

AD v AE
[2003] SGHC 258

Case Number : Div P 3849/2000, RAS 720041/2003, 720050/2003, SIC 651565/2003
Decision Date : 22 October 2003
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Nicholas F Cheong (Lim Soo Peng and Co) for husband/appellant in RAS 720041/2003; David Rasif with Michelle Woodworth (David Rasif and Partners) for wife/appellant in RAS 720050/2003
Parties : AD — AE

Civil Procedure – Appeals – Notice – Notice of appeal against custody order not served within the time prescribed – Application for extension of time to serve notice of appeal – Whether extension should be granted – Custody proceedings – Welfare of child paramount

1 This is an appeal by the petitioner (husband) against my orders of 18 September 2003. The dispute concerned the custody of the son of the parties. The son is 5 years old and was a progeny of the union between the petitioner and respondent. There were two other children both girls aged 7 and 8 respectively who were the daughters of the respondent by another man. The family court judge granted custody of the daughters to the respondent with no access to the petitioner. The petitioner was granted custody of the son with week-end access to the respondent.

2 The respondent (wife) wishes to appeal against the order granted custody of the son to the petitioner. The appeal was fixed for hearing before me on 18 September 2003 together with a summons-in-chambers in which the respondent applied for an extension of time to serve the notice of appeal on the petitioner.

3 The time limited for filing the Notice of Appeal was 11 June 2003. The Notice of Appeal was issued on that day. The notice was, however, not served on the petitioner until 6 August 2003 although the rules prescribed that the service must be served within seven days, namely by 18 June 2003.

4 The issue in the substantive appeal concerned the custody of a 5 year old child. In such proceedings the welfare of the child is of paramount importance. That is a statutory decree backed by the common law. In such cases, the interests of the parties themselves are secondary to the interests of the child, and for that reason, I exercised my discretion in granting leave to serve the Notice of Appeal out of time. I also ordered the parties to produce the child in court and, consequently, arguments in respect of the merits of the appeal had to be deferred accordingly. Against these orders the petitioner appeals. Counsel relied on *Stansfield Business International Pte Ltd v Vithya Sri Sumathis* [1999] 3 SLR 239 for the proposition that until an appeal has been served there is effectively no appeal. That, however, is not a matter of law in dispute. The issue was whether discretion ought to be exercised in granting an extension of time. Normally, the delay of more than a fortnight would be considered substantial; but in this case, as the substance of the appeal may affect the welfare of the child, I am of the view that an extension ought to be granted. I come to this view although I agree with Mr Cheong, counsel for the petitioner, that the lapse by the clerk of the petitioner's law firm was, in itself, a poor excuse.