

CZ v DA and Another
[2004] SGHC 216

Case Number : OSF 21/2004, RAS 29/2004
Decision Date : 24 September 2004
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Arthur Wang (Tan Kim Seng and Partners) for appellant; Lai Kwok Seng (Lai Mun Onn and Co) for respondents
Parties : CZ — DA; another

Family Law – Custody – Access – Grandmother alleging parents' negligence and lack of care resulting in child not receiving necessary medical attention for his medical problems – Parent asserting they had taken concrete steps to address child's medical problems – Whether grandmother entitled to order for access to child under circumstances

24 September 2004

Tan Lee Meng J:

1 The appellant ("the grandmother") is the mother of the first respondent, ("the father"), whose wife ("the mother") is the second respondent. She alleged that her son and her daughter-in-law neglected and abused their son ("the child"), who is eight years old and a Primary One student, to such an extent that she should be appointed the child's guardian in place of his parents and that she be given custody, care and control of the child. She sought, in the alternative, access to the child and an order that the latter be sent for a full medical examination by, among others, a neurologist. District Judge Regina Ow-Chang Yee Lin dismissed her application to be appointed the child's guardian and for the child to be sent for a medical examination. She made no order regarding her application for access. I dismissed the grandmother's appeal against the district judge's decision and now give the reasons for having done so.

Background

2 The grandmother is a retiree, aged 65 years. She and her husband ("the grandfather"), who is not a party to these proceedings, are the child's only grandparents as his maternal grandparents passed away before he was born. She is very close to the child and obviously loves him very much. She faulted the child's parents for failing to send him to see a doctor whenever medical attention was required and she alleged that as a result of his parents' negligence and lack of care, the child is sickly and appears to be mentally retarded. She is convinced that she would be a better guardian of the child than his parents.

3 The child's parents, who both have post-graduate qualifications, are business executives. They denied the grandmother's numerous allegations against them and claimed that the latter is paranoid about the health and welfare of their child. They accepted that their child had some problems but pointed out that they had taken concrete steps to arrest the problems. For instance, when their child showed some signs of developmental dyspraxia, they sent him for speech therapy as well as speech and drama lessons. Furthermore, when the child was diagnosed as having sensory integrative dysfunction, they enrolled him in a course to enhance his sensory processing. They also cared enough to employ a person to help him cope with kindergarten lessons. Apparently, these efforts proved fruitful as the child has made good progress in his courses and kindergarten.

4 Notwithstanding the problems faced by the child's parents in relation to his grandmother's paranoia, the child saw his grandmother regularly until October 2003. As the grandmother continued to insist that the child was ill-treated and had medical problems, her relationship with his parents deteriorated. Apart from taking the child to see neurologists who refused to treat him in the absence of his parents, the grandmother made two complaints in April 2003 to the Ministry of Community Development and Sports ("MCDS") that the child's parents neglected, mistreated and mentally abused him. These reports caused great inconvenience and distress to the child's parents, who were interviewed by welfare officers. The MCDS took no further action on the matter. In that month, the grandmother also lodged a police report against the child's parents. The police interviewed the parents and declined to take any further action on the matter as the grandmother's charges against them did not rest on solid ground. The grandmother next went so far as to apply for a protection order on behalf of the child against his parents on 11 August 2003. This application was heard and dismissed on 10 October 2003. Subsequently, she initiated the present proceedings against the child's parents. Her originating summons was heard on 17 May 2004 by the district judge. As she was dissatisfied with the dismissal of her application by the district judge, she appealed to the High Court.

The appeal

5 During the hearing of the appeal, the grandmother's counsel, Mr Arthur Wang, informed the court that she did not wish to proceed with her appeal against the dismissal of her application with respect to guardianship, custody, care and control of the child. He added that his client had also decided not to appeal against the district judge's refusal to make an order that the child be sent for medical tests. This made sense in view of a recent report by Dr Ho Kee Hang, the consultant neurosurgeon whom she first consulted about the child's alleged neurological problems on 16 August 2001. At the request of the child's parents, who wanted to refute the grandmother's allegation that their child had neurological problems, Dr Ho confirmed in writing on 8 September 2004 that he could find no previous or recent head injury in the child and that the child "did not have a neurosurgical problem during the first consultation and does not have any neurosurgical problem now".

6 In view of the position adopted by the grandmother at the hearing of the appeal, only the access sought by the grandmother needs to be considered. Her application for access was in relation to the following periods:

(a) Three hours three times a week on Mondays, Wednesdays and Fridays from 6.00pm to 9.00pm; and

(b) Three hours on Saturdays and Sundays.

7 The grandmother contended that it is beneficial for her grandchild to see her regularly as a close and loving relationship has developed between them. She pointed out that the fact that she has been stopped from seeing her grandchild from November last year must have bewildered and upset him. On the other hand, the child's parents asserted that in the circumstances of the case, an order granting the grandmother access to the child would not be in his interest as the disadvantages of having the grandmother contact their child outweigh the advantages. They feared that if access is granted to the grandmother, she would take the opportunity to bring him to see doctors unnecessarily and turn him against them. At the very least, they thought that the grandmother could "cause confusion and fear in the mind of this young child".

8 It is pertinent to note that the child's grandfather is not a party to these proceedings and that he is able to see his grandson without difficulty. Hopefully, in the future, sense will prevail and

the relationship between the parties will improve to such an extent that the child can have the benefit of a grandmother's love and attention without the tensions resulting from the dispute between her and his parents over his health and upbringing. What is relevant for present purposes is that a grandmother is, without more, not entitled to apply for an order for access to her grandchild. Admittedly, in *Re C (an infant)* [2003] 1 SLR 502, the paternal grandmother was granted limited access to her grandson but this was due to the very special circumstances in that case, namely, that the child's mother had been killed by his father, who was imprisoned for the crime. In that case, the Court of Appeal awarded custody of the child to the maternal grandparents and ordered that so long as the father remained in prison, the paternal grandmother could have access to the child twice a year in the home of the maternal grandparents. In view of the totally different circumstances in the present case, where the child is in the custody of loving and caring parents, the district judge's decision not to make any order granting the grandmother any right of access to the child cannot be faulted. As such, the grandmother's appeal was dismissed with costs.

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