IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC(A) 26

Appellate Division / Civil Appeal No 4 of 2026

Between

XGN

… *Appellant*

And

XGO

… *Respondent*

In the matter of District Court Appeal No 65 of 2025

Between

XGO

… *Appellant*

And

XGN

… *Respondent*

In the matter of District Court Appeal No 66 of 2025

Between

XGN

… *Appellant*

And

XGO

… *Respondent*

Version No 1: 02 Nov 2026 (12:56 hrs)

JUDGMENT

[Family Law — Custody — Access]
[Res Judicata — Issue estoppel — Foreign judgment]

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XGN
v
XGO

[2026] SGHC(A) 26

Appellate Division of the High Court — Civil Appeal No 4 of 2026
Woo Bih Li JAD, Kannan Ramesh JAD and Debbie Ong Siew Ling JAD
13 July 2026

2 November 2026 Judgment reserved.

Debbie Ong Siew Ling JAD (delivering the judgment of the court):

1 The present appeal, AD/CA 4/2026 ("AD 4"), concerns a cross-border dispute over the custody and access of a six-year-old child ("Child") in a family with connections to both Indonesia and Singapore. The appellant is the Child's father ("Father"), and the respondent is the Child's mother ("Mother").

2 The family had previously been resident in Indonesia. The Mother commenced divorce proceedings in Indonesia in June 2023. About a year later, she moved to Singapore, taking the Child with her without the Father's knowledge or consent. Subsequently, both parties commenced proceedings in relation to the Child in the Singapore courts. This gave rise to concurrent proceedings over the Child in both Indonesia and Singapore.

3 A district judge ("DJ") in the Family Court heard the parties' applications for orders concerning the Child. Before the DJ issued his brief

grounds to the parties on 13 May 2025 ("Brief Grounds"), the Supreme Court of Indonesia ("SCI") rendered its decision granting sole custody to the Mother, with access to be arranged between the parties on mutually agreed terms. The DJ made orders that reflected the SCI's orders, by granting sole custody and care and control to the Mother and making consequential orders to facilitate access between the Father and the Child. The DJ also imposed restraining orders on both parties which prohibited either from removing the Child from Singapore or applying for the Child's passport without the prior written consent of the other party or an Order of Court ("travel restraining orders").

4 On appeal, a judge ("Judge") in the Family Division of the High Court ("High Court") heard the parties' appeals and issued his judgment on 24 October 2025 in *XGO v XGN* [2025] SGHCF 60 ("Judgment"). The Judge found that the parties' applications had been brought on an interim basis, pending the outcome of the Indonesian proceedings. On that basis, he concluded that once the SCI had rendered its decision, there was no longer any basis for the parties' applications to be maintained in Singapore. The Judge was also of the view that it was not appropriate for a court in Singapore to make a pronouncement on issues already determined by the SCI, and that Indonesia was the more appropriate forum to resolve the parties' dispute. Hence, he held that the parties were to comply with the SCI's orders. The travel restraining orders imposed on the Father by the DJ were not disturbed.

5 In the appeal before us, the Father seeks joint custody, increased and unsupervised access to the Child, and the imposition of travel restraining orders on the Mother.

Version No 1: 02 Nov 2026 (12:56 hrs)

6 We allow the appeal in part. We grant the Father increased and unsupervised access to the Child and impose travel restraining orders on the Mother. We dismiss the appeal in relation to joint custody.

Factual background and procedural history

7 We set out the background facts and procedural history pertinent to this appeal. The parties, who are Indonesian nationals, married in Jakarta, Indonesia in October 2017. The Child was born in Jakarta, Indonesia in July 2020.

Procedural history prior to the DJ's decision

In 2023

8 Sometime in June 2023, the Mother left the matrimonial home with the Child without the Father's knowledge and consent, and commenced divorce and custody proceedings in the South Jakarta District Court ("SJDC").

In 2024

9 The SJDC dismissed the Mother's petition for divorce and custody of the Child on 2 May 2024. On 13 May 2024, the Mother filed an appeal to the Jakarta High Court ("JHC").

10 On 14 May 2024, the Mother left Indonesia for Singapore with the Child without the Father's knowledge or consent. By 4 June 2024, the Child had obtained a Student Pass and was enrolled as a student in Singapore.

11 Shortly thereafter, on 3 July 2024, the JHC allowed the Mother's appeal and granted her a divorce as well as custody of the Child, "without prejudice to the [Father's] right to meet the [Child] at times and places as agreed upon by

Version No 1: 02 Nov 2026 (12:56 hrs)

the parties". On 9 July 2024, the Father appealed against the decision of the JHC to the SCI.

12 In Singapore, the Mother filed FC/OSG 90/2024 ("OSG 90") on 15 July 2024, seeking travel restraining orders on the Father and to set out the terms of the Father's access to the Child. The access terms sought included:

(a) video or phone call access for 15 minutes on Mondays and Thursdays; and

(b) supervised access for four hours every other Saturday in Singapore at a suitable facility.

13 On 17 September 2024, the Father filed FC/OSG 130/2024 ("OSG 130") in Singapore for joint custody and unsupervised access to the Child. He sought, amongst other things, the following:

(a) joint custody, and sole care and control to the Mother, with the Child residing at the Mother's residence, the address of which shall be disclosed to the Father;

(b) unsupervised access, including video calls for 20 minutes every weekday, overnight weekend access from Saturday 10.00am to Sunday 3.00pm, alternate public holiday access, access for special holidays and celebrations, school holidays and overseas holidays, and provisions for make-up access; and

(c) travel restraining orders imposed on both parties.

14 Both applications were filed after the JHC decision but before the SCI decision was issued. On 30 September 2024, the parties reached an agreement

Version No 1: 02 Nov 2026 (12:56 hrs)

and an interim consent order was made granting the Father supervised physical access and video access to the Child. The order also imposed travel restraining orders on him.

15 On 28 November 2024, the SCI dismissed the Father's appeal. It affirmed the JHC's decision granting the Mother a divorce and custody of the Child, with access to the Father to be arranged between the parties on mutually agreed terms. The SCI issued its written judgment on 6 January 2025.

In 2025

16 Subsequently, the Father filed FC/SUM 262/2025 ("SUM 262") on 4 February 2025 to restrain the Mother from bringing the Child out of Singapore without the Father's prior written consent or leave of Court, pending the conclusion of proceedings in Singapore. On 18 March 2025, the Mother filed two applications: (a) FC/SUM 605/2025 ("SUM 605") to withdraw OSG 90 and rescind the interim consent order; and (b) FC/SUM 608/2025 ("SUM 608") to strike out OSG 130 and SUM 262, and rescind the interim consent order on jurisdictional grounds.

The DJ's decision

17 The DJ held that the court had jurisdiction as the Child was resident in Singapore, questions regarding his welfare had arisen in respect of his time here, and both parents had filed originating summonses in Singapore, thereby submitting to the court's jurisdiction. Accordingly, the DJ dismissed SUM 608 (Brief Grounds at [17]). The DJ further held that the court should exercise its jurisdiction, given that a dispute regarding the Child's welfare had been raised in respect of the period during which the Child was within the jurisdiction, and that it was in the Child's interests for it to do so (Brief Grounds at [18]).

Version No 1: 02 Nov 2026 (12:56 hrs)

18 On the substantive issues, the DJ declined to depart from the SCI's orders on custody and access, finding that those orders were not contrary to the Child's welfare (Brief Grounds at [19]). Consistent with those orders, the DJ ordered sole custody and care and control to the Mother, and access to the Father. He considered the sole dispute before him to be on the implementation of the access arrangements, which the parties had been unable to agree on (Brief Grounds at [22]). The DJ made orders to facilitate the implementation of the SCI's order. In this regard, he found that the interim consent order ought to be made permanent. He declined to increase or grant unsupervised access to the Father, finding that a patent trust deficit existed between the parties which they needed to bridge (Brief Grounds at [23]–[24]). Accordingly, in respect of SUM 605, the DJ granted the Mother's application to withdraw OSG 90 but not to rescind the interim consent order (Brief Grounds at [26]). In respect of OSG 130, the DJ partially allowed the Father's application on the terms of the interim order (Brief Grounds at [27]).

19 The DJ's orders were as follows:

(a) The Mother shall have sole custody, and care and control of the Child, who shall reside with her.

(b) The Father shall have access to the Child on the following terms:

(i) video access for 15 minutes on Mondays and Thursdays, between 6.00pm and 8.00pm;

(ii) supervised access in Singapore at a mutually agreed facility ("Facility") for two hours every Saturday before 4.00pm. The Facility shall provide a report on each supervised access

Version No 1: 02 Nov 2026 (12:56 hrs)

session to both parties, with the costs to be borne by the Father; and

(iii) Should either party be unable to proceed with a scheduled access session, the parties were to agree on make-up access for the Father, subject to it not affecting the Child's school or enrichment classes and to the Facility's availability.

(c) Travel restraining orders were made to prohibit either party from removing the Child from Singapore, or applying for a passport for the Child, without the consent of the other party or an Order of Court.

(d) Both parties were to remain contactable to each other.

The Judge's decision

20 Both parties appealed against the DJ's decision. HCF/DCA 65/2025 ("DCA 65") was the Mother's appeal against part of the DJ's decision, *ie*, the travel restraining orders imposed on her and his exercise of jurisdiction on the issue of custody. HCF/DCA 66/2025 ("DCA 66") was the Father's appeal against part of the DJ's decision on custody and access.

21 The Judge heard DCA 65 and DCA 66 and decided as follows:

> 6 Before me, counsel for the parties explained that their clients took out originating summonses in Singapore as the SCI decision was pending. Counsel explained that in Indonesia, the lower court's decision is not binding when it is being appealed.
>
> 7 By the time this matter came before me, the SCI, which is the highest court in Indonesia, had delivered its verdict on the father's appeal. In fact, the SCI had done so on 28 November 2024, even before the DJ issued his findings on the originating summonses taken out by the parties in Singapore. Since the SCI had delivered its judgment on this matter, the basis for parties bringing their initial application in Singapore no longer

Version No 1: 02 Nov 2026 (12:56 hrs)

> exists. It is not appropriate for a court in Singapore to make a pronouncement on issues which have already been determined by the SCI. In this case, the Indonesian court is clearly the more appropriate forum to decide on this divorce and its related proceedings. In a situation such as this, where the divorce was granted by the Indonesian court, and the matter was pending before the Indonesian appellate court, our courts should decline jurisdiction to adjudicate on the same issues that are within the province of the Indonesian courts.

22 The Judge allowed the Mother's appeal and dismissed the Father's appeal. The Judge stated that no further orders were to be made as to the DJ's decision and the parties were to comply with the SCI decision (Judgment at [8]). Accordingly, he made the following orders:

(a) The Mother is granted sole custody, and care and control of the Child.

(b) The Father shall have access to the Child at a time and place to be mutually agreed between the parties.

(c) The travel restraining orders against the Mother are removed.

23 As neither party appealed the travel restraining orders imposed on the Father by the DJ, those orders as against the Father remained in force.

24 On 20 November 2025, the Father filed AD/OA 45/2025 to this court for permission to appeal against the Judge's decision. On 7 January 2026, this court allowed the application.

The parties' cases on appeal

25 We heard the appeal on 13 July 2026. We summarise below the arguments raised in the parties' written and oral submissions.

Version No 1: 02 Nov 2026 (12:56 hrs)

The Father's Case

26 On appeal, the Father seeks joint custody of the Child, access to the Child (including unsupervised access every Saturday from 10.00am to 8.00pm and video call access for 20 minutes every Monday to Friday between 6.00pm and 8.00pm), travel restraining orders on both parties, and for each party to be contactable to the other at all times.

27 The Father raises four grounds of appeal. First, the Father argues that the Judge erred in allowing the Mother's appeal and dismissing the Father's appeal on the basis that (a) the parties' entire applications were brought in Singapore on an interim basis pending the decision of the SCI; and (b) the Singapore court should not have exercised jurisdiction as Indonesia was the more appropriate forum to resolve all issues in this case. He argues that the reliefs sought by the parties were not on an interim basis pending the decision of the SCI. Relying on local and foreign authorities, the Father further argues that the Singapore court has jurisdiction to hear issues relating to the Child and should exercise this jurisdiction as it has an independent duty and power mandated by s 3 of the Guardianship of Infants Act 1934 (2020 Rev Ed) ("GIA") to investigate the facts and make orders based on the welfare principle, notwithstanding the SCI order.

28 Second, the Father contends that the Judge erred in granting the Mother sole custody of the Child instead of joint custody. The Father argues that there is no evidence as to the custody order he had sought before the SCI and the court should undertake an independent assessment of custody based on Singapore law. He explains that unlike the position in Indonesia, where custody is entrusted to the person closest and most familiar to the child, namely, the mother, the position in Singapore is that joint custody is the norm. The Father

Version No 1: 02 Nov 2026 (12:56 hrs)

submits that joint custody is in the Child's best interests as the Child would benefit from the involvement and guidance of both parents.

29 Third, the Father submits that the Judge erred in granting him access only at a time and place to be mutually agreed between the parties. In doing so, the Judge revised the DJ's access order, even though the Mother had not appealed that order in DCA 65. As only the Father had appealed the access orders in DCA 66 seeking unsupervised access and increased video access, the High Court's jurisdiction was limited to deciding whether to grant the Father's appeal or dismiss it by retaining the original access orders. The Father submits that by revising the access orders to be in line with the orders made by the SCI when that was not sought by either party, the Judge exceeded his jurisdiction. Further, the Father submits that the Judge erred in dismissing his appeal for unsupervised and increased access. The Father argues that unsupervised access should only be refused in exceptional circumstances, and that no such circumstances are present here.

30 Fourth, the Father contends that the Judge erred in revising the travel restraining orders such that they applied only to the Father and not the Mother. In this regard, the Father submits that it is logically inconsistent for the court to disclaim jurisdiction over the issues of custody and access, while at the same time exercise jurisdiction to order travel restraining orders against the Father. It is even more difficult to justify a position where travel restraining orders are imposed on the Father but not the Mother. The Father submits that the court has jurisdiction to impose travel restraining orders against both parties, and that such orders against the Mother are critical to the Child's welfare given that she is a flight risk, having already removed the Child from Indonesia without his knowledge or consent.

Version No 1: 02 Nov 2026 (12:56 hrs)

The Mother's Case

31 The Mother raises four arguments in response. First, on jurisdiction, the Mother contends that the court should not exercise jurisdiction on the issue of custody because: (a) the Father expressly agreed and the parties conducted themselves on the basis that the Indonesian courts would adjudicate on the issue of custody of the Child; (b) the Father did not seek joint custody in Indonesia; (c) the Father sought joint custody in Singapore on an interim basis pending the SCI's decision; and (d) the welfare of the Child was considered by the Indonesian courts. The Mother submits that it does not follow that when the court applies the welfare principle, this would warrant the revisiting of every foreign order. Thus, the Judge was right to decline exercising jurisdiction on the issue of custody. We note that, as the Mother's arguments relating to the court's exercise of jurisdiction pertain to the issue of custody only, she appears to accept that the court should exercise jurisdiction in respect of the issues of access and travel restraining orders.

32 Second, the Mother submits in the alternative that if the court exercises jurisdiction on the issue of custody, due weight should be accorded to the SCI decision given its recency, its consideration of the Child's best interests, its finality as the apex court of Indonesia, the fact that the parties were legally represented in Indonesia, and the absence of any material change in circumstances. A departure from the SCI decision would result in conflicting orders which would not be in the Child's welfare and would inevitably drive the parties back to litigation to resolve every point of disagreement. The Mother further submits that the Father's application for joint custody amounts to an abuse of process – she argues that he did not seek joint custody before the Indonesian courts, and having failed to obtain a favourable outcome there, is now resiling from his earlier position that OSG 130 had been brought only on

Version No 1: 02 Nov 2026 (12:56 hrs)

an interim basis. In doing so, she contends that the Father is effectively seeking a second bite of the cherry by pursuing a permanent joint custody order for the first time on appeal. The Mother also contends that even if the court disregards the SCI decision, she should be awarded sole custody and care and control.

33 Third, on access, the Mother contends that the Judge did not exceed his jurisdiction in removing the access terms set out by the DJ. The Mother relies on r 805(7)(a) of the Family Justice Rules 2014, which provides that the court may make any order which ought to have been made and such further or other order as the case may require. The Mother submits that access was a live issue before the Judge as the Father had appealed the access orders in DCA 66, and it cannot be that the Father only expected the status quo to be maintained or access terms to improve in his favour. The Judge's access order is also more tenable when seen in the context of his broader decision in declining to exercise jurisdiction over all issues relating to the Child in light of the SCI decision – he was merely giving effect to the SCI decision. On the merits, the Mother states that she is amenable to a gradual transition towards increased and unsupervised access, provided that the counsellor confirms through a further report that it is suitable for the Father to have such access.

34 Finally, on the travel restraining orders, the Mother submits that the Judge's removal of the travel restraining order against her is consistent with the SCI decision, given that she has been granted sole custody, which confers all parental rights and responsibilities over the Child following divorce. The Mother further submits that the Judge's imposition of travel restraining orders on the Father is correct and should be seen not as an exercise of jurisdiction but as giving effect to the SCI decision, particularly given that no enforcement order has been obtained yet in the Indonesian courts.

Version No 1: 02 Nov 2026 (12:56 hrs)

Interim orders made at the hearing of this appeal

35 At the hearing on 13 July 2026, after hearing the parties' oral arguments, we made the following interim orders:

(a) The Father shall have unsupervised physical access to the Child for three hours per session on a weekly basis, commencing on 1 August 2026 for the month of August 2026. With effect from 1 September 2026, the Father's unsupervised access shall be extended to five hours per session on a weekly basis, until further Order of Court. Handover of the Child shall take place at the office of the parties' counsellor, but parties are at liberty to mutually agree on any other method or location.

(b) Commencing on 1 August 2026, the Father shall have video access to the Child for 20 minutes on each Monday, Thursday, and Friday, between 8.00pm and 9.00pm Singapore time, until further Order of Court. Video access shall continue during any period of the Mother's travel with the Child outside Singapore.

(c) In the event that the Mother intends to travel outside of Singapore with the Child, she shall notify the Father of the travel dates and destination in advance of the date of departure. Any access missed due to travel of the Child shall be made up by mutual arrangement between the parties.

36 On 5 August 2026, counsel for the Father wrote to the court on behalf of both parties to inform that they had agreed to certain adjustments to the terms of the interim order and sought a formal variation of the same. We informed the parties that they are at liberty to vary the terms by mutual agreement and encouraged them to continue cooperating in the best interests of the Child. We

Version No 1: 02 Nov 2026 (12:56 hrs)

also informed them that they may likewise agree on any matter in respect of which there were no court orders in force. Accordingly, no variation order was necessary.

Issues to be determined

37 The following issues are before us:

(a) as a preliminary matter, whether this court has and should exercise jurisdiction over issues relating to the Child;

(b) whether increased and unsupervised access to the Child should be granted to the Father;

(c) whether travel restraining orders should be imposed on the Mother; and

(d) whether joint custody of the Child should be ordered.

Issue 1: Whether the court has and should exercise jurisdiction over issues relating to the Child

Existence of jurisdiction

38 The first issue is whether the Singapore court has jurisdiction over matters concerning the Child and if so, whether that jurisdiction should be exercised in the present case.

39 On the present facts, it is clear that the court has jurisdiction over the Child. Jurisdiction over a child arises if the child is present or ordinarily resident within the jurisdiction (see *Re P (GE) (an infant)* [1965] Ch 568 at 582–584, 588–590 and 592–594). The Child is both present in Singapore and ordinarily

Version No 1: 02 Nov 2026 (12:56 hrs)

resident in Singapore. He has been in Singapore since May 2024 and has been issued a Student Pass to reside and go to school here.

Exercising jurisdiction and applying the welfare principle under Singapore law notwithstanding the existence of a foreign order

40 The more contentious issue raised by the parties is whether the court should exercise jurisdiction. In our view, the court should exercise jurisdiction to determine orders for the welfare of the Child.

41 In many jurisdictions, the welfare of the child is the paramount consideration in proceedings involving the guardianship and custody of children. In Singapore, this principle is statutorily enshrined in s 3 of the GIA which states:

> **Welfare of infant to be paramount consideration**
>
> **3.** Where in **any proceedings before any court the custody or upbringing of an infant** or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, **shall regard the welfare of the infant as the first and paramount consideration**…
>
> [emphasis added in bold]

42 The authorities establish that where a court is called upon to determine matters concerning the custody and upbringing of a child, its duty to treat the child's welfare as the paramount consideration is not displaced merely because a foreign court has previously determined the same or similar issues. The foreign court order may nevertheless be taken into account and accorded appropriate weight in the court's inquiry on the child's welfare.

43 Indeed, the House of Lords in the English case of *J v C* [1970] AC 668 held (at 700–701, 714 and 720) that, once a court assumes jurisdiction over a

Version No 1: 02 Nov 2026 (12:56 hrs)

child, it must determine the child's welfare by applying the welfare principle of the forum, notwithstanding the existence of a foreign order, which may nevertheless be taken into account as a relevant consideration.

44 Such an approach was taken in *TSH v TSE* [2017] SGHCF 21 ("*TSH v TSE (HCF)*"). In that case, proceedings concerning the child, M, had taken place in both England and Singapore. The English court had determined that M's best interests would be served by returning him to his mother's care in England. A district judge in Singapore granted the mother's application for a "mirror" order. On appeal to the High Court, the father argued that it was not in M's interest to be returned to the UK. The mother, on the other hand, argued that the English court's determination that it was in M's welfare to be returned to her full-time care in England gave rise to an issue estoppel.

45 A judge of the High Court dismissed the appeal. On the question of issue estoppel, the judge held (at [50]):

> 50 … **the doctrine of issue estoppel does not apply strictly in relation to proceedings involving the custody and upbringing of a child because the court has an overriding duty under s 3 of the GIA to have paramount regard to the child's welfare.** Thus, even if an issue estoppel is raised which binds the parties, the estoppel cannot abrogate the court's duty under s 3, which may in an appropriate case compel the court to hear all the evidence and the submissions which the parties have presented. …
>
> [emphasis added in bold]

46 The court in *TSH v TSE (HCF)* explained that it has a duty under s 3 of the GIA to apply the welfare principle in deciding matters concerning the upbringing and custody of a child. To fulfil that duty, the court must have the discretion, having regard to all the circumstances, to allow the parties to re-open any issue concerning the welfare and upbringing of a child which has been

Version No 1: 02 Nov 2026 (12:56 hrs)

decided by a court of competent jurisdiction (at [51]–[52]). Further, and in any case, the requirements of issue estoppel were not satisfied because the facts underlying the assessment of M's best interests were capable of change, such that there was no identity of subject matter (at [65]–[67]). The court then conducted a full investigation and concluded that it was in M's best interests to be returned to his mother's care in England (at [126]).

47 On appeal, the Court of Appeal in *TSF v TSE* [2018] 2 SLR 833 ("*TSF v TSE (CA)*") assessed the evidence (which included further evidence admitted on appeal), and reached a different conclusion, holding that M's interests would be better served by remaining in Singapore with his father and grandparents (at [96]). This decision clearly illustrates that a prior determination by a foreign court on a child's welfare does not displace the court's own assessment of the facts pursuant to fulfilling its statutory obligation under s 3 of the GIA.

48 This position is reinforced by the oft-cited case of *McKee v McKee* [1951] AC 352 ("*McKee v McKee*"). There, a Californian court had granted custody of the child to the mother. The father subsequently removed the child to Ontario without the mother's knowledge or consent. The mother commenced *habeas corpus* proceedings in Ontario seeking the return of the child to her custody. The Ontario trial judge conducted a full inquiry into the child's welfare and concluded that his interests were best served by remaining with the father. The Ontario Court of Appeal upheld that decision, but the Supreme Court of Canada reversed it, effectively giving effect to the earlier Californian custody order. The father appealed to the Privy Council.

49 The Privy Council held that, once a court assumes jurisdiction over a child, it must exercise its own judgment as to the child's welfare. To decline to

Version No 1: 02 Nov 2026 (12:56 hrs)

do so merely because a foreign order is in existence would be a negation of the welfare principle. Lord Simonds held (at 363–364):

> But it is the negation of the proposition, from which every judgment in this case has proceeded, namely, that the infant's welfare is the paramount consideration, to say that where the trial judge has in his discretion thought fit … to examine all the circumstances and form an independent judgment, his decision ought for that reason to be overruled. **Once it is conceded that the court of Ontario had jurisdiction to entertain the question of custody and that it need not blindly follow an order made by a foreign court, the consequence cannot be escaped that it must form an independent judgment on the question, though in doing so it will give proper weight to the foreign judgment.** What is the proper weight will depend on the circumstances of each case. It may be that, if the matter comes before the court of Ontario within a very short time of the foreign judgment and there is no new circumstance to be considered, the weight may be so great that such an order as the Supreme Court made in this case could be justified. But if so, it would be not because the court of Ontario, having assumed jurisdiction, then abdicated it, but because in the exercise of its jurisdiction it determined what was for the benefit of the infant.
>
> [emphasis added in bold]

50 *McKee v McKee* illustrates that the weight to be accorded to a foreign custody order depends on the circumstances of each case, including whether there has been a material change in circumstances since that order was made. In a different situation where the dispute comes before the forum court within a very short time after the foreign order is made, and there is no new circumstance of relevance, it may be appropriate to place greater weight on the foreign order. Ultimately, however, as Lord Simonds stated (at 364), "[w]hat is the proper weight will depend on the circumstances of each case".

51 In the present case, given that the SCI had made orders on the same issues as between the same parties, we note that concerns of *res judicata* or transnational issue estoppel may arise. However, for the reasons set out above,

Version No 1: 02 Nov 2026 (12:56 hrs)

these doctrines do not prevent this court from considering the merits afresh, notwithstanding that Indonesia's apex court has already made orders on the same issues between the same parties, even if some weight may be accorded to those orders in the appropriate circumstances. This is because the current proceedings concern "the custody or upbringing of an infant" where "the welfare of the infant [is] the first and paramount consideration" (s 3 of the GIA).

52 Further, as s 3 of the GIA is a mandatory law of the forum, the doctrine of transnational issue estoppel cannot operate to displace the court's statutory duty. As the Court of Appeal observed in *Merck Sharp & Dohme Corp v Merck KGaA* [2021] 1 SLR 1102 at [55], one possible limitation on the application of transnational issue estoppel is where there is a mandatory law of the forum that applies irrespective of the foreign elements of the case and irrespective of any choice of law rule. This accords with the holding in *TSH v TSE (HCF)* that the court's duty under s 3 of the GIA to have regard to the welfare of the child is paramount and cannot be abrogated by any issue estoppel. This characterisation of s 3 of the GIA as a mandatory law of the forum has also been adopted in academic commentary (see Colin Seow, *Report on the Framework and Margins of Transnational Issue Estoppel* (Law Reform Committee, Singapore Academy of Law, May 2023) at paras 26–27).

53 Lastly, one of the key requirements for *res judicata* or issue estoppel is that there must be identity of subject matter. As noted in *XRG v XRH* [2025] SGFC 105 at [53], this requirement may not be satisfied in a case which concerns an ongoing parent-child relationship that changes as time goes by and circumstances evolve, requiring new facts to be taken into consideration (see also *TSH v TSE (HCF)* at [50]). The Court of Appeal's approach in *TSF v TSE (CA)* illustrates this well. By the time the mother filed an application in the

Version No 1: 02 Nov 2026 (12:56 hrs)

Family Court in Singapore in November 2015, numerous orders had already been made by the English courts. The district judge's order was subsequently made in May 2016, and the High Court issued its decision in August 2017. On appeal, the Court of Appeal admitted further evidence comprising reports dated between January and February 2018 on M's condition and development. The Court of Appeal found that each of the three reports (*TSF v TSE (CA)* at [47]):

> … offered the court the most up-to-date information about M's condition and his conduct in preschool and at the intervention programme. As the reports were prepared after M had had some time to settle into the various programmes, they also offered a more accurate insight into M's future needs and the likely demands on the parent who would be granted care and control of M. These were issues that were clearly material to the question of which parent should be granted care and control of M.

54 As stated earlier (see above at [47]), the Court of Appeal considered all the evidence, including evidence reflecting the latest circumstances, and reached a different conclusion from the court below. This illustrates how the circumstances of a parent-child relationship can evolve quickly, even within a matter of months.

55 To summarise, the welfare principle prevails over the application of the doctrines of *res judicata* and issue estoppel, and foreign orders while relevant do not in themselves displace the court's independent duty to determine orders in the child's welfare.

The applicability of the Indonesian orders and whether they should be "mirrored" in Singapore

56 Singapore law applies to the issues of custody, care and control, and access of the Child, as he is present and resident here. This was not disputed by counsel for both parties at the hearing.

Version No 1: 02 Nov 2026 (12:56 hrs)

57 In so far as the Judge held that the orders made by the SCI applied directly in Singapore because Indonesia was viewed as the more appropriate forum and had made orders over the same matters, we are of the view that this is incorrect. There is no regime for the reciprocal recognition or enforcement of foreign orders concerning custody, care and control, and access in Singapore. The SCI's orders are therefore, without more, not automatically recognised and enforceable in Singapore. Indeed, the Singapore court will not simply "rubber-stamp" foreign court orders and will instead make its own determination by applying the welfare principle as enshrined in s 3 of the GIA (see discussion above at [41]–[55]). That said, in determining what would best serve the welfare of a child, the Singapore court may take such foreign court orders into account, particularly where they are proximate in time and where the foreign court was apprised of all the facts (see above at [42] and [50]).

58 The term "mirror" order appears to have been used in cases where a foreign court order is wholly incorporated or "converted" into an order granted by the forum court. Indeed, in *TSH v TSE (HCF)*, the High Court heard an appeal against the decision of the district judge who granted the mother's application for a "mirror" order (see above at [44]). The use of the description "mirror" in this context is not the most appropriate as it suggests that the forum court merely "rubber-stamps" the foreign order by "mirroring" or recording the foreign orders. This description is liable to lead to misperceptions that the forum court does not apply the welfare principle afresh upon examining the evidence and determine the child's welfare independently, which as we have established above, is incorrect.

59 In the present case, it appears to us that the SCI might not have had the benefit of considering the significant developments in the Child's circumstances

Version No 1: 02 Nov 2026 (12:56 hrs)

when determining his welfare. At the hearing, counsel for the Father was unable to confirm whether the SCI had been apprised of significant developments concerning the Child, including his relocation to Singapore in May 2024, several months *before* the appeal came before the SCI. Although counsel for the Mother asserted that the SCI had been notified of the Child's relocation, he was unable to point to any evidence in support of this. There is also no evidence before us that the SCI was aware of the proceedings in Singapore.

60 All in all, it is unclear to us whether the SCI had the benefit of the updated facts and circumstances, given the significant developments since proceedings were commenced in the SJDC. In particular, the Child has been residing with the Mother in Singapore and attends school here. Thus, even if the SCI had considered the Child's welfare in making its orders, as suggested by the Mother's expert, it may have done so by reference to a materially different factual position. This is relevant in determining the weight to be given to the Indonesian orders.

Considerations in applying the welfare principle

61 Counsel for the Mother relied on *TDX v TDY* [2015] 4 SLR 982 ("*TDX v TDY*") for the proposition that it is not in a child's welfare for there to be conflicting orders concerning the child in different jurisdictions. While we accept the proposition as a general one, it must be understood in its proper context. Many of the authorities emphasising the undesirability of conflicting orders arise in one of two contexts: (a) applications to stay proceedings on *forum non conveniens* grounds; or (b) applications for the return of a child who has been wrongfully removed from or retained in another jurisdiction in the context of child abduction by a parent and the Convention on the Civil Aspects of International Child Abduction (25 October 1980) 1343 UNTS 89 (entered into

Version No 1: 02 Nov 2026 (12:56 hrs)

force 1 December 1983) ("Hague Convention"). Those contexts are materially different from the present case.

62 In the first category of cases, the application of *forum non conveniens* principles, namely the principles in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460, is not inconsistent with the principle that the welfare of the child is paramount. Where Singapore proceedings are stayed, the court does not necessarily abdicate its responsibility for the child's welfare by declining to determine the substantive dispute. Rather, it concludes that the child's welfare is better served by having the dispute determined by a court in another jurisdiction which is much more closely connected with the child and best placed to assess his or her circumstances and welfare (see *Re A (an infant)* [2002] 1 SLR(R) 570 at [4] and [16]; *TDX v TDY* at [12]–[22]). It was in this context that the court in *TDX v TDY* observed that a multiplicity of proceedings and the prospect of conflicting orders may not be in the child's welfare and took that factor into account in granting a stay of proceedings (at [18] and [62]). Conversely, where the application of *forum non conveniens* principles does not warrant a stay, the court will determine the matter before it with reference to the welfare of the child.

63 The second category concerns the return of children wrongfully removed from another jurisdiction. Where the Hague Convention applies between two Contracting States, the forum court does not undertake a full inquiry into the child's welfare but instead applies the summary return regime prescribed by the Hague Convention. Under this regime, the forum court generally orders the prompt return of a child wrongfully removed from his or her State of habitual residence, subject to certain limited exceptions, leaving questions concerning the child's welfare and custody to be determined by the

Version No 1: 02 Nov 2026 (12:56 hrs)

courts of that State. This regime generally takes precedence over the forum's welfare principle and reflects the recognition that the unilateral removal of a child from his or her habitual residence is generally contrary to the child's interests, as it disrupts the child's relationship with the left-behind parent and the stability of his or her established home and social environment.

64 The position is, however, different where the relevant jurisdiction is not a signatory to the Hague Convention. In such cases, the court must determine the matter with reference to the welfare of the child.

65 The present case falls into neither of the situations described above. Proceedings in Indonesia have concluded, and neither an application for a stay of proceedings nor an application for a return of the Child featured in the history of the proceedings. More importantly, the Child has been resident in Singapore for over two years and will remain here for the foreseeable future.

66 Finally, we add that it is important to appreciate that proceedings concerning the welfare of a child differ from proceedings in typical commercial disputes. In proceedings involving a child, what is at stake is not a static legal right but continuing and evolving parent-child relationships. Orders relating to a child focus on the child's present circumstances and are made to support him or her as he or she moves forward in the future. In the present case, those relationships are now seated and centred in Singapore.

67 We therefore conclude that the court should exercise its jurisdiction over matters concerning the Child. We turn next to the substantive issues on access, travel restrictions and custody.

Version No 1: 02 Nov 2026 (12:56 hrs)

Issue 2: Whether increased and unsupervised access should be granted to the Father

68 We turn to the first substantive issue, namely whether the Father should be granted increased and unsupervised access to the Child, bearing in mind that he does not dispute that care and control of the Child is to be with the Mother. To recapitulate, the DJ granted the Father video access and supervised physical access (see above at [19]). The Judge, on the other hand, ordered that the Father shall have access to the Child at such times and places as the parties may mutually agree (see above at [22]).

69 We observe that, notwithstanding the Judge's order, supervised physical access and video access have continued. The Father has been flying between Jakarta and Singapore every weekend to spend time with the Child.

70 Preliminarily, we address the Father's contention that the Judge erred in reducing his access to the Child on appeal from the DJ's decision, given that the Father had appealed for increased access while the Mother had not cross-appealed for any reduction in access. In our view, this contention does not accurately characterise the Judge's decision. The Judge did not simply vary the DJ's access orders on their merits. Rather, his order followed from his antecedent conclusion that the Singapore court should decline to exercise jurisdiction over matters concerning the Child. In these circumstances, it cannot be said that the Judge had exceeded the scope of the appeal.

71 We make access orders which are, in our view, in the welfare of the Child.

72 We are of the view that it would be in the Child's welfare for him to have unsupervised and increased access with the Father. In *WZF v WZG*

Version No 1: 02 Nov 2026 (12:56 hrs)

[2025] 3 SLR 1219, the High Court at [29], referring to *APE v APF* [2015] SGHC 17 at [32], observed that unsupervised access should be the default position, save in exceptional circumstances, such as where: (a) there are serious welfare concerns, including violence or inappropriate parenting; (b) the child has become estranged from the parent and the parent-child relationship is in need of serious repair; or (c) there are factors that make unsupervised access difficult to implement effectively, for example, where the relationship between the parents is so acrimonious that the custodial parent frustrates the effectiveness of unsupervised access to the point that it cannot occur without detriment to the child. These are among the relevant factors to be considered, and each case must be determined on its specific facts and circumstances. At the hearing before us, counsel for the Father submitted that none of these circumstances arose in the present case, and counsel for the Mother conceded the same.

73 Indeed, a report dated 15 April 2025 ("Report") by the counselling centre that has been facilitating access between the Father and the Child ("Counselling Centre") paints a positive picture of their relationship. The Report records that the Child "responds well to his father's presence, demonstrating comfort, affection, and eagerness to interact" with "no signs of fear, withdrawal, or discomfort". It further states that the Child is "thriving emotionally and physically under current arrangements".

74 Although the Report recommended that access remain supervised, it did not provide cogent reasons for that recommendation. At the hearing of the appeal, when asked for the reasons for continued supervised access, counsel for the Mother cited the Father's tendency towards excessive gifting and the Report's recommendation that he attend parental education classes. Counsel for

Version No 1: 02 Nov 2026 (12:56 hrs)

the Mother submitted that these indicated that the Father was not yet ready for unsupervised access. In our view, these matters amount at most to differences in parenting approaches and beliefs. They do not raise the sort of welfare concerns that justify supervised access. We note that it was also recorded in the Report that when the Father was advised against bringing an excessive number of toys to the sessions, he was receptive to the feedback which shows his willingness to act in accordance with the Child's best interests.

75 More importantly, supervised access has been ongoing for over a year without any significant concerns. This was acknowledged by counsel for the Mother at the hearing of the appeal and is corroborated by the Report in respect of the access sessions conducted in the earlier months of 2025. We are of the view that in order for the Child to develop a close and meaningful relationship with the Father, it is important that the Father be granted increased and unsupervised physical access. Before we made the interim orders on access at the hearing, the Father was only able to have supervised physical access once a week for two hours. Counsel for the Father submitted at the hearing that such conditions were not conducive to building a healthy relationship, as the Father and the Child were confined to an enclosed office at the Counselling Centre and monitored by counsellors throughout. We agree that it would be far more conducive for the Father to be able to bring the Child to different locations and spend time together as they wished, fostering the bond between them.

76 At the hearing, counsel for the Mother indicated that the Mother was open to unsupervised access but submitted that it should be introduced gradually and only upon a further report and review by the Counselling Centre, so as to allow both the Mother and the Child to adjust to the new arrangement. We do not consider a further period of supervised access or review to be necessary.

Version No 1: 02 Nov 2026 (12:56 hrs)

There has already been more than a year of supervised access without incident, and the available evidence indicates that the Child is comfortable with the Father and enjoys a positive relationship with him. In these circumstances, delaying unsupervised access principally to accommodate the Mother's desired level of comfort with the transition would place her concerns ahead of the Child's welfare. The focus must remain on the arrangement that best serves the Child's welfare. In any event, interim access orders were made at the hearing which already provides for an incremental increase in access. Those arrangements afford an adequate transition to the new access regime and address the Mother's concerns that the change should not be abrupt.

77 In the circumstances, we grant the Father access on the following terms:

(a) The Father shall have video access for 20 minutes within 8.00pm to 9.00pm (Singapore time) on Mondays, Tuesdays and Thursdays.

(b) The Father shall have unsupervised access from 10.00am to 6.00pm on Saturdays, during which the Father is to remain contactable to the Mother.

(c) The handover of the Child for physical access is to be supervised at the Counselling Centre or is to take place at such other location or in such other manner as the parties may mutually agree. The costs of any supervised handover at the Counselling Centre are to be borne equally by the parties.

(d) If any scheduled access is missed, whether because of illness, travel or otherwise, the parties are to agree on reasonable make-up access, whether physical or by video call, as appropriate.

Version No 1: 02 Nov 2026 (12:56 hrs)

(e) The parties are at liberty to apply for such further orders as may be necessary.

Issue 3: Whether travel restraining orders should be imposed on the Mother

78 We turn to the second substantive issue, namely whether travel restraining orders should be imposed on the Mother. To recapitulate, the DJ ordered that neither parent could unilaterally remove the Child from Singapore or apply for a new passport for the Child (see above at [19]). The Judge, however, set aside the travel restraining orders against the Mother, leaving them in place against the Father alone (see above at [22]–[23]).

79 In our view, it is appropriate to impose travel restraining orders on the Mother. The Father's concern that the Mother may remove the Child permanently from Singapore without his knowledge or consent is not without basis. The Mother had previously removed the Child in June 2023 from the parties' joint residence in Indonesia and had subsequently taken the Child out of Indonesia in May 2024, without informing the Father on both occasions. At the hearing, counsel for the Mother also appeared to accept that an order prohibiting the unilateral relocation of the Child would not be objectionable.

80 This is also consistent with the framework under s 126 of the Women's Charter 1961 (2020 Rev Ed) ("Charter"). Pursuant to ss 126(3) and 126(4) of the Charter, where an order for custody is in force, even the parent granted custody may not take the child out of Singapore for a period of one month or longer without the written consent of the other parent or the permission of the court. In the present case, it is our view that an order reflecting this statutory restriction appropriately safeguards the Child's welfare, given the risk that the

Version No 1: 02 Nov 2026 (12:56 hrs)

Mother may seek to relocate the Child out of Singapore without the Father's knowledge or consent, or the court's approval.

81 At the same time, that concern must be balanced against the Mother's legitimate interest in taking the Child out of Singapore for short trips or holidays. Indeed, at the hearing, counsel for the Father clarified that the Father's principal concern was the relocation of the Child from Singapore, rather than the Mother taking the Child overseas for short periods. Consistent with s 126(4) of the Charter, the Mother need not obtain the Father's consent or the permission of the court to take the Child out of Singapore for a period of less than one month. We consider, however, that the Father should be kept informed of such travel. The Mother must provide him with the relevant travel details before taking the Child out of Singapore. Apart from keeping the Father informed of the Child's whereabouts, this would enable the parties to make appropriate arrangements for any access that may be affected or missed by the Child's absence from Singapore.

82 In the circumstances, we make the following orders:

(a) The Mother shall retain the Child's passport. The Father shall not apply for a separate passport for the Child, whether in Singapore or elsewhere, without the consent of the Mother or an Order of Court.

(b) The Mother shall not take the Child out of Singapore for a period of one month or more without the prior written consent of the Father or an Order of Court.

(c) Where the Mother intends to take the Child out of Singapore for a period of less than one month, she shall provide the Father, before the

Version No 1: 02 Nov 2026 (12:56 hrs)

Child's departure, with the destination and the relevant flight details, including the dates and times of departure from and return to Singapore.

83 As the Father did not appeal against the travel restraining orders imposed on him by the DJ, which the Judge left undisturbed, we leave them to stand.

Issue 4: Whether joint custody of the Child should be ordered

84 We turn to the third and final substantive issue, namely whether the Father's appeal for joint custody should be allowed. The Mother argues that the Father did not seek joint custody in Indonesia, and he prayed for joint custody in Singapore only on an interim basis pending the SCI's decision.

85 We dismiss the Father's appeal for joint custody. We agree with the Judge that the Father's prayer for joint custody in OSG 130 was sought only on an interim basis, pending the determination of his appeal to the SCI. Once the SCI released its decision, the basis for that prayer fell away.

86 The Father's first affidavit filed in support of OSG 130, read as a whole, shows that his application for joint custody was interim in nature. We reproduce the relevant paragraphs below:

> **c. My application for joint custody of [the Child]**
>
> 45. As explained above, the South Jakarta District Court had initially dismissed [the Mother's] application for divorce and custody of [the Child] on 2 May 2024, but upon her appeal, the Jakarta High Court decided, among other things, that my marriage with [the Mother] "*is legally dissolved due to divorce with all its legal consequences",* and that the "*custody of [the Child] is granted to [the Mother] as the biological mother, without prejudice to [the Father's] right to visit [the Child] according to a mutually agreed-upon time and place"* on 3 July 2024, for which I have submitted the Petition for Cassation Appeal and Memorandum of Cassation Appeal respectively to the Supreme Court of Indonesia on 9 and 15 July 2024.

Version No 1: 02 Nov 2026 (12:56 hrs)

46. I am advised by my Indonesian lawyers that:

a. The decision on 3 July 2024 by the Jakarta High Court does not have legally binding force on [the Mother] and I pending the decision of the Cassation appeal by me; and

b. Currently, pending the Cassation Decision to be rendered by the Supreme Court of Indonesia, we remain bound in a marital relationship and neither of us has custodial rights granted.

…

47. As neither of us have custodial rights granted **currently**, I am of the position that the Singapore Court is able to determine the issue of custody. I am seeking an order for joint custody, as I am advised that it is the norm in Singapore.

…

50. **If the Court is concerned about making a joint custody … pending the appeal in Indonesia as this may lead to two conflicting orders in the event the Supreme Court of Indonesia upholds the custody rights granted to [the Mother], I ask that a joint custody order be made in the interim period pending the appeal in Supreme Court of Indonesia. If the Supreme Court of Indonesia grants my appeal, the joint custody order made by the Singapore Court can be made permanent.** In the meantime, [the Mother] is prevented from relocating out of Singapore without my consent or leave of court and will have to keep me abreast of affairs relating to [the Child] and to discuss and agree with me on major issues pertaining to [the Child] such as his schooling, which will be in [the Child's] best interest. This is necessary as I understand that it will take at least 1 – 2 further years for the appeal proceedings to be completed by the Supreme Court of Indonesia.

…

67. … as explained above, pending the decision of my Cassation Appeal by the Supreme Court of Indonesia, the decision rendered by the Jakarta High Court does not have legally binding force on parties, which means that no custodial right has been granted to [the Mother] over [the Child]. **Even if the Supreme Court of Indonesia eventually decides to grant custodial rights to [the Mother], [the Child] shall retain his right to meet and maintain regular personal contact and relationship with both parents.** …

[emphasis in original in italics; emphasis added in bold]

Version No 1: 02 Nov 2026 (12:56 hrs)

87 At paras 45–46 of his first affidavit, the Father explained that the JHC had granted custody to the Mother, but that he had appealed against that decision and, on his understanding of Indonesian law, neither parent had custodial rights "[c]urrently, pending the Cassation Decision". It was on this premise that he stated at para 47 that, "[a]s neither of us have custodial rights granted currently", he sought an order for joint custody from the Singapore court.

88 More significantly, at para 50, the Father expressly asked that "a joint custody order be made in the interim period pending the appeal in [the] Supreme Court of Indonesia" and stated that "[i]f the Supreme Court of Indonesia grants [his] appeal, the joint custody order made by the Singapore Court can be made permanent". This shows that the Father expressly contemplated that the Singapore order would become permanent if his appeal to the SCI succeeded. Conversely, he did not contemplate the interim order becoming a permanent order which would subsist irrespective of the outcome of that appeal.

89 This is reinforced by the Father's position on the converse outcome. At para 67 of his first affidavit, he stated that, even if the SCI ultimately granted custodial rights to the Mother, the Child should retain the right to maintain regular contact and a relationship with both parents. Notably, he did not suggest that he would nevertheless continue to seek joint custody in Singapore. Instead, in contemplating an adverse decision by the SCI, he spoke only of preserving the Child's contact and relationship with both parents. Read together, that affidavit shows that the Father was seeking interim joint custody in Singapore to regulate the parties' positions pending the SCI's decision. Indeed, at the hearing before us, counsel for the Father accepted that the change in the Father's position was a "weakness" in his case and she was ultimately unable to offer any further explanation for the change beyond urging this court to determine

Version No 1: 02 Nov 2026 (12:56 hrs)

afresh whether joint custody was warranted, having regard to the paramountcy of the Child's welfare.

90 In the circumstances, the Father cannot now, following the dismissal of his appeal by the SCI, recast the relief sought below as an application for permanent joint custody in Singapore. We therefore need not consider whether, if an application for permanent joint custody had been properly made, such an order should be granted. While such attempts to reframe a case may amount to an abuse of process, it is also not necessary for us to decide this question.

91 In the circumstances, we dismiss the Father's appeal for joint custody.

Conclusion

92 For the foregoing reasons, we allow AD 4 in part. As each party has succeeded in part, we order that each party bears its own costs.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Version No 1: 02 Nov 2026 (12:56 hrs)

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Version No 1: 02 Nov 2026 (12:56 hrs)