

AZB v AYZ
[2012] SGHC 108

Case Number : Divorce No 63 of 2010 (Registrar's Appeal Subordinate Courts Nos 231 to 233 of 2011)
Decision Date : 21 May 2012
Tribunal/Court : High Court
Coram : Andrew Ang J
Counsel Name(s) : Edmund Kronenburg and Lye Huixian (Braddell Brothers LLP) for the defendant/appellant; Randolph Khoo and Johnson Loo (Drew & Napier LLC) for the plaintiff/respondent.
Parties : AZB — AYZ

Family Law – Relocation

21 May 2012

Andrew Ang J:

Introduction

1 Compared to families in the days of old, the modern family is more likely to be the product of a cross-cultural marriage, domiciled in more than one country and, especially in the more developed countries, to have a single offspring. The issue of relocation with the child is thus likely to be frequently raised before the family court as part of the ancillary matters to be resolved following divorce.

The background

2 The parties were married in New York, the United States of America, on 12 November 1999. The appellant, [AZB] (“the husband”), is 52 years of age and a wealthy Malaysian businessman from a privileged background: he is the son of an influential tycoon who ran one of Malaysia’s biggest state-owned companies. The respondent, [AYZ] (“the wife”), is a 49-year-old American currently residing in Singapore. She is also a homemaker and the primary caregiver to the couple’s only child, a daughter, [E], who is nine years old and a Primary 3 student in a prominent local primary school.

3 The parties’ relationship got off to a promising start. He was a globe-trotting businessman with investments all over the world, including Europe and the United States (“the US”), and had gone to college in the US before completing an intensive executive programme at a renowned business school; she was an institutional equities broker working in New York, equally well-travelled and with a keen interest in Asian culture and languages. They met at a wedding of a mutual friend and were married soon after.

4 The family has been living in Singapore since January 2005, having lived in Malaysia and San Francisco before that. While the family was based in Singapore, the husband travelled often to Malaysia on business. As befitting the husband’s wealthy background, the family home was a property in Sentosa Cove. Yet, behind the veneer of what many might consider a comfortable life was a troubled and turbulent marriage marked by verbal abuse and bullying on the husband’s part which,

coupled with the increasing sense of alienation and isolation felt by the wife, eventually led to the breakdown of the marriage.

The proceedings

5 The wife filed for a writ of divorce on 8 January 2010. On 11 March 2010, the parties agreed to the following interim orders pertaining to [E]:

- (a) The parties shall have interim joint custody of [E].
- (b) The wife shall have interim sole care and control of [E].
- (c) The husband shall have interim supervised access to [E].

6 On 8 March 2011, a personal protection order ("PPO") was granted by consent against the husband in favour of the wife. The PPO was admitted by the husband to be on the basis of use of harsh language against the wife during the marriage. On 23 August 2011, an interim judgment for divorce was granted on the basis of the husband's unreasonable behaviour, after the husband admitted to:

- (a) unreasonable use of verbally abusive language;
- (b) using expletives, vulgarities and rude comments in arguments at Petaling Jaya, Malaysia, on 24 October 2009; and
- (c) using coarse, harsh and hurtful language throughout the marriage, especially after the US divorce proceedings in 2004 which were instituted by the wife and subsequently withdrawn.

7 On 12 December 2011, District Judge Amy Tung ("the District Judge") made an order granting the wife continued interim sole care and control of [E] and gave the wife permission to permanently relocate out of Singapore with [E], to return home to Oak Brook, Illinois, in the US ("the 12 December order").

8 The 12 December order was the subject of the appeal before me. In the appeal, parties first proceeded with arguments relating to relocation (Registrar's Appeal No 231 of 2011).

The law on relocation

The parties' submissions

9 The husband argued that the Court of Appeal in *Re C (an infant)* [2003] 1 SLR(R) 502 ("*Re C*") did not establish a mechanistic rule that the court would allow a primary caregiver's application to relocate with the child unless one of two circumstances was shown:

- (a) That it was unreasonable to seek relocation; or
- (b) That the child's best interests were incompatible with the desire of the applicant parent to live abroad.

10 In particular, the husband's contention was that the authorities (for example, *Payne v Payne* [2001] 2 WLR 1826 ("*Payne*")) indicate that the wishes of the applicant-parent, while important, were but one factor in the balancing exercise and not decisive. He argued that the best interests of the

child are not always aligned with the wishes of the primary caregiver and factors such as the wishes expressed by the child; whether the reduced level of contact afforded to the non-applicant parent would be compatible with the child's best interests, the potential negative impact of relocation in terms of the loss of stability, *etc*, ought to be given weight as well.

11 The wife asserted that while the welfare of the child is the paramount consideration, the authorities stress the importance of recognising and supporting the function of the primary caregiver. In the rest of her arguments, the wife mostly aligned herself with the District Judge's decision.

Applicable law

12 In my view, despite the parties' apparent disagreement about the position at law, the authorities are *ad idem* on the issue. The Court of Appeal in *Re C* sets out the general approach succinctly at [22]:

... It is the reasonableness of the party having custody to want to take the child out of jurisdiction which will be determinative, and always keeping in mind that the paramount consideration is the welfare of the child. If the motive of the party seeking to take the child out of jurisdiction was to end contact between the child and the other parent, then that would be a very strong factor to refuse the application. Therefore, if it is shown that the move abroad by the person or parent having custody is not unreasonable or done in bad faith, then the court should only disallow the child to be taken out of jurisdiction if it is shown that the interest of the child is incompatible with the desire of such person or parent living abroad. As quoted by Ormrod LJ in *Chamberlain v de la Mare* (1983) 4 FLR 434 from his decision in *Moodey v Field* (unreported judgment dated 13 February 1981):

The question therefore in each case is, is the proposed move a reasonable one from the point of view of the adults involved? If the answer is yes, then leave should only be refused if it is clearly shown beyond any doubt that the interests of the children and the interests of the custodial parent are incompatible. One might postulate a situation where a boy or girl is well settled in a boarding school, or something of that kind, and it could be said to be very disadvantageous to upset the situation and move the child into a very different educational system. I merely take that as an example. Short of something like that, the court in principle should not interfere with the reasonable decision of the custodial parent.

13 In coming to its decision, the English Court of Appeal in *Chamberlain v de la Mare* (1983) 4 FLR 434 ("*Chamberlain*") attached considerable weight to the authority of two prior English decisions: *Poel v Poel* [1970] 1 WLR 1469 ("*Poel*") and *Nash v Nash* [1973] 2 All ER 704 ("*Nash*"). *Poel* involved the mother of a two-year-old boy, who was proposing to relocate with the boy to New Zealand where her new husband had good job prospects. In allowing the mother's application, Winn LJ said (at 1473):

... All this is, of course, without the slightest reflection upon the natural father: I am very firmly of opinion that the child's happiness is directly dependent not only upon the health and happiness of his own mother but upon her freedom from the very likely repercussions, of an adverse character, which would result affecting her relations with her new husband and her ability to look after her family peacefully and in a psychological frame of ease, from the refusal of the permission to take this boy to New Zealand which I think quite clearly his welfare dictates. ...

Likewise, Sachs LJ, in a passage which has been widely quoted and applied in the subsequent English decisions observed (also at 1473):

When a marriage breaks up, a situation normally arises when the child of that marriage, instead of being in the joint custody of both parents, must of necessity become one who is in the custody of a single parent. Once that position has arisen and the custody is working well, this court should not lightly interfere with such reasonable way of life as is selected by that parent to whom custody has been rightly given. Any such interference may, as my Lord has pointed out, produce considerable strains which would not only be unfair to the parent whose way of life is interfered with but also to any new marriage of that parent. In that way it might well in due course reflect on the welfare of the child. The way in which the parent who properly has custody of a child may choose in a reasonable manner to order his or her way of life is one of those things which the parent who has not been given custody may well have to bear, even though one has every sympathy with the latter on some of the results.

14 I should perhaps also note that the above passage by Sachs LJ has led to some confusion, as it had in the present case. In particular, it is frequently the indignant retort of the parent opposing a relocation application (as the husband is doing in the present case), to emphasise that it is the welfare of the child which is the paramount and overriding consideration, not the interests of the primary caregiver. Indeed it is; I do not think that the cases suggest otherwise. What the cases do suggest, however, is that the welfare of the child is often so inextricably intertwined with the general well-being and happiness of the primary caregiver that the court is loath to interfere with important life decisions of the primary caregiver, so long as they are reasonably made and are not against the interests of the child. The decision might be difficult for the parent without care and control to accept but, while one is not without sympathy for a parent in such a situation, the outcome is one of the unfortunate consequences of divorce and ultimately made in the best interests of the child.

15 In *Chamberlain* ([13] *supra*) itself, involving a mother's application to take the two children from her former marriage to the US where her new husband had to go for business, the English Court of Appeal (per Ormrod LJ) corrected the lower court's misapprehension of the abovementioned passage of Sachs LJ, explaining (at 442):

I think the judge read that passage as bringing into the balancing exercise the interests and welfare of the parent and the new spouse as such. He seems to have thought that the court was there weighing up the interests of the children on the one hand, and the interests of the custodial parent on the other. I do not read it in that sense at all. What Sachs LJ was saying, I think, is that if the court interferes with the way of life which the custodial parent is proposing to adopt so that he or she and the new spouse are compelled to adopt a manner of life which they do not want, and reasonably do not want, the likelihood is that the frustrations and bitterness which would result from such an interference with any adult whose career is at stake would be bound to overflow on to children. It would be bound to prejudice the relationship between the step-father in this case and the children, whom he must see as a drag on him (to put it no higher). It is that factor which is so important which has to be brought into account when the balancing exercise is done.

16 While the case of *Payne* ([10] *supra*) was not cited to our Court of Appeal in *Re C* ([9] *supra*), the holding in *Payne* was consistent with the reasoning of the earlier cases. In *Payne*, the counsel for the father had argued that the comparative importance of contact between the child and the absent parent had greatly increased since the earlier cases and, as such, had sought to convince the court to review its position. Thorpe LJ declined to do so and his reasons were as follows (at [29]–[32]):

29 ... Throughout my professional life in this specialist field, contact between child and absent parent has always been seen as an important ingredient in any welfare appraisal. The language may have shifted but the proposition seems to have remained constant. ... Furthermore

practicalities are all against this submission. International travel is comparatively cheaper and more competitive than ever before. Equally communication is cheaper and the options more varied.

30 ... In a broad sense the health and wellbeing of a child depends upon emotional and psychological stability and security. Both security and stability come from the child's emotional and psychological dependency upon the primary carer. ...

31 Logically and as a matter of experience the child cannot draw emotional and psychological security and stability from the dependency unless the primary carer herself is emotionally and psychologically stable and secure. The parent cannot give what she herself lacks. ...

32 Thus in most relocation cases the most crucial assessment and finding for the judge is likely to be the effect of the refusal of the application on the mother's future psychological and emotional stability.

Similarly, Dame Elizabeth Butler-Sloss P said at [83] of the same case:

... Reasonable arrangements made by the mother or stepfather to relocate should not in principle be frustrated, since it would be likely to have adverse effect upon the new family. It might reflect upon the stability of the new relationship. The stress upon the second family would inevitably have a serious adverse effect upon the children whose welfare is paramount. Even if there is not a new relationship, the effect upon the parent with the residence order of the frustration of plans for the future might have an equally bad effect upon the children. If the arrangements are sensible and the proposals are genuinely important to the applicant parent and the effect of refusal of the application would be seriously adverse to the new family, e.g. mother and child, or the mother, stepfather and child, then this would be, as Griffiths LJ said, a factor that had to be given great weight when weighing up the various factors in the balancing exercise.

17 To say that great weight would typically be given to the reasonable wishes of the primary caregiver to relocate does not mean that it is an insurmountable factor in favour of allowing the application. Indeed, in the appropriate case, the court might deem it necessary to deny an application to relocate as ultimately in reaching its determination the court has, as its priority, the welfare of the child. In this connection, the following observations of Moore-Bick LJ in *MK v CK* [2011] 3 FCR 111 ("*MK*") at [86] are apt:

I accept, of course, that the decision in *Payne v Payne* is binding on this court, as it is on all courts apart from the Supreme Court, but it is binding in the true sense only for its ratio decidendi. Nonetheless, I would also accept that where this court gives guidance on the proper approach to take in resolving any particular kind of dispute, judges at all levels must pay heed to that guidance and depart from it only after careful deliberation and when it is clear that the particular circumstances of the case require them to do so in order to give effect to fundamental principles. I am conscious that any views I express on this subject will be seen as coming from one who has little familiarity with family law and practice. Nonetheless, having considered *Payne v Payne* itself and the authorities in which it has been discussed, I cannot help thinking that the controversy which now surrounds it is the result of a failure to distinguish clearly between legal principle and guidance. In my view Wilson L.J. was, with respect, quite right to warn against endorsing a parody of the decision. As I read it, the only principle of law enunciated in *Payne v Payne* is that the welfare of the child is paramount; all the rest is guidance. Such difficulty as has arisen is the result of treating that guidance as if it contained principles of law from which no departure is permitted. Guidance of the kind provided in *Payne v Payne* is, of course, very

valuable both in ensuring that judges identify what are likely to be the most important factors to be taken into account and the weight that should generally be attached to them. It also plays a valuable role in promoting consistency in decision-making. However, the circumstances in which these difficult decisions have to be made vary infinitely and the judge in each case must be free to weigh up the individual factors and make whatever decision he or she considers to be in the best interests of the child. As Hedley J said in *Re Y*, the welfare of the child overbears all other considerations, however powerful and reasonable they may be. I do not think that the court in *Payne v Payne* intended to suggest otherwise.

18 In the case of *MK* itself, the court declined to allow the mother's application for relocation to Canada with the two children as it could not be said that she was the primary caregiver: under the shared residence order, the two children spent five nights with their father every fortnight, and nine nights with their mother. As the decisions in the line of cases dating back to *Poel* ([13] *supra*) all placed much weight and reliance on the primary carer status of the applicant, the court disallowed the application.

19 Similarly, in *HKMB v LML* [2007] HKCU 291, a decision of the Hong Kong District Court which was cited by the husband, the court disallowed the father's (the primary caregiver) application for relocation with his son to Malaysia after it determined, *inter alia*, that the father's relocation was likely to be motivated by vengeance and not genuine (see [89]).

20 Having considered the above authorities, it seems to me that what is beyond doubt in all the cases, is that the welfare of the child is the paramount consideration. However, since the long-term interests of the child are closely aligned with the emotional and psychological well-being of the primary caregiver, the court will place considerable weight on an application by the primary caregiver for relocation with the child, provided that such application is based on reasonable grounds and not made in bad faith. The court will also be sensitive to other factors in this balancing exercise, although in most cases where the desire of the primary caregiver to relocate is reasonable and genuine, the court is likely to grant the application.

21 With the guidance gleaned from the above cases in mind, I turn now to consider the facts of the present case.

Was the wife's decision to relocate to the US reasonable?

22 There were a myriad of factors at play here. Having considered the totality of the circumstances, I am of the view that the wife's decision to relocate back to the US was perfectly understandable and eminently reasonable.

The wife feels alienated and isolated in Singapore

23 It is evident that despite her best efforts, the wife has never quite been able to feel comfortable and at home in Singapore. For one, despite having lived in Singapore since January 2006, the wife did not become a permanent resident ("PR") or even hold a dependent's pass. While the wife could easily have obtained PR status if her application was supported by the husband, he adamantly refused, ostensibly because she would not be able to drive a cheaper Malaysian registered car in Singapore if she became a PR. As a result, the wife was previously on a social visit pass and subsequently an employment pass which was valid for only two years and has since expired. The wife's uncertain residential status in Singapore contributed to her feeling insecure and vulnerable. Perhaps more insidiously, it compelled her to remain heavily reliant on the husband despite the breakdown in their relationship, depriving her of the much needed autonomy and confidence required

to move on with her life.

24 The husband is not only keenly aware of the wife's vulnerability and insecurities, but has sought to exploit it to his advantage. One area where this is starkly apparent is in relation to [E's] education: while the wife was very keen to get [E] in to a good school in Singapore, she required the husband's help. A March 2009 conversation between the parties in the car, recorded by the wife, is revealing:

The husband: That's why you don't [regard] me as your enemy [AYZ], I am a deadly enemy.

The wife: What enemy?

The husband: Deadly enemy. I am a deadly enemy and I never forget as you know. I never forget until the score is over. You want to pay. Your school education is dead already. In 3 months you are finished. You're wrong. You're wrong to try and fight me now. All your dream school you can forget about it. Even international school also cannot already. Without me, you cannot get it. ...

...

The husband: ... Why should I put up with you? What do you bring to the table that's so great? Nothing. What do you bring to the table actually? Everything is just me. I/C, passport, registration of school. All is me. You got nothing. What do you bring to the table? Sooner or later she cannot go to school in Singapore. You play like this with me? Sooner or later she cannot go to school in Singapore. She by default cannot go to school in Singapore. ... You think you are smarter than me ah. Ok. I cancel everything. I cancel credit card. I cancel every [expletive] thing that you have. I cancel the Starhub. I cancel everything. You want to do yourself. You try and get everything yourself. You don't use my name. You don't use any of my [expletive] things. See where you are.

[The wife's 18th affidavit at pp 96 and 107.]

25 It is easy to underestimate the sense of diffidence and vulnerability a person feels in a foreign country, no matter how well-travelled that person might appear to be. In the wife's case, the problem is exacerbated by the fact that she was married to an extremely rich and allegedly influential man. The following exchange, also from the March 2009 car conversation, might appear ludicrous at first blush, but when considered in the context of the predicament the wife was in, evinces the sense of helplessness she felt in Singapore:

The wife: I don't know if we're allowed to stay in Singapore or not. I don't know.

The husband: I guarantee I will do my worse [sic] to not allow you to stay in Singapore. I promise you, I will do my worse [sic].

The wife: How do you prevent me from not staying in Singapore. On the undesirable list?

The husband: Unwanted la.

The wife: Unwanted for what? How could I be that? Like what? What could I have done that's wrong?

The husband: I don't know. Anything. Drugs?

The wife: I don't deal with drugs.

The husband: I testify that you've been doing all these things.

The wife: You're going to claim that I've been dealing with drugs?!!

The husband: It can be anything. I can claim anything. I can get other people to claim all sorts of things.

The wife: Who's going to claim that I've tried all these things?

The husband: Don't believe me. Ask whether I've power to do it. Whether I have the contacts to do it.

The wife: You mean you have the contacts in the legal system to do it?

The husband: Don't need legal system.

[The wife's 18th affidavit at p 95.]

26 It also certainly did not help that the wife has no family members or close friends in Singapore to act as a support group for her. In her own words, "I have no family members in Singapore and am unable to confide in many people or have many friends. It is an extremely isolated existence."

27 At this juncture, I note that in an attempt to raise some doubt about the veracity of the wife's claim that she felt alone and isolated in Singapore, the husband had pointed out that the wife had, on 26 April 2011, made the following declaration to the New York courts: "My roots are now firmly embedded in Singapore, where [AZB] and I have lived for approximately the past six (6) years." It may be that the wife preferred to have the matrimonial proceedings in Singapore rather than in New York for fear that the pre-nuptial agreement between the parties would likely be upheld in a New York court as a matter of course. Nevertheless, whatever might have been the reason for the declaration, I remain of the view that, on balance, the wife's decision to relocate is a genuine and reasonable one.

28 Having just emerged from, metaphorically speaking, the ruins of a painful divorce, and having had her self-esteem undermined by years of abuse by the husband, it is only understandable that the wife wishes to be in an environment where she has the best chance of regaining psychological and emotional stability. The following observations of Thorpe LJ in the case of *Payne* ([\[10\]](#) *supra*) are apposite:

... The disintegration of a family unit is invariably emotionally and psychologically turbulent. The mother who emerges with the responsibility of making the home for the children may recover her sense of wellbeing simply by coping over a passage of time. But often the mother may be in need of external support, whether financial, emotional or social. ... Alternatively the disintegration of the family unit may leave the mother in a society to which she was carried by the impetus of family life before its failure. Commonly in that event she may feel isolated and driven to seek the support she lacks by returning to her homeland, her family and her friends. ... In the case of the isolated mother, to deny her the support of her family and a return to her roots may have an even greater psychological detriment and she may have no one who might share her distress or

alleviate her depression. ...

Being back in the US will be greatly beneficial for the wife

29 The wife's decision to relocate back to Oak Brook, Illinois, in the US, will enable her to get the support she needs to move on from the messy breakdown of her marriage. In particular, the wife will be comforted by the nurturing company of her close, supportive and loving family. She plans to live with her parents whom she is close to; her three siblings and their children also appear to be frequent visitors to the family home.

30 In addition, the wife, who is now around 50 years of age, will find it easier to find a job and retain her independence back home in Oak Brook, Illinois, than in Singapore. Despite her work experience in her younger days, given the years she spent as a homemaker, it will be exceedingly difficult for her to re-enter the work place at a level commensurate with her expectations and needs. Back home in the US, however, as she pointed out, "while the work market in the US is not at its optimum level, old friends and contacts I have there can help me to secure a job, if need be".

31 There were also some suggestions by the husband that the wife's decision to relocate was engineered so as to extract more maintenance out of him. While the wife's financial circumstances were certainly one of the myriad of factors influencing her decision to relocate, to paint the wife's application to relocate as being premised "primarily on financial grounds" would be overly simplistic. As illustrated above, her plan to move back to the US appears to be driven by much more than just her material well-being, and any attempt to paint a different picture would be unfair. The following words of the wife, in her affidavit, are sobering:

200. Meanwhile, I am a nearly 50 year old Caucasian woman living as a single mother in Asia without family and relying on a transient support network. Now it appears that I will have to go back to work full-time to support myself and supplement the meager maintenance that the Defendant is providing for his only child.

201. My prospects as a woman, at this age and being Caucasian, of finding either a casual boyfriend or life long partner are extremely limited at best in Singapore. I am devastated that due to the Defendant's behaviour, I never had more children and will now have a broken family. All this in addition to my having no family here, leaves me very isolated and alone and that is not good for me, neither is it good for [E].

[The wife's 13th affidavit at p 63.]

32 In the light of the foregoing, I am of the view that the wife's decision to relocate back to the US is reasonable, genuine and not in bad faith.

Is it in [E's] best interest to relocate to the US?

33 While the wife's decision to relocate is reasonable, I am of course mindful that the litmus test is whether the best interests of [E] would be served by a move back to the US.

The wife's relationship with [E]

34 I turn first to consider the relationship between the wife and [E]. After all, the real reason for the courts placing such great weight on a reasonable application by a primary caregiver to relocate with the child is grounded in the premise that the well-being of the child and that of the primary

caregiver are inextricably tied together.

35 It is evident that the wife plays a primary and central role in [E's] life; she is the "constant in the child's life". This is hardly surprising since she is a homemaker who has been [E's] primary caregiver since she was born. In contrast, the husband had always been busy with his various business concerns and travelled abroad often for both business and pleasure. For instance, while the husband made suggestions about good schools to place [E] in, it was the wife who personally visited and researched various Singapore schools before placing [E] in her current primary school. Furthermore, it is also the wife who monitors and works closely with [E's] tutors to ensure that she is keeping up with her school work. In the District Judge's words (at [7] of her grounds of decision):

The reality of the situation is that for the whole of eight years, it was the plaintiff who has been looking after [E], tending to her every need, giving her support, helping with her school work and nurturing her on a daily basis. From the plaintiff's various affidavits, it was obvious to me that [E's] well-being is always at the forefront of the plaintiff's mind. The meticulous care that she has put into looking after this child covers all aspects of the child's well-being, including her physical, mental, emotional and psychological well-being. ...

36 I am in full agreement with the view expressed by the District Judge. Accordingly, in reviewing the relocation application, I placed significant weight on the fact that [E's] best interests and well-being will be best served if the wife's own emotional and psychological needs are taken care of. This was an important factor weighing in favour of the District Judge granting the application.

Other factors

37 Next, I considered the other factors raised by the parties, principally to examine if there was anything which indicated that it would not, in fact, be in [E's] best interests to relocate to the US. While I am entitled to place significant weight on the wife's application, I am mindful of the need to balance the different considerations to ensure that relocation is the course that is most consistent with promoting the welfare and interests of [E].

Loss of contact with the husband

38 In all cases involving relocation applications, the inevitable and unfortunate result, should the application be granted, would be that the child would be deprived of contact time with the other parent. While this, to some extent, has been ameliorated by recent advances in phone and internet technology and the greater ease of travel, it would be insensitive to ignore the impact this might have on the child. Nevertheless, as mentioned above, unless it can be shown that to deprive the child of such contact would be so detrimental as to negate the benefits to the child from having the primary caregiver's emotional and psychological needs taken care of, the relocation application would still be granted.

39 In that connection, I am of the view that there is nothing in the present case indicating that depriving [E] of contact with her father would be of such detriment to her as to justify a denial of the application.

Relationship between [E] and her father

40 While I have no doubt that there is some degree of mutual love and affection between father and daughter, I could not help but also observe that the husband has not been a good influence on [E].

41 First, there were the incidents of [E] chancing upon pornographic material on the husband's phone. Even accepting that the incidents were the result of pranks played by the husband's friends, I find the husband's nonchalance about the entire incident troubling. I should also point out that these were not the only incidents which revealed the husband's proclivity for pornography; equally troubling was the fact that the husband's pornographic material was found lying around in the family's house at Petaling Jaya and, in particular, a video with a sexually explicit cover was found right next to [E's] Winnie the Pooh video. While the husband may claim to be entitled to live his private life any way he pleases, regard must be had to the influence he could have on [E], a young girl on the cusp of adolescence.

42 Next, the husband also used foul language in [E's] presence, without regard to [E's] feelings. The following exchange, recorded in October 2009, is but one example:

[E]: I want to watch tv.

The husband: You didn't hug me last night. I asked you to hug me last night. You don't want. You think I'm going to be nice to you today? There's a price for everything in life! Pay the price! I will cancel. I want to cancel this place. I don't think I should sacrifice anymore. Because I think that I'm the one sacrificing for all, you're just benefitting. And you're telling me that I cannot sleep with her. What the [expletive]. I want to mesh you all up and see where it all crumbles to.

The wife: [AZB], I see your perspective on sleeping with her. I thought it would be helpful for her sleeping on her own, becoming more ...

The husband: Helpful for her? Or helpful for who? What is the consideration for [AZB] since I pay for all the freaking bills and you are a leech and you just suck. What is the benefit for [AZB]?

The wife: I see your point.

The husband: You see my point? You see the [expletive] pennies, you see my point. You see the [expletive] dollars. You should have talked about it earlier. I should blow up the [expletive] thing. ...

The wife: (Mumbles) What?

[E]: (Mumbles)

The husband: I struggle up here up myself. So what's the point ...

The wife: The holiday, we'll be here right?

The husband: [Expletive] the holiday. I'll be here. You compensate me with your holiday. Your compensation is with your holidays! Who are you talking to [AZY]? Come on. [E], you want me to throw the tv out of the house? I move the tv out of the house! Turn it off now!

[E]: But ...

The husband: How dare you turn it on when I say you cannot turn it on! All of you taking advantage of me. Your mother! Bad influence!

[Respondent's skeletal submissions at pp 153 and 154.]

Suffice it to say that the extracts above were but a snapshot of the husband's reprehensible behaviour in the presence of his daughter.

About-turn in the husband's attitude towards [E]

43 I also note that there appeared to have been an about-turn in the husband's attitude towards [E] once legal proceedings were properly afoot. Perhaps living up to his self-proclaimed moniker, "the King of Con", the husband suddenly transformed from a father who referred to [E] as "a [expletive] angmoh girl", to one who would shower [E] with lavish gifts and unstinting attention. One example of the gifts would be the purchase of a puppy for [E]. Another would be the purchase of an Apple iPhone, which allowed the husband to communicate daily with [E] via SMSs (short message service) and show his "concern" for her and also to undermine [E's] relationship with the wife. That [E] has been spoilt by the husband and has now come to expect gifts all the time is revealed by the series of SMSs exchanged between father and daughter:

2 April 2010

The husband: Have got your laser light you wanted and your water stickers. See you soon.

15 April 2010

[E]: Are you going to [sic] my dog?

The husband: Yes will bring pudgee. We can get the butterfly tag you wanted. Love you.

11 February 2011

[E]: On Saturday were [sic] do you want to go or maybe we could go shopping to get shoes and shorts, dresses and all kinds of stuff what do you think? I am sick ...

[E]: Is that ok.

[E]: Any one home.

The husband: Yes poopy. We can do that. Are you ok?

44 It is unfortunate that under the influence of the husband [E] has become disrespectful and demanding. For instance, on 11 September 2010, while the wife was singing a lullaby to [E], she aggressively shouted "stupid" at the wife. [E] had also previously shouted at the wife, accusing the wife of causing the husband to sell his Ferrari car to pay his lawyers. While these incidents of bad behaviour by [E] were sporadic in nature, the husband's pattern of bad behaviour in [E's] presence is worrying. It also weakens his case against the wife.

Opinion of the psychologist

45 In her reports dated 26 and 27 February 2012, Ms Koo Shen Lin ("Ms Koo"), a registered psychologist who was previously appointed to assess and treat [E], opined, *inter alia*, that:

- (a) she believed that [E] would have an adverse reaction to the relocation;
- (b) she believed that the husband was now able to exercise precaution and discretion when

conversing with [E], after she took on the role as his psychologist;

(c) contrary to the District Judge's findings, that it is neither safe nor appropriate to conclude that "improper influence" exerted by the husband is the sole cause that has made it difficult for the wife to parent [E] properly;

(d) contrary to the District Judge's findings, it is difficult to conclude that the increasing defiance and rude behaviour by [E] were largely or solely the product of the father's influence;

(e) none of her findings should be taken to mean that the husband is a bad influence on [E]; and

(f) if relocation is not a necessity, then it is in [E's] best interest to not relocate.

46 The recommendations in these two reports by Ms Koo were inconsistent with some of her earlier opinions. In particular, the recommendations contradicted her earlier position in a 10 October 2011 report where she had declared that "she [was] not responsible and [was] unable to answer questions relating to the wife's relocation of [E] to the United States and the impact on [E]".

47 In addition, while Ms Koo has concluded in another earlier report dated 11 September 2011 ("11 September 2011 report") that [E] had been subjected to improper parental influence from the husband, in her last report dated 20 March 2012 she claims that she has neither found nor suggested in any of her reports that the husband had asserted "parental alienation" on [E].

48 In *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983, later cited with approval by the Court of Appeal in *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606, the court stated at [76]:

What is axiomatic is that a judge is not entitled to substitute his own views for those of an uncontradicted expert's: *Saeng-Un Udom v PP* [2001] 2 SLR(R) 1. Be that as it may, a court must not on the other hand unquestioningly accept unchallenged evidence. Evidence must invariably be sifted, weighed and evaluated in the context of the factual matrix and in particular, the objective facts. An expert's opinion 'should not fly in the face of proven extrinsic facts relevant to the matter' *per* Yong Pung How CJ in *Khoo James v Gunapathy d/o Muniandy* [2002] 2 SLR(R) 414 at [65]. In reality, substantially the same rules apply to the evaluation of expert testimony as they would to other categories of witness testimony. Content credibility, evidence of partiality, coherence and a need to analyse the evidence in the context of established facts remain vital considerations; demeanour, however, more often than not recedes into the background as a yardstick.

49 The shift in Ms Koo's position also came after she assumed her role as the husband's psychologist, which places her in a position of conflict between her roles as an independent assessor of [E] and counsellor to the husband. It is also notable that Ms Koo changed her opinion only after [E] ceased consultations with her on 11 December 2011. In other words, while her earlier findings were based mostly on observations during actual consultations with [E], the later reports were based not on new observations of [E's] behaviour but *ex post facto* analysis of the material gleaned from previous sessions, the affidavits filed for the purposes of these proceedings and the conclusions of the husband's own expert witness, Dr Brian Yeo.

50 For example, in the earlier 11 September 2011 report, Ms Koo had initially stated:

6.4 The assessor noticed that [AZB] sat nearby and observed [E's] outburst without

addressing it. Finally, the assessor had to intervene and explained to [E] why parents may seem 'mean' when they say 'no' to their children's request. Upon hearing that, [E] became slightly upset and threw a few of the assessor's marker pens on the floor at [AZB's] feet. The assessor noticed that [AZB] neither said anything to help her understand why [AYZ] might have said no to [E's] request nor did he caution her that throwing the assessor's things was unacceptable. The assessor noted that he did not correct [E], explain or guide in her a more positive manner whenever she had a 'negative/bad' opinion about [AYZ].

...

7.6 The assessor can also conclude from conversations and observations of [E] with [AZB] that [E] is very affectionate towards [AZB]. It can also be seen from her 'secret' notes that she longs to spend more time with him. The assessor believes that the affection that [E] has for [AZB] is genuine and vice versa. However, [AZB] should take proper care when speaking with [E] and she should not be made aware of future court proceedings. He should also take care not to share his own (negative) opinion of [AYZ] with [E] which can cause a rift and harm the mother and child relationship. ...

But by the time of her report on 26 February 2012, she had altered her initial stance:

(1) While it may be that [AYZ] has a more difficult time parenting [E] now than in the past, it is neither appropriate nor safe to conclude that the 'improper influence' exerted by [AZB] is the sole cause that 'has made it difficult for [E's mother] to parent [E] properly'.

(2) As I had concluded in my report dated 11 September 2011, [E] has over time become progressively angrier and became more rude and disrespectful towards [AYZ] at times of disagreement because [AZB] had, in the past, 'improperly influenced' her. However, I agree with Dr. Brian Yeo's comment/observation that the 'improper influence' may or may not have made it significantly more difficult overall for [AYZ] to parent [E] properly. ...

[emphasis in original]

51 As highlighted above, since September 2011, Ms Koo had been seeing the husband fortnightly for one-to-one counselling sessions and assumed the role of his personal psychologist. In light of the various inconsistencies in Ms Koo's reports, I thus placed little weight on her subsequent reports (opining that relocation was not in [E's] best interest).

[E's] friends/schooling

52 The husband also raised some concerns that since [E] is currently well-settled in school in Singapore, with many friends, the relocation would be detrimental to her well-being. While I do not dismiss the validity of this concern, one should not under-estimate the adaptability and resilience of young children generally. Neither is the school that [E] goes to a boarding school around which the entire life of the child is centred mainly around the school. While relocation to an entirely new country is going to involve some degree of adjustment for any person, as the District Judge rightly pointed out, what is important here is the stabilising influence of the wife in [E's] life. Furthermore, it has been variously pointed out in Ms Koo's reports and apparent from the affidavits filed that [E] is a vivacious and sociable child for whom the adjustment is likely to be less difficult than most other children. The wife has also made plans to enrol [E] in a school at Oak Brook and there is little doubt that [E] would be able to make new friends and settle into life in Oak Brook without too much difficulty.

53 In relation to the quality of the schooling [E] would be exposed to, it would not be fair or meaningful to compare the educational institutions in Oak Brook and Singapore as each would have its own strengths and drawbacks. For instance, while a child might have better exposure to Mandarin due to the compulsory Mandarin classes in local schools, it is often said that the American system has a stronger focus on creative thinking. At the end of the day, it is often the child's own motivational level and parental support which would make the difference.

Whether the relocation application should be allowed while the ancillaries are still pending

54 The husband's main contention here is that since the wife's financial position could improve dramatically once the ancillaries are concluded, it would not be prudent to decide on the relocation application at the current juncture, especially since the wife could change her mind about relocating if that happens.

55 In the first place, contrary to the husband's assertion, there is nothing to indicate that the wife's motivation for relocation was based primarily on financial reasons. Indeed, as explained at [\[31\]](#) above, the opposite is true. As such, even if the wife was to be awarded a significant proportion of the matrimonial assets – which is currently, at best, a speculative assumption and, at worst, an unlikely proposition since the parties have a pre-nuptial agreement – it is unlikely to affect her decision to relocate.

56 Next, as the District Judge pointed out, given that there is a significant difference between the estimated value (by the wife) and the declared value (by the husband) of the husband's assets, the ancillaries are likely to be protracted with discovery applications and interrogatories. To delay the wife's plan to relocate would unnecessarily prolong her agony and discomfort and ultimately not be in [E's] best interest.

57 In any case, I should also point out that the wife is not obliged to proceed with her plans to relocate to the US simply because her application for relocation had been granted by the court. If the husband was indeed right that the wife might reconsider her plans to relocate should her financial position improve significantly, it is still open to him to come to a settlement with her so as to sway her decision. He is certainly not precluded from doing so by the decision of this court, if he so wishes.

58 Having considered and weighed the relevant factors, I came to the conclusion that it would ultimately be in [E's] best interests to allow her to relocate to the US with the wife. This was especially since the wife's wish to relocate was reasonable and genuine, with nothing to persuade me that it would not be in [E's] interest to be in a country where her primary caregiver would be in the best physical, mental and psychological state to look after her needs. I would further add that, given the husband's financial means, while he may not get to see [E] as much as he would like, it would also not be too difficult for him to make the necessary arrangements to travel down to the US to spend time with her.

Conclusion

59 In light of the above, I dismissed the appeal and upheld the District Judge's decision to allow the wife to relocate to the US together with [E]. I also made the following further orders:

- (a) Counsel for both parties to address the District Judge on the issue of the husband's access upon relocation.
- (b) In relation to paragraph 8 of the District Judge's order, the husband is cautioned that

breach of the order may result in penal consequences.

(c) Counsel for both parties to submit before the District Judge on the actual relocation date and other details.

60 In view of this decision, I made no order in regard to the appeal on interim custody, care and control (Registrar's Appeals Nos 232 and 233 of 2011). The costs of this appeal are to be taxed unless agreed between the parties.

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