

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 45

Registrar’s Appeal No 14 of 2024

Between

XFF

... Appellant

And

XFG

... Respondent

JUDGMENT

[Family Law — Custody — care and control — shared care and control of children]

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XFF

v

XFG

[2024] SGHCF 45

General Division of the High Court (Family Division) — Registrar's Appeal
No 14 of 2024
Choo Han Teck J
24 October 2024

13 November 2024

Judgment reserved.

Choo Han Teck J:

1 The appellant father, aged 41, and the respondent mother, aged 36, were married on 26 January 2013. They have two children together, a boy and a girl (twins), aged around five and a half years old. Their marriage lasted about ten years when the mother filed for divorce on 30 August 2023. Interim judgment (“IJ”) was granted on 14 February 2024 on the grounds of both parties’ unreasonable behaviour, with the ancillary matters to be determined. The present appeal arises from an interim application brought by the father on 30 January 2024 relating to interim care arrangements for the children, and the mother’s cross-application brought on 18 March 2024 on the same. On 6 August 2024, the district judge who heard the applications granted joint custody over the children to both parents. He awarded sole care and control to the mother and access to the father. He further made various orders relating to the behaviour of both parties.

2 The father now appeals against the district judge's decision. He wants sole care and control over the children, or alternatively, shared care and control with the mother. He complains that the access orders made by the district judge provides him with insufficient time with the children and unreasonably amounts to supervised access, which is not justified on the facts. The mother's case is that the district judge was correct in having awarded her sole care and control of the children and that the access orders were reasonable for the father to build up his rapport with the children, who are more comfortable in her presence.

3 Generally, it is ideal for the children to have a strong and deep relationship with both parents. Having both parents for support stands them in the best stead to take on the challenges of the children's young world. However, such strong relationships are never guaranteed and an investment of time and effort from both parents is needed. As a pre-requisite, both parents must be able to spend time and effort on their children. There are opportunities in this case for the father and mother to build a strong and deep relationship with the children. However, in my view, the orders made by the district judge below significantly reduce the father's opportunity to do so. The father ought to be given a bigger role in the interim care of the children, pending the hearing of the ancillary matters and determination of the final care arrangements for the children.

4 To begin with, the father, mother and children are all staying together in a Housing Development Board ("HDB") flat with three bedrooms. The mother and the children sleep in one room, and the father sleeps in another room. The children attend kindergarten in the day and both parents take them there. The children have other extra enrichments classes as well and it appears that both parents are involved too. Both parents are currently working. The father is an IT programmer, and the mother works from home as a freelance finance officer

or bookkeeper. Although the father is employed full-time, it appears that his work offers him the flexibility of working from home whenever required. He says that his company is accommodating when it comes to the taking of urgent leave related to the children.

5 The above facts would have been sufficient for me to find that both parents should have shared care and control over the children as an interim measure. Given that the father, mother and children are staying in the same flat, there would be minimal disruption to the children's lives as compared to the usual form of shared care and control arrangements which would require the children to be ferried between two different houses — often a distance away. Although there is some dispute as to the level of each parent's involvement in the care of the children, it cannot be disputed that both parents play a role in taking care of the children. The parents bring the children to kindergarten together and church together. They both spend time caring for the children and are also involved in various activities with the children regularly. I do not accept that the father's full-time employment should be counted as a factor against granting him care and control (shared) over the children when compared to the mother's role as a freelancer. Full-time employment is an ordinary part of daily life, and the critical inquiry is whether he makes time for the children, which he does.

6 The only obstacle towards a shared care and control arrangement arises because there is a level of acrimony between the parties. There is some dispute between the father and mother over when the children should go to bed as this affects the amount of time the children have with the father. Both sides have made allegations of alienation and a reluctance to work with the other party. There is some dispute over whether photographs and videos of the children should be taken and used in the divorce proceedings as evidence of the other

party's bad behaviour. Although acrimony between parents is one factor that should be accounted for when considering a shared care and control arrangement, it does not automatically nullify such an option. The court has to take a close look at the facts of each case to see if a shared care and control arrangement would be unworkable because of the acrimony, and if it would be in the best interests of the children. Otherwise, parties may have a perverse incentive to increase the acrimony to gain a tactical advantage in the care arrangements of the children (*BNS v BNT* [2017] 4 SLR 213 at [73], [76]-[77] citing *AZZ v BZZ* [2016] SGHC 44 at [40]).

7 In my view, it is in the best interests of the children for both parents to have shared care and control in the interim, until the ancillary matters have been decided. The facts (at [4] above) show that acrimony between the parties in the present case does not make such an arrangement unworkable or to the detriment of the children. Parties have been living and continue to live together with the children under the same roof. In such circumstances, it would be harsh to restrict the father's access to the children when they are in such close proximity, rendering them strangers under the same roof. It is in the best interests of the children that the father is able to take on a more active and substantial role in their care, together with the mother. Although the parents have ended their marital relationship and will be unrelated to each other, they both maintain full parental relationships with the children. The children should not have a diminished relationship with their father, and he should continue to strengthen and deepen his relationship with the children. This, of course, should not be done at the expense of the children's relationship with their mother.

8 There must however be boundaries that both parties must abide by in their shared care and control of the children. These rules will minimise disputes (and hopefully the acrimony between parties):

- (a) The father is to have care and control of the children from 10am on Thursday to 10pm on Saturday.
- (b) The mother is to have care and control of the children from 10pm on Saturday to 10am on Thursday.
- (c) The father and mother will fetch the children to their kindergarten on weekday mornings.
- (d) The father will be entitled to attend Church on Sunday with the children and the mother (if they go).
- (e) On all occasions while the children are at home, the father and mother may have access to them until they go to bed, regardless of whoever has care and control at that time.
- (f) If one party is unavailable to personally care for the children during his or her allotted period of care and control, the other party must be given the choice to fill in for the relevant period. Only then can the parties approach other people for help in caring for the children.
- (g) Neither party is to enter into the other party's bedroom without permission.

9 A shared care and control arrangement may introduce some initial uncertainty into the children's routines. But in my view, this is a reasonable arrangement for the children to continue having adequate time to deepen their bond with their father. Parties should remember that the children are the ultimate beneficiaries of such a care arrangement and do their best to work together. Conduct which would raise the levels of acrimony should be avoided. In this connection, the district judge's orders preventing the use of audio or video

recordings of the children in the divorce proceedings, unless they are evidence of abuse should be maintained. Likewise, the district judge's orders insulating the children from the effects of these divorce proceedings should be maintained as well.

10 As for the children's passports, travelling documents and birth certificates, I do not see an issue with the mother retaining custody and possession of them. The district judge's order that neither party shall be permitted to take the children overseas pending the resolution of the ancillary matters (including appeals), unless they have written agreement from the other side is to stand.

11 No order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Kulvinder Kaur (I.R.B Law LLP) for the appellant;
Yeo Khee Chye Raymond (Raymond Yeo) for the respondent.
