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Clement Yong
District Judge
19 May 2021

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE
[2021] SGFC 51

FC/OSG 102 of 2020
HCF/DCA 25 of 2021

Between

VLI

... Plaintiff

And

VLJ

... Defendant

JUDGMENT / GROUNDS OF DECISION

[Guardianship – Welfare of child]

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**VLI
v
VLJ**

[2021] SGFC 51

Family Justice Courts – FC/OSG 102/2020
District Judge Clement Yong

23 December 2020, 8 and 17 February 2021

19 May 2021

District Judge Clement Yong:

Introduction

1 FC/OSG 102/2020 was an application filed by the plaintiff wife (the “**Wife**”) under section 5 of the Guardianship of Infants Act (Cap. 122) (the “**GIA**”) against the defendant husband (the “**Husband**”) to seek, *inter alia*, sole custody and care and control of their one year old child (the “**Child**”), and an order that the defendant does all that is necessary to enable the plaintiff to obtain a Long Term Visit Pass (“**LTVP**”). For context, the Wife is a foreign spouse and the Husband is Singaporean.

2 On 8 February 2021, after considering the parties’ written submissions and oral arguments, I dismissed the Wife’s application and made no order as to

custody and care and control of the Child. I also declined to make an order for the Husband to do all that is necessary to enable the Wife to obtain an LTVP.

3 Subsequently, the Wife applied to make further arguments on the LTVP issue. Leave was granted and I heard parties again on 17 February 2021. The Wife urged me to reconsider my earlier decision, stating that it is in the best interest of the Child pursuant to section 5 of the GIA for the Wife to be granted an LTVP. After hearing parties' further arguments, I declined to make any further orders and maintained my earlier decision to dismiss the Wife's application.

4 The Wife has since filed an appeal *only* against my decision given on 17 February 2021¹. As there was no appeal on my decision made on 8 February 2021, I now give the reasons why I was not persuaded to grant the LTVP order based on the Wife's further arguments made on 17 February 2021.

Facts

The parties

5 The Wife is a 27-year-old Israeli citizen and an architect by profession. She relocated to Singapore in 2020 after working in Bangkok for seven years, during which time she also did part-time modelling.

6 The Husband is a 32-year-old Singaporean currently working as a service engineer. He is currently based in Singapore.

7 The parties are parents to a one-year old child (hereinafter referred to as the "**Child**"), who was born in Thailand and now lives in Singapore whilst

¹ Notice of Appeal filed on 24 February 2021

retaining an Israeli citizenship. The parties had applied for Singapore citizenship for the Child, and the application is currently under review by the Immigration and Checkpoints Authority (the “ICA”).

Background to the dispute

8 The parties met in Bangkok sometime in 2019. Shortly after, the Wife found herself pregnant and she gave birth to the Child in November 2019. The Husband proposed that the Wife relocate to Singapore and she took up his offer after meeting with his parents over Chinese New Year in 2020. On 2 April 2020, parties registered their marriage at the Registry of Marriages in Singapore.

9 Sadly, this marriage was not one of happiness and longevity. By July 2020, the marriage broke down. The Husband terminated the lease of a condominium in Bishan that the Wife was living in and refused to complete the application for the Wife’s LTVP with the ICA. By his actions, it appears that the Husband no longer wanted to have anything to do with the Wife and the Child.

The dispute

10 Against this backdrop, the Wife was compelled to take out originating summons FC/OSG 102/2020 on 15 July 2020. I reproduce below the key prayers and broadly categorise them into three broad issues – (i) the “**Care and Control Issue**”, (ii) the “**LTVP Issue**”, and (iii) the “**Housing Issue**”.

| <u>No.</u> | <u>Prayer</u> | <u>Issue</u> |
|------------|--|----------------------------|
| 1. | That the Plaintiff be granted sole custody care and control of the Child, (Thai BC No. | The Care and Control Issue |

| | | |
|----|---|-------------------|
| | x-xxxx-xxxxx-65-0), male, born in November 2019, an infant; | |
| 2. | That the Defendant be granted restricted and supervised access to the Child; | |
| 3. | That the Defendant be ordered to reinstate restore or re-apply for the Plaintiff’s Long Term Visit Pass from the Immigration and Checkpoint Authority and to do all that is necessary to enable the Plaintiff to obtain the Long Term Visit Pass; | The LTVP Issue |
| 4. | That the Defendant be restrained whether by himself or his servants and/or agents, from terminating the lease and/or tenancy at the property known as and situated at Bishan XX (“ Bishan Property ”) before the expiration of the Tenancy Agreement; | |
| 5. | That the Defendant be ordered continue payment of the rent in the monthly sum of S\$2,250 for the Bishan Property for the duration of the tenancy of the same and in the event that he has ceased to do so, to reinstate or restore the tenancy of the Bishan Property by payment of the rent of S\$2,250 a month and all arrears of rent for the duration of the tenancy and/or lease; | The Housing Issue |
| 6. | That the Defendant, whether by himself or his servants and/or agents, be restrained from evicting or removing the Plaintiff | |

| | | |
|----|---|--|
| | and/or the Child from occupation at the Bishan Property for the duration of the tenancy and/or lease; | |
| 7. | That the Defendant be ordered to permit the Plaintiff and the said Child to occupy the Bishan Property for the duration of the tenancy and/or lease; | |
| 8. | That the Defendant, whether by himself or his servants and/or agents, be restrained from subletting any part of the Bishan Property while the Plaintiff and the said Child is residing therein; | |

11 On the same day that the Originating Summons was filed, the Wife also filed an urgent *ex-parte* summons (SUM 1910 of 2020) in respect of the Housing Issue. The matter was heard in July 2020 and the Court declined to grant the prayers sought. The Wife appealed and the first instance decision is reported in *VLI v VLJ* [2020] SGFC 77. On appeal, Justice Debbie Ong made no order as circumstances had changed significantly and the Housing Issue had become moot by the time it was heard on 3 November 2020 before the High Court.

12 The remaining Care and Control and LTVP Issues were then heard before me on 23 December 2020 and 8 February 2021. Prior to that, the parties had filed the following affidavits in support of their respective cases:

- (a) Wife's 1st Affidavit – Filed on 15 July 2020
- (b) Husband's Affidavit in Reply – Filed on 8 October 2020

(c) Wife's 2nd Affidavit – Filed on 28 October 2020

13 After considering the evidence as well as parties' written submissions and oral arguments, I dismissed the Wife's application and made no order as to custody and care and control of the Child. I also declined to make an order for the Husband to do all that is necessary to enable the Wife to obtain an LTVP.

14 Subsequently, the Wife applied to make further arguments on the LTVP issue. Leave was granted and I heard parties again on 17 February 2021. The Wife urged me to reconsider my earlier decision, stating that it is in the best interest of the Child pursuant to section 5 of the GIA for the Wife to be granted an LTVP. After hearing parties' further arguments, I declined to make any further orders and maintained my earlier decision to dismiss the Wife's application.

The parties' cases

15 The Wife submits that I have the power and jurisdiction to grant an order against the Husband for him to reinstate, restore, or re-apply for the Wife's LTVP from the ICA, and to do all that is necessary to enable the Wife to obtain the LTVP (the "**LTVP Order**"). The Wife also submitted that having an LTVP would allow her to obtain a Letter of Consent to work in Singapore and this is in the best interest of the Child because she needs income in order to raise the Child in Singapore².

16 The Husband, who was a litigant in person, did not address me on whether I had the power and jurisdiction to make such an order. Instead, he

² Wife's skeletal submissions dated 18 December 2021 at paragraphs [33] – [42]

submitted that the Wife does not need an LTVP as a work permit will suffice³ if she wishes to work and she could apply for one on her own⁴. In any event, the Husband is not prepared to stand as guarantor for the LTVP application as that imposes certain obligations on him personally⁵.

Issues on appeal

17 As the Wife's appeal is solely against the whole of my decision given on 17 February 2021, it is necessary to state that at the hearing, I only heard further arguments from the Wife as to:

- (a) whether I have the powers to grant the LTVP Order under section 5 of the Guardianship of Infants Act (Cap. 122), and
- (b) whether I should grant the LTVP Order.

18 Having had the benefit of hearing the Wife's oral arguments, I answered both questions in the negative and declined to make the LTVP Order. I set out below the reasons for my decision.

Issue 1: Whether this Court has the power to make the LTVP Order under section 5 of the Guardianship of Infants Act (Cap. 122)

19 In making submissions on this point, the Wife appears to have premised her entire argument on the findings made in the case in *TYC v TYD* [2017] SGFC 23 ("*TYC v TYD*"), in which she draws strong parallels with the present one. It

³ Notes of Evidence, Day 1, 23 December 2020, Page 9

⁴ Notes Evidence, Day 3, 17 February 2021, Page 19, Lines 13-14

⁵ Notes of Evidence, Day 2, 8 February 2021, Page 3, Lines 16-24

is therefore necessary that I set out below the key facts and findings of the Court in *TYC v TYD*.

20 *TYC v TYD* is a case involving a Singaporean husband and foreign wife. Whilst the parties were undergoing divorce proceedings in Singapore, the husband cancelled the wife's dependant pass, which meant she no longer had the right to join her husband in Singapore. This presented the wife with numerous problems, as she could no longer stay in Singapore to participate in the divorce proceedings, as well as the cross-applications for interim care and control of their child. To partake in these proceedings meant that she had to frequently incur costs for travelling in and out of Singapore, requiring funds that she did not have. As such, she took out a summons to compel her husband to take all necessary steps to reinstate her Dependant's Pass.

21 The Court in that case found that it had the jurisdiction to hear this matter, and eventually exercised its inherent powers to order the husband to take all necessary steps to reinstate or renew the wife's Dependant's Pass. In doing so, the Court was particularly cognisant of the fact that the husband's act of cancelling the wife's Dependant's Pass was calculated to place her at a disadvantage in the divorce proceedings. Hence, it exercised its inherent procedural powers to ensure that the stage was set for the wife to have a fair hearing in the ongoing matters without having to leave Singapore and effectively surrender the proceedings by default.

22 Further and in the alternative, the Court explained that it would have also arrived at the same findings had it exercised its powers under section 124 of the Women's Charter (Cap. 353) (the "WC"), as it was in the best interest of the child to do so. Specifically, the Court found that suddenly removing the wife from the child's life would entail massive changes to the child's routine and

would also result in a removal of one of the child's key parental figure from his life at a key stage of his development. Such a drastic change would not be in the child's best interests and hence the Court exercised its wide powers under section 124 of the WC to order the husband to take all necessary steps to reinstate or renew the wife's Dependant's Pass.

23 It is in this light of these facts in *TYC v TYD* that I now turn to the Wife's arguments that I should exercise my powers under section 124 of the WC, or alternatively, my inherent powers, to make the LTVP Order.

The Wife's argument – That the Court has statutory powers under the Women's Charter or Guardianship of Infants Act to make the LTVP Order

24 The Wife initially submitted that I have the power to make the LTVP Order under section 124 of the WC, as was done in the case of *TYC v TYD* in the context of a Dependant's Pass. I found this submission to be misconceived as FC/OSG 102/2020 was taken out under an entirely different statute, that is, section 5 of the GIA. Besides, section 124 of the WC applies only to proceedings for divorce, judicial separation or nullity of marriage, as was the case in *TYC v TYD*. However, none of these applies in the present case.

25 After I pronounced the above on 8 February 2021 as one of the grounds for declining to make the LTVP Order, the Wife's Counsel submitted a letter⁶ to Court which put forth a new argument in this respect, upon which the Wife relied on at the further hearing before me on 17 February 2021. She submits that section 5 should be read with section 3 of the GIA, and because section 5 of the

⁶ Dated 9 February 2021

GIA is *in pari materia* with section 124 of the WC⁷, the former empowers the Court to make any orders it thinks fit in the best interests of the Child⁸.

26 It is appropriate at this juncture to reproduce below the respective provisions under the WC and GIA:

Women's Charter (Cap. 353)

Orders on welfare of children

124. In any proceedings for divorce, judicial separation or nullity of marriage, the court may, at any stage of the proceedings, or after a final judgment has been granted, make such orders as it thinks fit with respect to the welfare of any child and may vary or discharge the said orders, and may, if it thinks fit, direct that proceedings be commenced for placing the child under the protection of the court.

Guardianship of Infants Act (Cap. 122)

Welfare of infant to be paramount consideration

3. Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father.

Power of court to make, discharge or amend orders for custody and maintenance of infants

5. The court may, upon the application of either parent or of any guardian appointed under this Act, make orders as it may think fit

⁷ Wife's letter dated 9 February 2021 at [8]

⁸ Wife's letter dated 9 February 2021 at [11]

regarding the custody of such infant, the right of access thereto and the payment of any sum towards the maintenance of the infant and may alter, vary or discharge such order on the application of either parent or of any guardian appointed under this Act.

27 On a plain reading of the provisions, I am unable to find that these provisions are *in pari materia*.

28 The chief difference between these provisions is that under section 124 of the WC, a Court is narrowly seized with jurisdiction for only three types of proceedings,⁹ but is given fairly wide powers¹⁰ to make orders with respect to the welfare of a child in these proceedings. On the other hand, section 5 of the GIA seizes the Court with jurisdiction under a wider range of circumstances¹¹, but limits the Court's power to make orders only in four specific areas¹².

29 Put simply, section 124 of the WC allows a Court to make (any) such orders as it thinks fit with respect to the welfare of the Child. This is a very broad and wide-ranging power, albeit exercisable only in the context of a divorce, judicial separation or nullity of marriage proceeding. Conversely, section 5 of the GIA gives power to the Court to make orders regarding only four very narrow areas: (i) the custody of an infant, (ii) the right of access to an infant, (iii) payment of maintenance for the infant, and (iv) altering, varying or discharging such an order. Clearly, these provisions are not *in pari materia*.

⁹ Proceedings for divorce, judicial separation or nullity of marriage

¹⁰ The Court can make (any) such order as it thinks fit with respect to the welfare of any child

¹¹ The application can be taken out by either parent or even guardians appointed under the GIA, and can also be as taken out independent of whether the natural parents are married, and if so, whether they are undergoing proceedings for divorce, judicial separation or nullity of marriage

¹² Regarding (i) the custody of such infant, (ii) the right of access thereto and (iii) the payment of any sum towards the maintenance of the infant and (iv) the alteration, variation or discharge of an order

30 I shall therefore consider only the provisions in the GIA in deciding on this issue as the WC has no application to these proceedings and does not provide any further guidance in this regard. There is no ambiguity in section 5 of the GIA. On a literal reading, section 5 of the GIA does not give me the power to make an order in *any* regard, such as the power to order the Husband to take all necessary steps to reinstate or renew the Wife's LTVP.

31 When I made known my preliminary views on the above to the Wife's counsel during the course of oral submissions, he referred me to section 3 of the GIA and highlighted that in determining any application under section 5 of the GIA, the welfare of the Child is the court's paramount consideration. On this ground, the Wife argues¹³ that section 5 of the GIA empowers the Court to make any orders it thinks fit in the best interests of the Child.

32 I find this argument to be wholly misconceived. There is a difference between making an order *in consideration of* the Child's welfare (under section 5 read with section 3 of the GIA), and having the power to make an order *for* the Child's best interests (under section 124 of the WC).

33 Crucially, whilst section 3 of the GIA requires the Court to consider the welfare of the infant as first and paramount in a section 5 GIA application, this does not translate into an unchecked expansion of the powers given to me under section 5 of the GIA to also include having the power to make *any* order I think fit regarding the welfare of the Child. The four categories under section 5 of the GIA in which I have powers to make orders are closed categories. I am not prepared to read section 3 of the GIA as giving me blanket powers under section 5 of the GIA to make a substantive order directly for the best interest of the

¹³ Wife's letter dated 9 February 2021 at [10]

Child, especially since the Wife's counsel is making this argument in isolation, independent of the issue of the custody of the Child.

34 In view of the above, the Wife's argument that section 5 of the GIA empowers the Court to make any orders it thinks fit in the best interests of the Child is therefore untenable. I find that on the facts, I do not have the statutory powers to make the LTVP Order under section 5 of the GIA, and that section 124 of the WC does not assist the Wife very much, if at all, in her arguments on this issue.

The Wife's earlier argument – That the Court has inherent powers to make the LTVP Order

35 For completeness, I should state that at the earlier hearing before me on 8 February 2021, the Wife also ran the argument that I have the inherent powers to make the LTVP Order. As I was not persuaded by the argument, I declined to do so.

36 Thereafter, when I heard parties again on 17 February 2021 for further arguments, the Wife's Counsel Mr. Koh clarified that he was no longer pursuing the argument that I had the inherent powers to make the LTVP Order¹⁴:

Court: Okay, and let me understand your position correctly. Now, at the previous hearing, you were relying on 2 grounds for--for me to grant you prayer N. First, inherent jurisdiction. Second, Section 124 of the Women's Charter. But today you are telling me that you are conceding on the inherent jurisdiction point and you are asking me to consider section

¹⁴ Notes of Evidence, Day 3, 17 February 2021, Page 3, Lines 12-22

*5 of the GIA which you submit is in pari materia with Section 124 of the Women's Charter?*¹⁵.

Koh: That is true.

Court: Did I get your argument correctly?

Koh: Yes, Sir.

37 As the inherent jurisdiction argument was no longer pursued before me on 17 February 2021, it did not form a part of my decision on that day, and accordingly is not the subject matter of this appeal. It is therefore not necessary for me to expound on this any further, save to say that whilst the Court in *TYC v TYD* had exercised its inherent procedural powers to cure a *procedural* injustice, the Wife in the present case is essentially asking me to exercise a substantive inherent power to grant a *substantive* remedy to her. I was not prepared to do so and the Wife's argument that parallels should be drawn with *TYC v TYD* did not go far with me.

Issue 2: Whether this Court should make the LTVP Order

38 Despite the above, even if I had the powers to make the LTVP Order as sought, I would still decline to do so. In this regard, there are substantial evidential difficulties with the Wife's case which her arguments fail to overcome. I will now elaborate on this further.

39 To recap, the Wife argues that Singapore is a good place to raise the Child. By extension, it would be in the Child's best interest for the Wife to find a job in Singapore, so that she can work and support the Child, and supplement the Court-ordered maintenance of \$2,000 currently payable by the Husband to

¹⁵ Amended from transcript to reflect the correct spelling of *in pari materia* and to correct minor typographical errors

the Wife and Child each month. For the Wife to get a job in Singapore, she requires an LTVP, in which the Husband is in a position to assist with.

Whether it is in the best interests of the Child to remain in Singapore

40 On the facts, the Wife premised her argument on Singapore being a good place to raise a child and the Child being eligible for Singapore citizenship, despite the Husband having now cancelled the Child's citizenship application¹⁶. These reasons alone are insufficient to show that it is in the best interests of the Child to remain in Singapore. In the eventuality that the Child follows the Wife to another country *if* she is unable to remain in Singapore, it is likely that the Child could either be brought to Bangkok, Thailand where the Child was born and the Wife worked for seven years prior, or to Israel, where both the Child and the Wife *are* citizens.

41 Whilst it may well be true that Singapore is a good place to raise a child, the Wife's evidence does not explain *why* raising the Child in Singapore is in his *best* interest as compared to raising him in his country of birth (Thailand) or country of citizenship (Israel). The Wife could have provided such information by giving the necessary background and reasons for why this is so. However, such evidence was not stated in her affidavits and I do not have the factual basis to find in the Wife's favour in this regard, or even draw an inference on the facts in her favour. It is therefore unclear to me if it is even in the best interests of the Child for him to remain in Singapore.

¹⁶ Notes of Evidence, Day 1, 23 December 2020, Page 8 at [C]

Whether it is in the best interests of the Child for the Wife to be able to work in Singapore

42 I also fail to see how the ability of the Wife to work in Singapore can be connected with the Child's best interests, especially since I am not even convinced on the facts that the Child remaining in Singapore is in his best interest. The Wife's desire to work in Singapore is *too* remotely connected with the Child's best interests. This link might be drawn if the Wife had placed some evidence before me to show that raising the Child in Singapore is in his best interest. This was not done. Given the evidential lacuna, I am unable to find that it is in the best interests of the Child for the Wife to be able to work in Singapore.

Whether the LTVP application is most appropriate given the alternatives of a Work Permit or Employment Pass

43 Even if I accept that it is in the Child's best interest for him to remain in Singapore and for the Wife to find work in Singapore, the next hurdle faced by the Wife in her quest to work in Singapore relates to the question of why an LTVP application is the most appropriate course of action available to her. Under the immigration and manpower regime in Singapore, the usual course of action for a foreigner wishing to seek employment in Singapore is to apply for either a Work Permit or Employment Pass. On the other hand, the main purpose of an LTVP, as its name suggests, is to give its holder the rights to long term visits, and the corollary right to work in Singapore if a Letter of Consent is obtained from the authorities.

44 Given the various options¹⁷ available to the Wife who is a foreigner who wishes to work in Singapore, where the application process differs from her

¹⁷ Work Permit, Employment Pass, or Letter of Consent under an LTVP

perspective is that an LTVP application requires, amongst other things, the support of the Husband wherein he will have to give certain undertakings to the authorities. However, a Work Permit or Employment Pass application by the Wife need not involve any undertakings by the Husband, as such applications will need to be supported, in the main, by the potential employer, if any, of the Wife. It is therefore baffling why the Wife insists on an LTVP application when either a Work Permit or Employment Pass will allow her the same, or even greater rights to work in Singapore. That said, the following paragraphs *may* shed some light on this.

45 Having taken judicial notice of the manpower rules in Singapore and having considered the Wife's further submissions¹⁸, I observe that a foreigner on an LTVP who holds a Letter of Consent to work in Singapore does not subject his or her employer to the foreign worker levy or quota. Conversely, a foreigner on a Work Permit may subject his or her employer to a foreign worker quota and levy. Whilst the employer of a foreign employee on an Employment Pass is not subject to a foreign worker quota and levy, the eligibility criteria for such a pass is higher as the said employee needs to command a minimum monthly salary of at least \$4,500, amongst other requirements.

46 From the evidence, it is unclear if the Wife can command a minimum monthly salary of \$4,500 to be eligible for an Employment Pass to work in Singapore. If she is unable to, the Wife is left with either the option of either obtaining an LTVP and Letter of Consent to work in Singapore (which does not subject the potential employer to pay a foreign worker levy or quota), or working on a Work Permit (which *may* subject the potential employer to pay a foreign worker levy or quota). All else equal, it appears that having a Letter of

¹⁸ Wife's further submissions dated 18 January 2021, at [20] – [21]

Consent to work on an LTVP does give its holder an advantage in the job market if one is unable to meet the more stringent criteria to obtain an Employment Pass.

47 Given the clear alternatives available to the Wife, it is difficult to ascertain whether her insistence on obtaining an LTVP is, on a balance, really in the best interest of the Child, or for herself. The Wife has not discharged her evidential burden to demonstrate why an LTVP application is the most appropriate course of action available to her, especially when she could have had applied for a Work Permit, as the Husband had rightly pointed out¹⁹. In the premises, I decline to make the LTVP Order bearing in mind the overly prejudicial effect to the Husband as this will otherwise require him to give certain personal undertakings to the authorities against his will.

Conclusion

48 Having considered all the facts and circumstances in this case, I do not think that granting the LTVP Order would be proper or in accordance with law.

49 The Wife's application for the LTVP Order is therefore dismissed.



Clement Yong
District Judge



Koh Tien Hua (Harry Elias Partnership LLP) for the plaintiff;
Defendant-In-Person.

¹⁹ Notes of Evidence, Day 3, 17 February 2021, Page 19, Lines 13-20