IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 24

Civil Appeal No 104 of 2018 and Summons No 107 of 2018

Between

UDG

… *Appellant*

And

UDF

… *Respondent*

In the matter of HCF/Divorce (Transferred) No 63 of 2010

Between

UDF

… *Plaintiff*

And

UDG

… *Defendant*

EX TEMPORE JUDGMENT

[Family Law] — [Custody] — [Access]

UDG
v
UDF and another matter

[2019] SGCA 24

Court of Appeal — Civil Appeal No 104 of 2018 and Summons No 107 of 2018
Andrew Phang Boon Leong JA, Tay Yong Kwang JA and Belinda Ang Saw Ean J
8 April 2019

8 April 2019

Andrew Phang Boon Leong JA (delivering the judgment of the court *ex tempore*):

1 This appeal against the decision of the High Court judge ("the Judge") in the court below centres on three main grounds, *viz*, overnight and overseas access to the only child of the marriage between the Appellant (who is the father) and the Respondent (who is the mother); the monthly maintenance ordered in the court below for the child (coupled with an order to pay backdated maintenance); and the issue of costs (the Appellant seeking an order of costs on an indemnity basis together with disbursements for some aspects of the divorce ancillary matters). The Appellant has also filed Summons No 107 of 2018 for leave to adduce further evidence for the appeal.

2 The Respondent informed this Court in her three e-mails dated 5 April 2019 (sent just prior to this hearing) that she would not be able to attend the

hearing of the appeal in person and asked that this Court take into account what she presented in her e-mails in her absence (together with a letter responding in detail to the Appellant's case as well as his recent application to this Court to adduce further evidence). In coming to our decision, we have carefully considered the Appellant's written and oral submissions and the Respondent's e-mails as well as letter to the court.

3 We allow the Appellant's application to adduce further evidence, although in coming to our decision, we have not (as we shall elaborate upon in a moment) found the additional evidence to be of much assistance.

4 We will deal with the second and third issues first.

5 In so far as both these issues are concerned, we agree with the reasons as well as decisions arrived at by the Judge. In our view, the Judge had not erred in law or exercised her discretion wrongly. She also had not taken into account irrelevant considerations or failed to take into account relevant considerations.

6 However, the first issue poses greater difficulties. The Appellant appeals against the Judge's decision in relation to overnight and overseas access (*ie*, any access outside of Illinois, USA) to the child. In this case, the child and the Respondent are living in Illinois (the Respondent was granted leave in 2011–2012 to relocate with the child from Singapore), and the Appellant continues residing in Singapore. The Judge ordered that the Appellant's overnight and overseas access to the child are both subject to agreement between both parties, after both parties have consulted with the child, whether individually or together. In relation to overseas access with the Appellant, the child is at liberty to consult with her child therapist, and the Appellant is to pay for the costs of such consultation, if any. The Respondent may also accompany the child on her

visit(s) to Singapore, if the Respondent, after consultation with the child, considers that this is in her best interests, and the parties are to bear the Respondent's reasonable travel, accommodation and living expenses on an equal basis.

7 In the Appellant's appeal, he seeks generally for overnight and overseas access to be subject only to the child's agreement, and specifically for a specified duration for such access.

8 It is axiomatic that the lodestar principle is that this Court must have regard to the welfare and the best interests of the child (here, the child of the present marriage), and much will depend upon the precise facts and circumstances of the case. And one important aspect relating to the best interests of the child in this case must surely be that she be permitted the widest possible latitude to bond with *both* of her parents. On a related note, there is nothing in the evidence on record that demonstrates that it would now be detrimental for the child to spend more time with the Appellant and/or that, on the whole, the child herself does not wish to spend more time with the Appellant. It is true that the Judge did proffer a negative view of the Appellant as a father and this was apparently based, amongst other things, on her interview and e-mail communications with the child. Having perused the interview notes as well as e-mail communications, we are of the view that whilst the Appellant could be more flexible in his relationship with the child, his conduct is not unusual and (more importantly) his current relationship with his daughter may well be the product of a vicious cycle in which he has been deprived of the opportunity to bond with her; put simply, the "water" that gives life and refreshment to the bond between father and daughter has in this case simply been depleted, with the inevitable result that the relationship will die upon the vine if that vicious cycle is not, instead, turned into a virtuous one. In any event, as we shall

elaborate upon in a moment, there is no reason in principle why the child should not be afforded the opportunity to decide when and under what conditions she would like to meet with the Appellant – and this is a point to which our attention now turns.

9 Another closely related point is that, even when she was younger (specifically, when she was 14 years old), the Judge herself noted (in an earlier judgment (in *UDF v UDG* [2017] SGHCF 17 at [29])) that the child was capable of expressing her wishes and of deciding for herself (in that particular instance, in the context of her education and whether or not she wished to come to Singapore for her 2017 summer vacation). Indeed, she is now 16 years old and there is every reason to be optimistic that she is even more mature with the further passage of time.

10 At this juncture, we should state that the Appellant has filed document after document as further evidence for the appeal. Whilst not dismissing the value/weight of these documents or reports out of hand, we note that they emanate from a source which cannot be assumed to be the model of objectivity. This is understandable but we also have to adopt a practical as well as fair approach in the context of such a situation – especially since the Respondent has not filed anything in response (save for the three e-mails as well as letter which she sent just prior to this hearing).

11 Nevertheless, returning to the lodestar principle referred to above in the context of first principles as well as logic and common sense (always reliable guides especially in family cases where emotions can run high), we are of the view that there is a key element of the Judge's access orders that constitutes, in our view, an unnecessary as well as critical obstacle to the nurturing of the bond between the Appellant and his daughter – the fact that the Respondent has also

to agree in order for the various orders to be implemented. Given the acrimony between the parties (the divorce proceedings commenced nine years ago in 2010), such a condition would (as the Appellant has argued) make it virtually impossible for him to cultivate a meaningful relationship with the child (or, indeed, have meaningful physical time with her to begin with). This situation is only exacerbated by the fact that both the child and the Respondent are living overseas and apart from the Appellant (who is in Singapore). Taking into account the fact that the child is 16 years old and is able to make her own decisions, we would allow the appeal in relation to access and permit both overnight as well as overseas access *subject to the child's agreement on timing and conditions, if any*. We also order that it is not necessary for the child to consult with the Respondent as to whether the Respondent should accompany her on her visit(s) to Singapore. In relation to the overnight and overseas access with the Appellant, the child is at liberty to consult with her child therapist, and the Appellant shall pay for the costs of such consultation, if any. We will not, however, make any orders for the Appellant's overnight and overseas access to the child to be for a specified duration.

12 We affirm the remaining orders of the Judge in relation to the care arrangements for the child. In particular, we remind the Appellant that he has (pursuant to para 2.3.1 of the Judge's order) to give eight days' notice to the Respondent and the child when he seeks reasonable non-overnight and non-overseas access to the child on weekdays, weekends and school holidays, subject to her school and extracurricular schedule.

13 In the circumstances of the case, we make no order as to the costs of the appeal. The costs orders made in the court below shall stand. There will be the usual consequential orders.

Andrew Phang Boon Leong	Tay Yong Kwang	Belinda Ang Saw Ean
Judge of Appeal	Judge of Appeal	Judge

Kronenburg Edmund Jerome and Thng Yu Ting, Angelia (Braddell Brothers LLP) for the appellant;
The respondent absent and unrepresented.