IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 42

District Court Appeal No 75 of 2024

Between

XBF

… *Appellant*

And

XBE

… *Respondent*

District Court Appeal No 76 of 2024

Between

XBF

… *Appellant*

And

XBE

… *Respondent*

JUDGMENT

[Family Law — Custody — Care and control — Relocation]

XBF
v
XBE and another appeal

[2024] SGHCF 42

General Division of the High Court (Family Division) — District Court Appeals Nos 75 and 76 of 2024
Choo Han Teck J
17 October, 1 November 2024

8 November 2024 Judgment reserved.

Choo Han Teck J:

1 These are appeal against the orders by the District Court Judge ("DJ") under s 5 of the Guardianship of Infants Act 1934 (2020 Rev Ed) ("the GIA"). The DJ granted care and control of the parties' three children to the mother ("the Respondent") and allowed her to relocate to Indonesia with them. The father ("the Appellant") is appealing against both orders. The three children, ("A", "B", and "C") are aged eight, six and four respectively. A and B are daughters and C, a son. The Appellant is a 38-year-old lecturer in a university in Singapore. The Respondent is 41 years old and was a homemaker when she was in Singapore. She now works for her father's family business in Indonesia. There are no divorce proceedings in Singapore presently. The Respondent commenced divorce proceedings in Indonesia. Those were dismissed due to failure of service, but her counsel, Ms Lim, says that proceedings there are being recommenced.

2 The parties were married in November 2015 and thereafter lived with the Appellant's parents at ET until December 2021, when the parties and their children moved into a flat at a place called "The M", rented by the Respondent for a year from January 2022 (the Appellant claims that they moved to the flat at The M in March). The Appellant owned a flat at "The XXX" which he had let out with the lease ending in January 2022. The parties dispute the reasons for moving into the flat at The M, but this is not a crucial issue in the appeal before me.

3 2022 was an eventful year for the parties. The Appellant's parents, with whom his family were living with at ET, moved in to live with the parties in The M, a reversal of sorts. Eventually, the Appellants' parents bought a flat at The XXX where the Appellant had his flat. The Respondent and the children flew to Bali on 25 September 2022 for her brother's wedding on 29 September. The Appellant arrived on 26 September. On 29 September, the Appellant had a quarrel with the Respondent. The Respondent's father saw the quarrel.

4 The Appellant was surprised to find the Respondent and the children missing the next day. He was told by the Respondent's father and the police that the Respondent would be staying in Indonesia for a while. It transpired that the Respondent had taken the children to Jakarta where her parents live. The Appellant was left with no choice but to visit the children there from time to time, sometimes up to seven or fourteen days on each visit. On 31 October 2023, which was to be his last visit, he brought the children back to Singapore. It is not known how he did it although the DJ thought that he had government assistance. The Respondent then filed an application in Singapore on 21 November 2023 for them to be relocated to Jakarta, and for interim sole custody, care and control of the children. The Appellant cross-applied on 2 April

2024 for sole custody, care and control of the children. The DJ granted orders in favour of the Respondent, resulting in this appeal by the Appellant.

5 The DJ's reasoning begins with this passage, at [22] of her Grounds of Decision ("GD"):

> As a starting point, I made a finding that the [Respondent] was the children's primary caregiver save for the period of 31 October 2023 to July 2024 when she was deprived of the children through the [Appellant's] actions of 31 October 2023. This period of absence from the children's lives was involuntary and caused by the supervening event of their removal from the [Respondent's] care by the [Appellant]. It did not however mean that she lost her role or that it had been displaced.

She then concluded, "Having found that the [Respondent] was the children's primary caregiver, it is in their best interests for the children to remain with her".

6 This case is not as straightforward as it appears. The finding that the Respondent was the primary caregiver is challenged, not without grounds, by the Appellant. The DJ, however, conflated the idea that a relocation order follows care and control because it is in the best interests of the children to be with the primary caregiver. In many cases, that might be correct, but this is not such a case. The primary issue in this case is the relocation of the children, not which parent should be granted care and control. The two issues must be examined together. It cannot be assumed, as the court below did, that relocation follows the issue of care and control. The court should consider whether it is in the best interests for the children to be relocated to Indonesia, and the question of care and control can be determined as part of that inquiry. The best interests of the children may overlap with the best interests of the mother, but they are not the same.

7 The three children were all born and raised in Singapore. Their father is a Singaporean citizen. The Respondent is Indonesian with Singapore Permanent Residency ("PR"). The DJ (at [2] of her GD) seemed to think that the Respondent did not know why her PR was terminated "although she had prior approval that this was to continue through for 5 years until May 2028". The truth, as counsel for the Appellant Ms Kulvinder has shown through the documents, was that the Respondent left for the fateful Bali trip without a re-entry permit. The Immigration and Checkpoint Authority ("ICA") sent her a reminder to get one. This was forwarded to her by the Appellant. The Respondent did not apply for the re-entry permit and the ICA thus cancelled her PR. It was the Appellant who appealed on her behalf, and was successful. The ICA then informed the Respondent of the procedure for re-entry and reinstatement of her PR. When the DJ delivered her oral judgment, she erroneously found that the Appellant had cancelled the Respondent's PR. When she decided to write the GD (having given the reasons for decision orally), she added a line to say that the Appellant "did not admit to any involvement on his part with regard to the cancellation". This was to ameliorate her erroneous finding of fact that gave her a negative impression of the Appellant.

8 The DJ repeatedly referred to the Appellant taking the children back to Singapore on 31 October 2023 as "an act engineered by the [Appellant]", completely overlooking that, in the first place, it was the Respondent who had taken the children from Bali to Jakarta, without informing the Appellant. This is also not a case in which the court was determining the relocation of the children in conjunction with care and control in the course of an ancillary hearing of divorce proceedings here. This case is more complex than one in which a parent, in the course of such proceedings in Singapore, is asking for the relocation of the children to a foreign country. The extra layer of complication

here is that the Respondent had abducted the children and is now asking the court to legitimise her conduct.

9 Although there are no divorce proceedings, certainly not in Singapore, the DJ seemed to have attributed the breakdown of the marriage to the Appellant. The evidence against the Appellant was led by the Respondent in her explanation as to why she took the children to Jakarta without the Appellant's consent or knowledge. Consequently, many of the factors that led the DJ to her decision to allow relocation obscured the crucial issues in this case.

10 In cases where parents fight for the care and control of their children, the issues are ventilated in the ancillary hearing after the divorce, or in a hearing for interim orders pending the divorce. This application was filed under the GIA, where applications are normally made by parties who are not married, or by some other party who is not a parent of the child. The Respondent was compelled to make her application under the GIA and not as part of the ancillary matters in a divorce because she was not seeking a divorce in Singapore. Since there were no conflicting divorce actions in Indonesia and Singapore, there was no issue regarding *forum non conveniens*. Had that been an issue, Singapore would likely have been found to be the more appropriate forum for the reasons apparent in this judgment – essentially, the only connections with Indonesia are that the Respondent is an Indonesian citizen and the children have both Indonesian and Singapore passports although the Indonesian passport of one of the children has expired.

11 The Respondent claims to have filed for divorce in Indonesia, and even then, it was filed after she had abducted the children. Abduction is a strong word but it has been used to describe the action of both parents in this case. Abduction (by parents of their children) is the act of taking the children of the marriage

away from the other parent without consent or a court order. In this case, the children were all born in Singapore, lived in Singapore with parents who are not divorced or separated, and taken away to attend a wedding (of the Respondent's brother) in Bali, only to be whisked away to another part of Indonesia without the knowledge or consent of the other parent, and without any court order.

12 Had the facts been inversed, namely, had a Singaporean father taken his children, born and raised in Indonesia, to Singapore without the wife's knowledge or consent, or without an order of court, the court in Singapore will be inclined to order that the children be returned to Indonesia and for the parents to sort out their marital and domestic problems there. The present case requires the Respondent to return the children and obtain a court order for relocation. She is not entitled to do the reverse.

13 The facts show that it was the Respondent who, in the words of the DJ, "engineered the abduction" of the children. The Respondent's father may also have been complicit in the act. The DJ noted that "the [Respondent's] father was protective of her and the children [*sic*]. With the backing of her family, the [Respondent] took the step to protect the children and herself by staying on in Jakarta". The DJ also noted that the Respondent's father and her other family members "informed [the Appellant] that the [Respondent] and the children would stay on in Indonesia for a while". The Respondent claims in her affidavit that her father saw the Appellant raise his hand (as if wanting) to hit her.

14 The claim that the Respondent was the primary caregiver is strongly disputed by the Appellant. That is an issue that is best left to the divorce court, and I would prefer to keep that issue open for full ventilation there. The important point to make here, is that even if the Respondent had been the

primary caregiver, the DJ should not have ordered a relocation on the facts and circumstances of the present case.

15 On the above grounds alone, I would have allowed the Appellant's appeal. However, to see the bigger and fuller picture, I asked to see the children — all three of them together. They were some of the brightest, chirpiest, and happy children that I have seen in the course of family dispute proceedings. They are aware that they now see their mother only when she visits, and mostly at the hotel she checks in. The children appear joyful in each other's company and showing no signs of tension or anxiety. I do not think that their spontaneity was coached for the purpose of presenting a primed performance to this court. From the photographs produced by the Appellant, it is clear to me that these children were brought up well and have been happy throughout their lives. The photographs were not the occasional shot, but a collection of family gatherings, not only with the Appellant and the Respondent, but also with the children's paternal grandparents, through the years.

16 No doubt, children are resilient, and in cases of dislocation and relocation, we can only hope that the resilience of the young may pull them through, psychologically unscarred. But, there is no reason for this court to put the resilience of these three children to the test.

17 After seeing the children, I saw the Appellant and the Respondent separately. I am fortified thereafter that the breakdown of the marriage and the questions of care and control ought to be left to the divorce proceedings. The DJ arrived at some conclusions on the basis that the breakdown was the fault of the Appellant, but I think that that issue is not fully or properly resolved. The Respondent made it her case that the Appellant was an abusive husband because that was her only way to justify the abduction of the children. The Appellant's

evidence, on the other hand, was focussed on getting the children to remain in Singapore rather than on the allegations by the Respondent against him. I need only refer to one of the points by the Respondent, namely, that the physical abuse began shortly after their marriage, but this was a nine-year marriage in which the normalcy of family life is documented in the photographs and the fact that no police or medical reports were made with reference to assaults by the Appellant.

18 The DJ referred to a text message from the Appellant admitting his anger, but going through all the messages exchanged between the parties, this message, like the others, were exchanged during the dips in the marriage. There were also messages by the parties that, taken at face value, incriminate each other. For the present appeal, I do not need to expand on each of them as the parties will likely refer to them again more fully in subsequent proceedings.

19 It is unfortunate that the Respondent, by her own doing, has lost her PR. That, however, may not prevent her from regaining it or obtaining long term stay in Singapore should she be given care and control without the relocation of the children. In the present case, I have no doubt that it is in the best interests of the children for them to remain in Singapore, and presently, with the Appellant and his parents. The issue of care and control may be litigated again in divorce proceedings. It should not, on the facts of this case, be conflated with the issue of relocation.

20 For the reasons above, the Appellant's appeals are allowed. The Respondent shall be granted liberal access to the children, with liberty to apply in the event that the Appellant does not offer liberal access. This court expects that the children be given reasonable face time daily over the telephone or computer, and overnight access at least once a month.

21 The costs below are to be reversed and paid by the Respondent to the Appellant instead. I order the Respondent to pay the Appellant the costs of this appeal at $4,000 inclusive of disbursements.

- Sgd -
Choo Han Teck
Judge of the High Court

Kulvinder Kaur and Kalvinder Kaur (I.R.B Law LLP) for the appellant/husband
June Lim Pei Ling (Eden Law Corporation) for the respondent/wife.
