this front.

The appropriate scope of access

51 Having regard to the totality of the evidence of the father’s non-utilisation of his overseas and overnight access, his sexual promiscuity and sexual disposition towards sex with underage girls, his negative influence and the discussion on possibly farming out the children to be looked after by [E] and [F] from time to time, and the potential harm to the children arising therefrom, I found that a *targeted* variation to the Access Orders was appropriate to reduce the risk to the children’s safety and in the overall interest of the children’s welfare. I was satisfied that the change in circumstances clearly justified a termination of the father’s overseas and overnight access to the children.

52 That was not to say that the father’s access to the children should be entirely denied. Although I was mindful of the risk to the children’s safety, this risk ought to be counter-balanced by the children’s interest for the father to be granted some opportunity to fulfil his fatherly role to the children. After all, access is the “right of the child to spend time and to maintain a consistent relationship with the parent who does not reside with them”: see *Law and Practice of Family Law in Singapore* at para 7.4.38. Hence, I was of the view that the father should retain reasonable access to the children during the daytime of stipulated days of the week on Tuesdays, Thursdays and Sundays, and on special occasions such as public holidays, the eve of the children’s birthdays and the father’s birthday. In ordering these variations, I considered further the

mother's concern that the children had to be provided ample time to spend on their studies ahead of their upcoming major examinations because [B] would be sitting for her O-Level Examinations in 2024, and [C] would be sitting for his PSLE this year in 2023.⁶² [B] was also expected to embark on his secondary school education next year. It was hence pertinent that the father's access to the children should be tailored to allow him access on specified days of the week, including a day on the weekends, to minimise disruption to the children's studies. To my mind, restricting the father's access to certain stipulated days of the week, one weekend, and public holidays should sufficiently allay the mother's concern for the educational needs of the children.

53 To facilitate communication between the father and the children, I also granted the father the liberty to place calls to the children on days when he would have no access to them. Should the father desire additional access, I allowed the father to arrange this directly with the children, subject to the mutual agreement of the father and the children. As per the court's decision in *UOW v UOX* [2022] SGFC 81 at [34], it was necessary for the court to review the access arrangements with a view to reducing conflict between the parents. I was satisfied that the variations as set out above would go some way towards reducing conflict between the parents and would be in the best interests of the children.

Conclusion

54 For the reasons stated above, and after consultation with the parties on what access arrangements (apart from overseas and overnight access) would be suitable for the parties and the children, I ordered the Access Orders set out in

⁶² PWS at para 160.

para 3(b) of the Interim Judgment dated 13 October 2021 to be varied as follows:⁶³

(a) Reasonable access to the father as follows (subject to the children's agreement to the schedule below):

- (i) Every Tuesday and Thursday from 6pm to 9pm;
- (ii) Every Sunday from 10am to 9pm;
- (iii) On public holidays, from 10am to 9pm; and
- (iv) On the eve of the children's birthdays and the father's birthday from 6pm to 9pm.

(b) Liberty to the father to place calls to the children on the days without access.

⁶³ Minute Sheet dated 30 August 2023 for FC/SUM 1745/2023 at p 3.

- (c) Any additional access to be arranged directly and mutually agreed with the children.
- (d) Overseas and overnight access to be terminated.

Chan Seng Onn
Senior Judge

Tan Siew Kim and Loo Liang Zhi (M/s Sterling Law Corporation)
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