IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGHCF 26

District Court Appeal No 88 of 2024

Between

XCQ

… *Appellant*

And

XCP

… *Respondent*

JUDGMENT

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

XCQ
v
XCP

[2025] SGHCF 26

General Division of the High Court (Family Division) — District Court Appeal No 88 of 2024 and Summons No 10 of 2025
Choo Han Teck J
10 April 2025

21 April 2025 Judgment reserved.

Choo Han Teck J:

1 The appellant husband and the respondent wife married on 24 October 2014. The appellant, aged 47, works as an investment and wealth solutions manager at a bank. The respondent, aged 41, works as a manager at another bank. They have a child who is turning five next month. The marriage lasted about nine years before the respondent commenced divorce proceedings on 23 May 2023. Interim judgment was granted on 9 November 2023 and orders were recorded by consent for the ancillary matters, save for issues relating to the custody, care and control and access to the child. These issues were decided by the District Judge ("DJ") on 15 July 2024. As the parties could not agree on the interpretation of the orders, they attended a clarification hearing on 23 August 2024 and the DJ made various clarificatory orders. The appellant filed his appeal on 5 September 2024 against the whole of the DJ's decision.

2 Briefly, these are the DJ's orders which are the subject of this appeal.

(a) The respondent is to have sole care and control of the child.

(b) The appellant shall have weekday access on Wednesdays and Thursdays from the time the child is picked up from childcare or school to 8.30pm, as well as an overnight weekend access from 9pm on Saturdays to 9pm on Sundays. For the overnight weekend access, the child shall reside at her paternal grandparents' residence.

(c) When the child commences primary school, the appellant shall have access on Wednesdays and Thursdays from 10am to 8.30pm during the school holidays. When the child turns nine years old, the school holidays are to be equally shared (inclusive of overnight access).

(d) The appellant may not bring the child overseas until she turns six. When the child is between six and nine years old, the appellant may bring the child overseas only with the accompaniment of either the paternal grandparents or the paternal aunt. It is only when the child turns nine that the appellant can bring her overseas alone. The appellant's overseas access is for a maximum of seven days at a time and shall not exceed twice a year without the consent of both parties.

(e) The appellant shall take a breath analyser test before each access session for the next six months and must preserve the photographic records of the test results. The care and access sessions shall be subject to the undertakings of both parties not to consume alcohol. These two orders are known as the "Access Conditions".

3 The appellant sought to adduce further evidence in HCF/SUM 10/2025

("SUM 10"). I grant the application as the further evidence is relevant and material to the appellant's appeal. They relate to matters that occurred after the date of the DJ's decision.

4 The appellant's first contention is that the parties should have shared care and control of the child. He wants to have the child from after school on Thursdays to 10.30am on Sundays, while the respondent has the child from 10.30am on Sundays to 6pm on Thursdays. Counsel for the appellant, Ms Hoon, submits that it would be in the child's best interests to preserve the *status quo* in their living arrangements (citing *Wong Phila Mae v Shaw Harold* [1991] 1 SLR(R) 680). The parties had been co-parenting and exercising shared care over the child even at the time of the ancillary matters hearing. This was acknowledged by the DJ, but he held that a shared care and control order would not be a preservation of the *status quo* in any case because the matrimonial home was due to be sold and the child would have to alternate between two households.

5 Ms Hoon argues that there are three reasons to grant the appeal. First, the child has always been accustomed to spending substantial amounts of time with both parents as she has lived with both parents since birth and even after interim judgment was granted. The sale of the matrimonial home does not prevent the maintenance of such *status quo*. Second, the child is of a younger age and has not commenced formal education. Third, the appellant has the support of his parents in caregiving, whereas the respondent does not have such support from her own family members. All these factors support the finding that shared care and control is in the child's best interests. Ms Hoon also refers to *ADL v ADM* [2014] SGHC 95 ("*ADL*") and *UPK v UPL* [2018] SGFC 92 ("*UPK*"). In *ADL*, I extended the father's access time because the 2-year-old child had a flexible schedule and the father had flexible working hours. In *UPK*,

the court ordered shared care and control of the two-year-old child because, *inter alia*, the father had a helper and his parents to provide additional assistance in caregiving.

6 Counsel for the respondent, Mr Nadarajan, says that the DJ granted sole care and control to the respondent because she has always been the primary caregiver, and that she has a closer bond with the child and places the needs of the child above hers. Mr Nadarajan argues that the child in the present case is over four years old and is not as young as the children in *ADL* and *UPK*, respectively. He says that although the appellant has a "flexible work-from-home" arrangement, his hours are not fully flexible as in the case of *ADL*. Further, the respondent claims to have a more flexible work schedule than the appellant and has always been available for the child's medical and school appointments.

7 Shared care and control orders require both parties to demonstrate their capacity to work well together and are therefore, not normally ordered. I do not think that the circumstances of this case are so exceptional or unique as to warrant a grant of a shared care and control order. Although the parties were able to reside together even after interim judgment was granted, their relationship appears to have become rather acrimonious. I am not persuaded that they can cooperate in a shared care and control order. Further, I believe that it may be disruptive to move the child between two homes every few days. She is at that young age that would benefit from a constancy and consistency in her routine (see: *AQL v AQM* [2012] 1 SLR 840 at [17]). Therefore, I find that the DJ's orders as to care and control of the child should remain.

8 The appellant sees the child three to four times per week (with one weekend overnight access). I am of the view that there is sufficient time for him

to bond with the child. Further, the child, who is just under five years of age, has a regular weekly schedule which includes going to church and enrichment classes. I therefore reject the appellant's prayer for a variation of the access days. So far as the appellant's request to extend his drop-off timing on weekdays from 8.30pm to 8.45pm is concerned, I think that although it is a small variation, it would give him a little more meaningful access without taking too much away from the respondent, and thus I will grant it.

9 As for the weekend overnight access, I see no reason to require the child to spend the night at her paternal grandparents' residence. The DJ found that the appellant's parents' support in caregiving has been "especially helpful". It appears that the DJ's order was persuaded by the appellant's own testimony that his parents have reserved two rooms in their house for him and the child, and that he intends to stay with the child at his parents' residence. However, I am not convinced that the appellant is incapable of caring for the child independently for one night. He can ask his parents for help when needed, but there is no need to impose an absolute condition (especially one that has no deadline) that overnight access with the child must take place at his parents' residence. Such a condition would also be overly onerous on the appellant's parents, who have no legal duty to care for their grandchild.

10 The appellant's second argument is with respect to his school holiday access and overseas access. Ms Hoon argues that the equal access for school holidays should not be deferred until the child turns nine and that there is no reason for the overseas access to be introduced in a "staggered fashion" or "stepped-up approach". Further, she pointed out during the hearing that the DJ's orders effectively prevent the appellant from exercising his overseas access until the child turns nine. This is because the child would logically only be able to travel during the school holidays, but the appellant does not have school holiday

access until the child enters primary school, and even then, his school holiday access will be limited to Wednesdays and Thursdays (without overnight access).

11 The DJ's reason for his approach was that the appellant had not independently taken care of the child for a protracted period. The gradual increase in access periods was therefore made with the view of allowing the appellant to "enjoy greater access" once he becomes more familiar with the child's care and the child has become more mature and independent.

12 Ms Hoon says that the appellant has been actively involved in the child's life since her birth, thus there is no need for him to acquire "greater familiarity". And even if the appellant requires more time to familiarise himself with the child's care, there is no reason why he would need four years to do so. Ms Hoon also says that the DJ's orders create "double standards" as the respondent is permitted to take the child overseas now while the appellant cannot do so even if accompanied by family members. Furthermore, the appellant's overseas access is limited to two trips of up to seven days each year, whereas the respondent is not subject to any restriction. Conversely, Mr Nadarajan submits that the appellant "never had truly independent care" of the child since the parties were staying in the same household even during the breakdown of their marriage. Therefore, he submits, it is appropriate to implement an incremental approach.

13 In determining this appeal, only the child's best interests are paramount. I am of the view that once the child begins primary school, school holidays ought to be shared equally (inclusive of overnight access) and the appellant shall be allowed to travel overseas with the child without accompaniment. There shall also be no limit on the duration and frequency of the travels by either party. In the meantime, during the child's pre-school or kindergarten holidays, the

appellant shall have daytime access to the child on Wednesdays and Thursdays from 10am to 8.30pm and overnight weekend access from 9pm on Saturdays to 9pm on Sundays. The appellant may bring the child overseas with the accompaniment of his parents, brother or sister if the parties can agree to a variation of the access days. The present access arrangements will give the appellant more opportunities to care for the child exclusively and familiarise himself with her routine. In my view, their bonding over the course of this year and the next should adequately prepare him for overseas access and equal holiday access by the time she begins primary school. Since there is no objection by the respondent, I will grant the appellant's prayer for the parent who does not have the child on Christmas Day to have the child from 12pm to 9.30pm on Christmas Eve.

14 Next, Ms Hoon submits that the Access Conditions should be revoked. Upon the DJ's suggestion, the appellant attended seven sessions with a court-appointed psychologist, Dr Matthew Woo from the Panel of Therapeutic Specialists. Dr Woo was directed to assess whether the respondent's concerns regarding the appellant's alleged alcohol addiction were founded. Dr Woo produced a report dated 15 July 2024 based on his observations of the appellant between 26 April 2024 and 21 June 2024. In essence, Dr Woo was of the opinion that the appellant's behaviour at home was not under any influence of alcohol and there was no evidence of safety issues with respect to the child. Despite acknowledging Dr Woo's findings, the DJ imposed the Access Conditions to address the respondent's "residual concerns".

15 Ms Hoon argues that the requirement to abstain from alcohol entirely during access is tantamount to "expecting the [appellant] to live up to saintly standards" when there has been no incident of harm to the child. She says that it is against public policy to impose a blanket no-alcohol condition during access

times as the care and control parent may attempt to deprive the non-custodial parent of their access on the basis of their innocuous or moderate consumption of alcohol (*eg*, having a can of beer after the child has fallen asleep).

16 The respondent, on the other hand, says that she had no opportunity to challenge or even clarify the evidence given by Dr Woo by cross-examination. She raises her concern that the appellant was only "artificially limiting his alcohol consumption during the observation period" and is worried that he might "relapse" in future. To allay her concerns, the appellant sought to adduce a supplemental report from Dr Woo dated 6 January 2025 in SUM 10. This was produced after Dr Woo's further observation of the appellant from July 2024 to December 2024. Dr Woo again found that there was no evidence of alcohol use and no safety risk "with respect to child custody, including for extended periods of care by [the appellant]".

17 The DJ's reason for ordering the Access Conditions was to allay the respondent's concern about the appellant having "drunk to excess in the past" and having "exhibited allegedly aggressive behaviour at home". There was no proof that such aggression, if any at all, was ever directed at the child. Although the respondent had made two police reports arising from the appellant's alleged inebriety between 2021 and 2023, there were no further investigations nor findings in either of the police reports. The evidence before me suggests that there is insufficient evidence that the appellant had displayed any aggressive tendencies after drinking. Neither is there any evidence to suggest that he is dependent on alcohol. I agree with Ms Hoon that the Access Conditions encourage acrimony between the parties and should not be imposed in the absence of clear evidence of alcohol dependency. Therefore, I order that the Access Conditions be revoked. I am of the view that the mutual undertaking suggested by the appellant at the hearing below adequately covers the parties'

conduct.

18 Lastly, the appellant asks for an order for up to five makeup sessions if he is unable to have his usual access due to work or travel commitments. I agree with the DJ that any makeup access should be "handled in the spirit of give and take between parents". It is not necessary to stipulate a makeup access order. Both parties should communicate and facilitate access of the child with the other party as long as such access is reasonable. The appellant also argues that the costs of $1,500 awarded to him by the DJ were too low as the court should have considered the conduct of the parties in their attempt to resolve their matter by mediation. The DJ had in fact considered that the final outcome was more aligned with the appellant's without prejudice offer and thus awarded costs of $1,500 in favour of the appellant. This was an appropriate figure and I see no reason to disturb the DJ's finding.

19 For the reasons above, I allow the appeal in part. Each party is to bear its own costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Hoon Shu Mei Sumathi, Goh Wei Sien Alex and Wang Shang Yew (Drew & Napier LLC) for the appellant;
Kannan Nadarajan, Huang Junli Christopher and Dilys H Chua (CHP Law LLC) for the respondent.