G v R
[2003] SGHC 202

Case Number : Div P 807/2000, RAS 720088/2002

Decision Date : 09 September 2003

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Koh Geok Jen and Raymong Yeo (Koh Ong & Partners) for the appellant; K S Rajah SC, A Rajandran and Ignatius Joseph (A Rajandran Joseph & Nayar) for the respondent

Parties : G — R

Constitutional Law – Natural justice – Bias – Whether trial judge had been biased against appellant by believing respondent.

Family Law – Custody – Care and control – Whether respondent had an adverse effect on the child and had unduly burdened him.

Family Law – Women's charter – s 125(2) Women's Charter (Cap 353, 2001 Rev Ed) – Welfare of the child as paramount consideration – Whether appellant's mental state should be taken into consideration when determining issue of custody.

Family Law – Custody – Care and control – Whether the court must in all instances lean in favour of the mother when deciding on custody of an infant of tender years.

1 This was an appeal by the petitioner against the decision of Mrs Emily Wilfred DJ made on 2 October 2002. The District Judge ordered that the sole custody, care and control of the 6 ½ year old son, X ("the son") and only child of the marriage be granted to the respondent. The District Judge further ordered that the access orders granted to the appellant by the High Court on 23 April 2001 shall continue. Those were generous access.

2 Accordingly, the central issue is the question who of the parents should be granted custody of the son. On 6 occasions the Judges of the Family Court and the High Court had decided in favour of the respondent. At the conclusion of the hearing, I dismissed the appeal with costs fixed at $3,000.

3 The circumstances giving rise to the appeal were as follows. The parties were married on 14 March 1995. The son was born on 14 May 1996. In August 1998 the young family lived in their matrimonial flat. Their marriage encountered difficulties. The appellant petitioned for divorce on the ground of his unreasonable behaviour. He cross petitioned on the ground of her adultery. Eventually, both the petition and the cross petition proceeded on the ground of the other spouse's unreasonable behaviour. Decree Nisi was granted on 6 November 2001 and ancillary matters were adjourned.

4 When the appellant declared that she wanted a divorce, there was a meeting at which she also noted that the respondent was not "a bad person". The respondent's parents indicated that they would supply the respondent so far as the custody, care and control of the son was concerned. From 18 March 2000 the respondent and the son had been residing with the respondent's parents. The son has been effectively under the care and control of the grandfather.

5 The grandfather is a retired police officer, with 37 years in the police force. They devote their time, looking after their grandson.

6 In fighting 'tooth and nail' for custody, the appellant emphasised the fact that she and her parents were the main care-givers in the first 27 months of the son's life. However, the appellant had to return to work. During that period, the son was looked after by her mother. Her mother herself had to return to work. A maid was employed to look for the son.

7 As noted by Lee Sieu Kin JC (as he then was) when the matter of interim custody came before the High Court, on an appeal by the appellant, the appellant suffered a bout of depression. She had recovered by the time the appeal was heard by me. It might well have been brought about by the tussle over custody of the son, but the fact that she suffered a depression had to be taken into account. Section 125(2) of the Women's Charter directs that the paramount consideration in a custody matter is the welfare of the child. The fact that the respondent is mentally more stable is a factor that had to be considered. Lee Sieu Kin JC set out in great details very generous access to the appellant. When the appellant appealed against the interim orders of Lee Sieu Kin JC, the Court of Appeal adjourned the appeal sine die. In effect, the interim orders were allowed to operate until the Family Court dealt with the question of custody finally.

8 In the Family Court, the appellant filed further affidavits. She asserted that the respondent was not a suitable caregiver because he smoked, had violent tendencies and a drinking problem. The respondent denied that he was violent. She alleged that the respondent was by nature very possessive and this excessive possessiveness might have an adverse effect on the son. She claimed that the respondent, a lawyer, worked for long hours and could not give the son the kind of care and control that he could. The appellant also made general allegations that the appellant had been 'poisoning' the son's mind against the mother. She also asserted that the respondent was unduly burdening the son by requiring him to attend Tamil and Chinese tuition and music classes.

9 Mrs Emily Wilfred DJ took the trouble to interview the son. After breaking the ice, the District Judge found that the son was "confident, spontaneous and uninhibited." The District Judge concluded that the child enjoyed a very close bond with **both** parents. The District Judge stated: "Here, credit must be given to the father, as the child did not display any antagonism towards his mother unlike other acrimonious parties where the parent having care and control has "brainwashed" the child against the other parent." In relation to the allegations that the son was being overburdened with many classes to attend, the District Judge referred to the 'objective evidence' and noted, quite helpfully, that the son's educational progress and results, and the teacher's testimonial, attested to the fact that the son's welfare had been enhanced when in the sole care and control of the respondent from 18 March 2000 during the period of over 2 years. The District Judge had made her findings after a full consideration of all relevant factors. That she came to the same conclusions as those of the tribunals at the interim stage did not in and by itself mean that she was too much influenced by the previous interim orders. It is not right to criticise her for being 'too influenced' by the interim orders. She did considered all relevant factors (including matters subsequent to the interim orders) and made the decisions she did.

11 I refer to the appellant's allegation of "blatant biasness" on the part of the District Judge. This allegation was made in the light of the District Judge giving 'credit to the father' for having brought up the son without 'brainwashing' him against the mother. Having regard to the careful observations of the son by the District Judge during the interview, and the thoughtful conclusions she made, I must reject the allegation as baseless.

12 Next, the appellant submitted that the District Judge failed to give effect to the practice of the courts that all things being equal they would lean in favour of the mother being given custody of young infants of tender years: *Soon Peck Wan v Won Che Chye* [1998] 1 SLR 234 CA. The District Judge pointedly stated that "all things are not equal in this case and the father is the preferred

custodian”. Further, the tender years doctrine had no application in this case where the son was soon attaining 7 years of age.

13 For these reasons, I dismissed the appeal with costs.

Appeal is dismissed with costs