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v
GR

[2023] SGSYC 11

Syariah Court — Originating Summons No 61970
Irwan Hadi bin Mohd Shuhaimy
20 October 2023

Divorce — Custody — Access — Care and control

Divorce — Division of matrimonial assets

Case(s) referred to

AC v AD (2011) 6 SSAR 78

BK v BL (2012) 6 SSAR 221

Quranic verse(s) referred to

Surah 4, An Nisa', verse 35

At the Syariah Court:

Nur Shahirah Nassir (RW Law Practice) for the plaintiff

Sharifah Ally (Emerald Law LLC) for the defendant

Parties:

Plaintiff – Wife

Defendant – Husband

[Editorial note: The appeal in Syariah Appeal No 18 of 2023 was withdrawn.]

[Editorial note: This is the grounds of decision of the Syariah Court dated 20 October 2023.]

20 October 2023

Irwan Hadi bin Mohd Shuhaimy (President, Syariah Court):

Introduction

1 These are the grounds of decision rendered by this Court on 7 July 2023, in the Originating Summons No 61970. The plaintiff to this

originating summons is the wife (“the Wife”). The defendant is the husband (“the Husband”).

2 The parties married on 2 April 2016.

3 There is one child to the marriage, born on 7 May 2018. The child (son) was five years old at the time of the hearing.

4 In this case, the Wife applied for a divorce from the Husband and claimed the ancillaries consequential upon the divorce. Both parties were represented by counsels.

5 On the day of the hearing, 7 July 2023, the Husband claimed that he had pronounced *talak* on 22 May 2022 (“*talak* date”). Having made the *ikrar syar’ie* before the court on the day of hearing, the Court was satisfied that the Husband had indeed pronounced *talak sorih* (explicit *talak*) with the intention of divorcing the Wife on the *talak* date. Accordingly, the Court decreed the *talak* pronounced on 22 May 2022 to be a one *talak raji’i* and thereafter ordered the divorce to be registered.

6 After considering the parties’ positions on the ancillary matters as set out in their respective affidavits and oral submissions of parties’ counsels to the Court, the Court made the following ancillary matters orders on 7 July 2023 (the “Order”):

(1) The Husband shall pay the Wife *nafkah iddah* in the sum of \$500 a month for *nafkah iddah* for three (3) months to be paid monthly commencing from 31/07/2023 into the Plaintiff’s POSB account no. [account number redacted].

(2) The Husband shall pay the Wife *mutaah* in the sum of \$13,446.00.

(3) Payment of *mutaah* shall be deducted from the Husband’s share of the net sale proceeds sale of the matrimonial flat.

(4) Within 9 months from the date of this Order, the matrimonial flat at and known as [address redacted] (‘the Matrimonial Flat’) shall be sold in the open market. After CPF refunds being made to parties and deduction of all expenses arising from the sale, any net sale proceeds will be divided 45% to the Wife and 55% to the Husband.

(5) Parties shall have joint custody of the child of the marriage.

(6) The Wife shall have care and control of the child and the Wife shall have the right to only determine the kindergarten arrangements of the child.

(7) The Husband shall have reasonable access to the child including the following:

i. Overnight access for at least two (2) days a week as may be arranged by the parties.

- ii. Husband shall have access to the child on alternate public holidays, Husband's birthday and Father's Day from 8.00 pm on the eve of the same to 8.00 pm of the day itself.
- iii. Husband shall have access to the child on the child's birthday every year as may be arranged by parties.
- iv. Husband shall have access to the child on alternate Hari Raya from 6.00 pm on the eve of the same to 2.00 pm on the day of Hari Raya itself.
- v. Husband shall have overseas access subject to Husband providing the Wife with at least two (2) weeks' notice of intention. Husband shall provide Wife with the itinerary and details pertaining to lodging, flight and emergency contact numbers.
- vi. Husband shall have access to the child during second half of the child's school holidays.
- vii. Only the Husband or his nominee/s consisting of Husband's family members shall pick the child up for access.
- viii. Any other arrangements as may be agreed between the parties.

7 Following the hearing on 7 July 2023 ("1st Hearing"), counsel for the Wife requested for a clarification hearing which was held on 12 September 2023 ("Clarification Hearing"). The basis for the request was to seek the Court's clarification on what was meant by the phrase that the Plaintiff-Wife "shall determine the kindergarten arrangements of the child" of the parties in para 6 of the Order (the "Clause").

8 In the Clarification Hearing, the Husband's counsel averred that the Husband understood the Clause as the court only granting the Wife the right to determine choice of school and sending and picking up the child. However, on the issue of when the child should be transferred out of the current school, it is a matter which falls under joint-custody rights which is to be decided upon by both parties. The Husband therefore sought the child's kindergarten to withhold the child from being transferred until the Clarification Hearing was over. The Wife's counsel averred that between the date of the Order and the Clarification Hearing, the child and her had to shuttle between Yishun, where the Wife was currently staying, and Punggol where the child's kindergarten was located. It was also disclosed to the Court in the Clarification Hearing that counsel for Husband stated in correspondence with the Wife's counsel that he is agreeable to the child's transfer from his current kindergarten as per the Order on the condition that the child remains in the matrimonial home and in the current school until end of school term of 2023.

9 The Court clarified that what it meant by the Clause is that the Wife has the sole right and authority to determine the choice of school for the child and when to transfer the child to another school. However, this is only limited to the kindergarten level as per the Order. To do otherwise

would defeat the intention of the Clause which is to ensure that the child gets to attend school near the residence of the parent with care and control right.

10 The Husband is dissatisfied with part of the Order and has filed an appeal in respect thereto.

11 The Husband's appeal is limited to paras 6 and 7 of the Order dated 7 July 2023, namely the Court's order in respect of the Wife's right to determine the child's kindergarten arrangement, care and control and the Husband's access to the child:

(a) [Child's name redacted], Male, born on [D.O.B [date of birth] redacted] [ID [identification] number redacted (TXXXXXXX)].

12 I shall address both the Wife's right to determine the kindergarten arrangement, care and control and access issues concurrently.

Issue 1: Wife's sole authority to determine child's kindergarten arrangement and choice

13 Custody is not in dispute. I have therefore ordered joint custody to both parties. However, the Wife is granted the right to determine only the choice for the child's kindergarten and its arrangements for reasons which shall be elaborated below.

a. Parties' prayers for care and control and access

14 Both parties have sought care and control of the child of the marriage. The Husband sought for either care and control to him with reasonable access to the Wife or shared care and control in alternate weeks. In the alternative, where care and control is granted to the Wife, the Husband sought to be granted reasonable access with overnight access including the following:

(a) Overnight access to the child every week during his off days from 10.00am on the first day of his off days to 9.00pm on the last day of his off day. Parties to agree on the dates of access.

(b) Access on Husband's birthday and Father's Day, from 8.00pm on the eve of both days to 9.00pm of the said days.

(c) Access on the child's birthday every even years from the eve of the child's birthday at 8.00pm to 9.00pm of the child's birthday.

(d) Access on Hari Raya Aidil Fitri and Hari Raya Haji from 8.00pm on the eve of both days to 3.00pm on the day of the actual days.

(e) When the child enters Primary 1, for Husband to have access during the first half of the March, June, September and December school holidays on his off days.

(f) Husband shall provide the Plaintiff with his access schedule for the month by the last week of the preceding month. He is to be entitled to replacement access, subject to the Husband providing advance notice to the Wife (*ie*, before the access session is missed) of his intention to exercise replacement access and the proposed date for replacement access. The replacement access shall be in the same calendar year as missed access.

(g) Husband or his nominee shall fetch the child from the child's place of residence on the day of access and return the child after access.

(h) Husband to have the liberty to take the child overseas subject to him providing the Wife with at least two (2) weeks' notice of intention of such travel. Wife is to hand over the child's passport one week before the travel date and shall be returned to the Wife within one (1) day after travel.

15 The Wife on the other hand also seeks care and control of the child and for the Husband to be granted reasonable access as follow:

(a) Weekly access of one (1) weekday and one (1) weekend – If the Defendant's day off is on a weekday, he shall have unsupervised access between after school hours to 8.00pm. If the child has school, the Husband shall send and fetch the child to and from school. If the Husband's day off is on a weekend (either Saturday or Sunday), he shall have unsupervised access from the evening before at 6.00pm to the following day at 6.00pm. As the Husband is working shift hours, the Husband shall inform the Wife one (1) week in advance of his intended weekly access day. The Husband shall also provide his monthly work schedule whenever possible for purposes of co-ordinating access days.

(b) Access on Hari Raya Aidilitri and Hari Raya Haji from 7.00am to 3.00pm OR from 7:00pm during eve of Hari Raya to 3:00pm the following day every odd year.

(c) Alternate public holidays from 10.00am to 8.00pm. If the Defendant has work on that day, the Defendant shall inform the Plaintiff.

(d) One (1) week every June and November-December holidays.

(e) Overseas access with prior notice of any intention to bring the child out of the jurisdiction and shall provide the other parent with the itinerary of the said trip and that the child remain contactable.

(f) Or any other access arrangement agreed by parties.

(g) Wife to be granted sole discretion in changing the child's school to be one near my [her] residence if granted the care and control as her future residence is far from the child's current school location at [address redacted].

b. Principles in law

16 In determining matters relating to children, the paramount consideration is the welfare of the children. It is an accepted legal proposition that the welfare of the child applies to the determination of children matters in the Syariah Court (see *AC v AD* (2011) 6 SSAR 78 at

[12] (“*AC v AD*”). In addition to the sources cited by the Appeal Board in *AC v AD*, we add to this the position of Imam As-Shaukani, Muhammad bin Ali bin Muhammad bin Abdullah in *Nailul Authār*, (1993) Darul Hadith, Egypt, at Vol 6 p 393 wherein he states:

وَأَعْلَمُ أَنَّهُ يَنْبَغِي قَبْلَ التَّخْيِيرِ وَالْإِسْتِهَامِ مُمْلَاحَةً مَا فِيهِ مَصْلَحَةٌ لِلصَّبِيِّ، فَإِذَا كَانَ أَحَدُ الْوَالِدَيْنِ أَصْلَحَ لِلصَّبِيِّ مِنَ الْآخَرِ قَدَّمَ عَلَيْهِ مِنْ غَيْرِ قُرْعَةٍ وَلَا تَخْيِيرٍ،

[Translation:

Take note that even before deciding on whether to allow the child to choose or for a lot to be drawn on which parent is to be given custody over the child, one must first consider what is in the **best interest of the child**. Where it is clear [from the facts] that the care of the child under one parent is more suited for the child’s interest then there should be no option for a lot to be drawn [for the same] nor an option for the child to choose. [emphasis added in bold underline]]

17 Parties have each accused the other of being unfit parents. However, parties’ evidence exhibited in their respective submissions do not, in the Court’s assessment, prove nor demonstrate that they are uncaring and unfit parents who would abrogate their parental responsibilities or neglect the child.

c. Court’s decision on Wife’s right to determine kindergarten choice and arrangements

18 Given the child’s age (five years old), I have not made an order for a joint child interview. Other than allegations of carelessness by the parties of the other, there are no serious allegations of violence, abuse or neglect. Accordingly, I did not order for any custody evaluation report. Instead, my decision is based on the submissions of both parties and the consideration of what would be in the best interest of the child.

19 In making this order, the Court wishes to emphasise that the granting of care and control to the Wife does not in any way attempts to demonstrate that the Husband is a less capable parent. It is noted that both parents care and love the child and wishes for the best to be given to him. However, because love is not always readily measured by words or actions alone, the court in considering matters of custody, care and control and access would also consider the totality of the circumstances. This includes the consideration of which parent would be able to be more constantly present in the child’s life particularly where the child is in his formative years.

20 With the principles above in mind, the Court granted the Wife the right to determine the child’s kindergarten arrangement instead of ordering for the child to remain in the current kindergarten. As clarified in the Clarification Hearing, this meant that the Wife has the sole right and authority to determine the choice of school and when to transfer the

child to another school. We note the Husband's argument in his oral submission in the 1st Hearing that the child should remain in the current kindergarten to minimise disruption. However, considering the Court's decision to grant the Wife care and control and its order for the matrimonial flat to be sold, it is uncertain as to where exactly parties' new residence will be at the point of hearing.

21 Additionally, the Court notes both parties' continued arguments over the child's early childhood education arrangements as evident from parties' submissions and the Clarification Hearing. The Court's concern that the parents' quarrel over the child's schooling arrangements would adversely affect the child's welfare is realised when the Husband insisted that the Wife does not have the right to unilaterally determine when the child is to be transferred to another kindergarten school. From the Clarification Hearing, the Court was informed that because of the Father's contestation of the mother's right to determine when the child can be transferred to another kindergarten, the child has had to travel to and from Yishun and Punggol every schooling day for the period between the issuance of the Order and the Clarification Hearing date. This evidently goes against the interest of the child and accentuates the Court's concern arising from the parties' disagreement on the child's current schooling arrangements.

22 With the above concerns being considered, the Court decided that it would be in the best interest of the child for the Wife to have the right to determine only the kindergarten arrangements at this point. This is to avoid disruption from both parties continuing their quarrel over the child's early childhood education arrangements and to ensure stability moving forward for the child until he reaches Primary 1. The Court did not order that the Wife had the sole authority to determine the child's school beyond kindergarten as it the Court's hope that both parents, with the passage of time, can be more co-operative and amicable in determining the educational path of their child and accordingly jointly involving themselves in important matters pertaining to his upbringing.

Issue 2: Care and control and access

23 Next, on the issue of care and control and access, the Husband argues that he should be granted care and control or in the alternative shared care and control on alternate weeks. He highlighted that the child has built a close bond with the Husband and is also more familiar with his paternal grandmother as she cared for the child up until he started going to school. The Husband further argued that as the Wife has applied for a personal protection order ("PPO") against her father before and that she had indicated that she will be residing at her parents' place while waiting to get a new place. Accordingly, the Husband registered his concerns for the Wife to be given care and control of the

child. This is in addition to the claims that the Wife's father had received complaints of causing noise pollution arising from his karaoke sessions.

24 On the issue of the child having built a close bond with the Husband and his mother, I share the position of the learned Senior President then in *BK v BL* (2012) 6 SSAR 221 at [17] wherein, on the father's argument that the child has developed an "inseparable bond" with him and thus he should be given care and control, he observed that:

This is not the Court's predominant consideration. Now that the parties are divorced and can go their separate ways, they will have to adjust to new beginnings. Similarly, care and control arrangements can be adjusted to ensure that the children have access to the love of both parents.

On the evidence before me, it is almost impossible to ascertain that the child has only developed an inseparable bond with the Husband and his mother and not with the Wife and her extended family. Evidence from parties in fact demonstrate that the child has a relatively healthy relationship with both his maternal and paternal extended families. Accordingly, I did not give much weight to this claim of the Husband.

25 Pertaining to the PPO taken by the Wife against her father, the court notes that this was in 2011. The Wife averred that she has since mended her relationship with her father. This is evident from the fact that the Wife's father was present as her *Wali* during her solemnisation with the Husband in 2018. The Husband's claim of the Wife's father receiving complaints of causing noise pollution by his karaoke sessions was denied by the Wife and were not supported by any evidence. It is therefore not given much weight by the Court.

26 In addition to the above, the Court also notes that the Husband has an irregular work schedule as a flight steward. Taking into consideration the Husband's submission of his average number of days in Singapore which amounts to 21 days or even at its highest being 26 days, it would mean that the Husband would not be physically around for the child between four to ten days. Accordingly, he will need to leave the child in the care of another caregiver whom the Court is not made aware of. Given the child's age, this was a point of concern. Being still in his formative years and having to adapt to the new living arrangements arising from the divorce, it would not be in the best interest of the child to be left in the care of others for days without a parent around.

27 The continued presence of a parent both emotionally and physically is vital. The Court believes that this would ensure the child's emotional stability during this period of transition. Beyond just providing happiness and joy, the physical presence of a parent provides assurance for the child that despite the separation which has happened between his parents, at least one of them is almost always around physically. It is unfortunate that the child is now unable to have his parents living

together, but to not have both parents around physically even for a few days may still be daunting for a child of his age. To this end, the Court decided that it is in the best interest of the child to grant the Wife the care and control of the child. The nature and timing of her work enables her to be more physically present for the child daily and to be with him during the nights when he is with her.

28 In addition to the above, the Court is also of the view that the access schedule granted to the Husband would ensure that the Husband is able to spend meaningful time with the child. It was for this purpose that the Court allowed the access of at least two days a week for the Husband. This, the Court believes, would allow the Husband to gain access to the child for at least two days a week regardless of whether it is a weekday or a weekend. This order was made as such to enable flexibility such that where it can be agreed by both parties, the Husband may obtain access to the child for more than two days when he is available in Singapore during his days off. This is in addition to granting the Husband almost all his prayers for access. It is therefore perplexing as to why the Husband chose to appeal against the access orders.

Conclusion

29 As how children were born out of love and compassion, so too should they continue to enjoy this love and compassion from both parents. Children, as much as their parents, will have to navigate their current lives and ascertain their future after the divorce. This would require the parent's sacrifice to put aside their differences and to converge on what is best for the child.

30 Under Islamic law, the purpose of *Sulh* (compromise, settlement or agreement between parties to a dispute) is as mentioned by Sheikh Wahbah Az-Zuhaili in *Al-Fiqh Al-Islam wa Adillatuh*, Vol 5 (Damshiq: Dar al-Fikr) is *Qath'u al-niza'* (قطع النزاع) which means to end conflict and hostility among believers so that they may conduct their relationships in peace and amity.

31 The Quranic wisdom in verse 35 of *Surah 4, An Nisa'* provides:

إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا.....

[Translation:

Should parties wish for reconciliation then Allah shall make guide them.]

32 While parties may not have achieved reconciliation in terms of their marriage, they can still choose to achieve reconciliation in matters pertaining to their child. It is hoped that by doing so they are setting an example for their child to emulate his parents' noble trait of prioritising

peace and harmony and in turn nurture him to be an individual of admirable conduct.
