

AAV v AAW
[2009] SGHC 175

Case Number : OSF 159/2006, RA 34/2009
Decision Date : 31 July 2009
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Arul Suppiah Thevar (Arul & Co) for the plaintiff/appellant; Gopalakrishnan Dinakaran (Thomas Tham Dinakaran & Co) for the defendant/respondent
Parties : AAV — AAW

Family Law – Custody – Care and control – Whether in child's best interest for father to be given care and control – Whether father's idea of discipline and instilling core values relevant factors in determining child's best interest

31 July 2009

Woo Bih Li J:

Introduction

1 This was a dispute primarily over care and control of a female child ("B") who was born in 2001. The dispute was between her biological father ("AAV") and mother ("AAW") who are not married. AAV was born in the early 1960s and is about 14 years older than AAW.

Background

2 The affidavits from AAV and AAW were rambling and fraught with disagreements even on background details.

3 After B was born, AAV, AAW and B stayed in AAV's flat in a condominium in the East Coast for about two months.

4 They then moved to a rented 3-room HDB flat in Toa Payoh because AAV's tuition centre was located there. AAV said that all three lived there (see para 12 of his affidavit of 23 November 2006). On the other hand, AAW said that she and B occupied one room while another room was used as a classroom. The living room was used as an office in the day. AAV visited once or twice a month (see para 7 of AAW's affidavit of 31 January 2008). AAW was working at AAV's tuition centre as a manager until November 2004 when she resigned.

5 In July 2002, AAV rented another flat in a condominium in Yio Chu Kang where all three stayed (according to para 13 of AAV's affidavit of 23 November 2006).

6 In October 2004, AAV bought an HDB flat in Toa Payoh which was near his tuition centre and also because AAW's mother's HDB flat was in Toa Payoh but it appeared that the family (or at least AAW and B) still stayed at the rented flat in Yio Chua Kang for the time being. According to AAV, some time prior to February 2005, AAW told him to leave this rented flat and hand over the keys to AAW as she had a boyfriend and he complied.

7 AAW left this rented flat with B on 10 February 2005. On or about 16 February 2005, AAW filed

a maintenance summons. There were several mediation sessions and the maintenance issue was resolved after more than a year.

8 According to AAV, his solicitors had mentioned during the various mediation sessions that he wanted to resolve the issue of custody as well as maintenance. On 31 March 2006, parties had agreed through counsel on certain terms of access for AAV which AAW did not stick to. AAW would dictate when he was allowed to have access to B.

9 In November 2006, AAV applied by way of Originating Summons OSF No 159 of 2006 ("the OS") under s 5 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) for sole custody, care and control of B alleging unreasonable behaviour of AAW. On 22 December 2006, a District Court Judge made an order for both AAV and AAW to have joint custody of B with care and control of B being granted to AAV and access being granted to AAW ("the 22/12/06 Order"). It was also part of the 22/12/06 Order that AAW was to hand B over to AAV.

10 AAW was not present when the 22/12/06 Order was made. According to AAW, she was handed a copy of the OS and AAV's supporting affidavit by a staff from a firm of solicitors Arul & Co at about 4.00pm on 30 November 2006 at the Family Court, about five minutes before a scheduled hearing on the maintenance issue. The date of the hearing for the OS was covered by the firm's acknowledgement slip stapled on the front page. She presumed that the documents related to the maintenance issue. She did not read them as they were voluminous. Hence, she was unaware of the hearing fixed for 22 December 2006 for custody, care and control of B. Had she been aware, she would certainly have attended to contest the OS.

11 AAW also said that the 22/12/06 Order was not served on her initially. She was told about it by AAV who claimed that he was granted sole custody of B. She then made a search on 23 January 2007 at the relevant registry and it was then that she realised that AAV had applied for custody of B (see para 3 of AAW's affidavit of 7 November 2007). AAW did not elaborate in her affidavit as to whether she had discovered from the search that, in fact, both AAV and AAW had been granted joint custody of B.

12 In fact, AAW had written a letter dated 19 January 2007 (a few days before her search) to the Family Court to apply for a rehearing of the matter. The reply dated 19 January 2007 stated that the matter had already been decided by the court and if she would like to appeal, set aside or vary the decision, she must file the appropriate application. In AAW's letter, she said she had read the OS only on 17 January 2007 and realised she had missed a hearing date which she referred to as a Pre-Trial Conference hearing date. She got to know the outcome from AAV on 18 January 2007.

13 AAW said she spoke to AAV to re-open the matter but he refused. According to AAW, she could not do anything until she had money to engage solicitors to act for her. Eventually, she engaged solicitors who filed an application on 7 November 2007 to vary the 22/12/06 Order on care and control. AAW said that the 22/12/06 Order was served on her only on 24 December 2007, about a year later. AAV said that it was served a few months earlier and that the service in December 2007 was the second service on AAW in circumstances which I need not elaborate on. Eventually, on 19 March 2009, a District Court Judge varied the 22/12/06 Order and granted care and control of the child to AAW with access on certain terms to AAV (the 19/3/09 Order).

14 Before I move on, I would make some observations. Apparently, there was no affidavit of service (of the OS and the supporting affidavit) from AAV's solicitors in respect of the service on AAW. The circumstances relating to the service which AAW had described appeared to be unchallenged. On the other hand, it was undisputed that she did receive the OS and the supporting

affidavit. If she did not read those documents, the point was that she should have.

15 Secondly, it was also not disputed that after the 22/12/06 Order was made, AAW was not served with the same initially. The explanation from AAV's counsel was that AAV had instructed him not to do so as he (AAV) would explain the 22/12/06 Order to her. I would add that it is not right to try and explain any order to the other party without also handing over a copy of the order simultaneously. In any event, it was clear that even though AAW was not served with the 26/12/06 Order initially, she knew about its existence in January 2007.

16 In such circumstances, it was immaterial for purposes of the appeal before me whether service of the 22/12/06 Order on her was made only in December 2007 as she claimed or was first made a few months before December 2007, as AAV claimed, because AAW had already filed her application to vary the 22/12/06 Order on 7 November 2007. Furthermore, as mentioned above, she was in fact aware of the existence of the 22/12/06 Order much earlier, *ie*, since January 2007.

17 I would also mention that although AAW stressed that AAV had told her that he had been granted sole custody of B, as opposed to joint custody, AAW did not elaborate clearly as to how that distinction affected her subsequent conduct. Her subsequent affidavits were rather rambling in nature and lacked focus.

18 I come now to what transpired after AAW learned about the 22/12/06 Order in January 2007. There were different versions. AAV said he was taking care of B and AAW was given access. AAV stressed that until the 19/3/09 Order, he had been taking care of B for two years. AAW said that in fact there was no change and she continued to take care of B with access to AAV. Each side contradicted the other's position with many allegations and there appeared to be more disputes than common ground. It may be that AAW had handed B over to AAV and then AAW went to stay with AAV and B and continued to care for B. I was not able to make a finding as to who was in fact taking care of B in the two years before the 19/3/09 Order.

19 In any event, it was not disputed that the District Court had directed that a welfare report be provided before the 19/3/09 Order was made. That report was submitted on 20 May 2008. It favoured the granting of care and control of B to AAW. Thereafter, the 19/3/09 Order was made and AAV appealed against the same. I heard AAV's appeal.

The High Court decision

20 AAV has a degree in civil and structural engineering from the National University of Singapore. However, he runs a tuition business, claiming (in his affidavit of 23 November 2006) to be in the business of educating children for the past 18 years. He said he was earning \$10,000 a month excluding profits.

21 As I mentioned above, AAW is 14 years younger than AAV. She has a diploma in shipbuilding and offshore engineering. She is a training program assistant with a multi-national company. Her monthly income was \$2,600 a month in or about 2008.

22 Each side made numerous allegations to portray himself or herself as the "better" parent to whom care and control should be given. I do not propose to go through all those allegations which served to distract.

23 It was clear to me that between the two, AAV was the more capable in the sense that he was running a successful business and was a person who could take charge of matters. I have already

mentioned AAW's carelessness in not reading court documents and need not say more about it. AAV also mentioned that AAW was rather emotional and perhaps there was some truth in this. However, AAW's emotional state may have been caused, contributed to or exacerbated by AAV's relationships with two other women, which I shall elaborate on later.

24 It seemed clear to me that AAV was really very busy running his business. Concerns had been expressed from various sources (which might have originated from AAW) that AAV would bring B with him to his meetings and frequently B would not have her meals at regular times and would also be tired. AAV did not dispute that he brought B with him to his meetings. He disclosed to the welfare officer that this was what his own father had done with him so that he would pick up business skills and he was hoping that B would pick up such skills and take over his business in future. AAV also claimed that, with his help, B was doing well in her studies.

25 It seemed to me that AAV's priority was more materialistic than was healthy for the young child B.

26 In addition, it transpired that AAV has other responsibilities as well. He has ongoing relationships with two other women, one a national of China and the other a Singaporean. I will refer to them as "GF(C)" and "GF(S)" respectively.

27 In his affidavits, AAV stated that he was no longer in a relationship with GF(S) but he was assuming responsibility for GF(S) and their daughter whom GF(S) had given birth to in late 2007 (see para 43 of his affidavit of 11 August 2008 and para 82 of his affidavit of 22 January 2009). However, in his interview with the welfare officer (presumably in the first half of 2008 as the report was submitted on 20 May 2008), he disclosed that both of them were his current girlfriends and that both had chosen to stay with him (relationship-wise) and he would not ditch one for the other.

28 The living arrangements were that GF(S) and their daughter do not stay with AAV. Nevertheless, they visit him and GF(C) at their residence on weekends. Each woman is apparently comfortable with or prepared to accept that situation. In addition, GF(C) was pregnant with their child at the time of the interview with the welfare officer and I was informed by AAV's counsel that GF(C) gave birth to a daughter also, in late 2008 or early 2009.

29 In para 12 and 13 of AAW's affidavit of 7 November 2007, AAW also complained that AAV and his girlfriend (GF(C)) would bathe together with B. They would sleep naked in the bedroom and behave intimately in front of B. In para 24 to 27 of AAV's affidavit of 24 January 2008, AAV denied that they sleep naked in the bedroom or behaved intimately in front of B but he said that GF(C) and he bathed together only when they were rushing for time and, as a matter of respect, he had stopped doing this. In a subsequent affidavit, AAV said that the bathing incident happened only once. In the welfare report, AAV was recorded as having told the welfare officer that he had bathed together with both GF(C) and with B, *ie*, not with GF(C) only. This was because they were rushing for time.

30 I also refer to AAV's idea of discipline. He had told the welfare officer that at one time he was concerned with B's careless mistakes in her spelling tests and when mistakes were made a second time, he had told B that he would cane her if mistakes were made a third time. However, when they occurred a third time, he had asked B to stretch out her hand while he caned his own hand. He then told B that he had caned himself as he had failed as a parent. He said B was moved to tears and has since been more careful in her spelling. I found AAV's idea of discipline questionable.

31 In para 54 and 74 of AAV's affidavit of 11 August 2008, he proudly asserted that he was

instilling proper core values to B. I did not think so.

32 In all the circumstances, I was of the view that notwithstanding AAV's capabilities, it was in B's interest that AAW should be given care and control of B. I dismissed AAV's appeal for care and control. I granted access on even more elaborate terms than had been granted by the District Court as AAV had sought the elaboration. The terms of access are set out in my order of 29 May 2009 read together with the 19/3/09 Order. In summary, the access terms are:

- (1) AAV is to have access to B during the school term and to pick up B from school as follows:
 - (a) On Monday and Wednesday after B's school hours but to bring B back to AAW by 7.00pm for her dinner;
 - (b) On Friday after B's school hours and overnight access but to bring B back to AAW by Saturday 1.00pm for her lunch.
- (2) During school holidays, AAV is to have access from Wednesday 10.00am to Saturday 10.00am.
- (3) Either party may bring B for overseas holidays including to Malaysia for 14 days during the mid-year and year-end school holidays but is to give at least 14 days written notice to the other party of his/her intention to do so. Thereafter, that parent is to provide the name of the country, accommodation and contact number of accommodation to the other at least two days before the commencement of the trip. B shall be allowed to call the other parent once a day during the trip. AAV's overseas holidays with B are to be in the first two weeks of each school holiday period unless AAW agrees otherwise.
- (4) AAW is to retain B's passport but release it to AAV if AAV is taking B on an overseas holiday in good time to enable arrangements such as obtaining a visa, where applicable, and in any event, at least four days before the trip commences.
- (5) In Singapore, each party is to provide his/her contact particulars to the other.
- (6) AAV is to have access to B on Father's Day from 1.00pm to 1.00pm the next day. Same for AAW on Mother's Day if that day is a day when AAV is supposed to have access.
- (7) The above [\[6\]](#) is to apply for AAV's birthday and AAW's birthday respectively.
- (8) Each party is to have B on her birthday on alternate years from 1.00pm to 1.00pm the next day.
- (9) For Chinese New Year ("CNY"), each party is to have B on alternate years as follows:
 - (a) 6.00pm of CNY eve to 6.00pm of the 1st day of CNY; or
 - (b) 6.00pm of the first day of CNY to 6.00pm of the second day of CNY.
- (10) Where applicable, the party having B till the next day is to bring B to school if the next day falls on a school day.

33 AAV has filed an appeal to the Court of Appeal against my decision on care and control and certain aspects of my order on access.

34 In so far as AAV is appealing against para 1 of my access order that he pick B up from school, that was what I understood the District Judge to have decided under the 19/3/09 Order and I agreed with it. Before me, the only question raised on this aspect was whether AAV could get someone to pick B up from school. AAW's counsel said he was not aware that this was an issue and was not ready to argue it. I left it to the parties to resolve it and failing a resolution, to write in for an appointment, before my order was extracted, for me to resolve it. Neither side did.

35 In so far as AAV is appealing against para 3 of my access order that AAV's overseas holidays be in the first two weeks of each school holiday unless AAW agrees otherwise, I was of the view that it was not sufficient for AAV to give 14 days advance notice as AAW would also have to make her own plans with B for the school holiday period well in advance. It was therefore in the interests of all concerned if a particular period was fixed initially so that the parents know where to start from and leave it to them to agree otherwise. AAV is apparently dissatisfied with this aspect of access even though, conversely, AAW would also be required to get AAV's consent if AAW wished to bring B on an overseas holiday in the first two weeks of a school holiday.

36 AAV is also appealing against para 9 of my access order regarding the time of access during the first and second days of CNY. AAV had asked for 10.00am to 10.00am of the next day. I thought 6.00pm to 6.00pm of the next day would give B more time to wake up in the morning.

37 As for Christmas and public holidays, I would have granted access on alternate Christmas and alternate public holidays from 10.00am to 7.00pm so that B would be returned to AAW on the same day.

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