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Clement Yong  
District Judge  
2 June 2022

**IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE**  
**[2022] SGFC 23**

Divorce No 1861 of 2020  
HCF/DCA No. 36 of 2022

Between

WBC

*... Plaintiffs*

And

WBD

*... Defendants*

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**JUDGMENT / GROUNDS OF DECISION**

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[Family Law] — [Custody] — [Care and control]

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**WBC  
v  
WBD**

**[2022] SGFC 23**

Family Justice Court — Divorce No 1861 of 2020 (SUM 3539/2021 and  
SUM 3823/2021)

District Judge Clement Yong  
11 February 2022 and 3 March 2022

2 June 2022

**District Judge Clement Yong**

**Introduction**

1 The Plaintiff said to the Defendant: “*this is my house, my rules. Not happy, you get out*”. The Defendant did just that, and more. She left the matrimonial flat with their two children (the “**Children**”), never to return. Arising from this episode, parties have since taken out cross-summonses against each other, where the high priority and primary issue before me was whether care and control of the Children should be switched from the Plaintiff (the “**Father**”) to the Defendant (the “**Mother**”).

2 By order of court, the Father has care and control of the Children. Notwithstanding that the Children have been living together with the Mother since 28 August 2021, I found that this state of affairs was caused exclusively by the Mother removing them from the Father’s care and control on the same day without his consent, in an act which the latter terms as an “*abduction*”.

3 Whilst the Mother argued that the Children’s best interests and a material change of circumstances now warrants a switch of care and control to her, I was not persuaded. Like many courts before me, I take a dim view towards self-induced changes in support of one’s own variation application. Without a valid material change in circumstances upon which I could rely, my power to vary the existing court order under section 128<sup>1</sup> of the Women’s Charter (Cap. 353) (the “WC”) did not arise. It was therefore unnecessary for me to proceed further to consider the Children’s welfare pursuant to section 125 of the WC, as that is predicated on me first having the necessary powers to vary the existing court order.

4 In the premises, I dismissed the Mother’s application for care and control of the Children. I also ordered the Mother return the Children to the Father’s care and control within two weeks of this order. I now give my reasons below.

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<sup>1</sup> Or under section 129 of the WC. Whilst the Court of Appeal in *AYM v AYL* and another appeal [2014] SGCA 46 appeared to regard an agreement recorded as a consent order as falling within section 119 of the Women’s Charter (Cap. 353) (the “WC”), the Mother conducted her case premised on section 128 of the WC. Nonetheless, the substantive findings and outcome of this case do not turn on whether a consent order is classified as an ‘order’ or an ‘agreement’ under sections 128 or 129 of the WC respectively.

**Background**

5 After approximately 11 years of marriage, the parties got divorced in 2020. On 29 June 2020, the parties recorded a consent order (the “**Consent Order**”) stating that parties shall have joint custody of the Children with care and control to the Father, and the Mother to have reasonable access subject to their schedule and wishes. To this end, it was agreed and recorded that the Father shall solely maintain the Children.

6 In addition, the Consent Order also stated that the Mother shall transfer her interests in the parties’ matrimonial flat to the Father within six months of the Final Judgment. Further, parties agreed that the Mother was allowed to continue living in the matrimonial flat rent-free, for up to six months from the completion of the said transfer. As this took place on 12 March 2021, the Mother therefore had until 11 September 2021 to vacate the flat.

7 At the time of the Consent Order, parties were living together with the Children in the matrimonial flat. They continued this living arrangement until 28 August 2021, when the Mother moved out of the house with the Children. The exact circumstances leading to this incident is hotly challenged by the parties, and I shall return to this below. What is undisputed is that since the Children were removed from the matrimonial flat, the Father has had some difficulties seeing the children, so an order was made on 9 November 2021 in the Family Justice Courts (the “**FJC**”) giving interim access to the Father.

8 As the Father desired that the terms of the Consent Order to be followed, he subsequently took out committal proceedings against the Mother, having properly obtained leave to do so. Specifically, this was in respect of the Children being having been removed from the house without his consent. The Mother on the other hand, took out a variation application for her to be given care and

control of the Children, reasonable access to the Father, and a claim for children maintenance and arrears from the Father.

9 Both matters were initially fixed before me for hearing on 11 February 2022. However, I had reservations about hearing both matters together as the Mother's counsel rightly pointed out that the committal hearing should proceed by way of trial with cross-examination of witnesses, and his client's variation application is a chamber hearing which should proceed by way of affidavits only. Therefore, hearing both summonses together is unlikely to lead to a just, expeditious, and economical disposal of the matter.

10 Adopting a Judge-led approach, I identified the central issue to be that of the care and control of the Children, as my decision on the other issues will ultimately turn on this one. For instance, committal and punishment may no longer serve any purpose if care and control is varied and given to the Mother. On the flip side, if care and control is not given to the Mother, then her application for maintenance and access for the Father may be rendered moot. As such, I informed parties that I would first make a finding on the care and control of the Children. Thereafter, this would allow counsels to take further instructions and advise their clients respectively. It is against this background that I now turn to the central issue below.

### **The Mother's arguments on care and control of the Children**

11 Whilst the Mother accepts that the Consent Order was entered into when she was legally represented, she explained that she did so because of her motivation to resolve the ancillary matters quickly. Thus, she did not contest and drag out the divorce proceedings. That said, the Mother did not go so far as to allege that she was labouring under any misrepresentation or mistake of fact at the time the Consent Order was made.

12 The Mother relies solely on the ground of a material change of circumstances under section 128 of the WC in support of her application for care and control of the Children. To show such a material change, she made a number of arguments in support, which I broadly reframe as follows:

- (a) First, the Children are now living with her under her sole care and control, with the Father only exercising access; and
- (b) Second, the Father had effectively ceded care and control of the Children to the Mother by way of his post-Consent Order conduct.

13 As the Mother did not refer to or rely on the Guardianship of Infants Act 1934 in her submissions, I confined my decision below only to the arguments pursuant to the WC which had been raised before me.

***The first material change of circumstances - the Children are now living under the Mother's sole care and control***

14 This change in circumstances was triggered by the events of 28 August 2021, where the Mother moved out of the matrimonial flat and took the Children with her. In the lead up to this incident, the Mother submitted that over time, the Father had been asking her to leave the matrimonial flat by way of certain WhatsApp messages he sent her. These were the cumulative threats and emotional blackmail which caused her to eventually snap and forced her to leave the matrimonial flat with the Children.

15 On the day of the incident on 28 August 2021, the Mother gave evidence that she was unhappy that the Father's priority was money rather than the growth of one of the Children. She made a remark to this effect and in reply, the Father exclaimed: "*this is my house, my rules. Not happy, you get out*". Once she made up her mind to leave the matrimonial flat, she informed the Children



of the same and asked whether they wished to stay or follow her. She did not shout at them nor pressured them to follow her. The Children evidently wanted to follow the Mother out of their own free will and they packed their belongings. The Children apparently even instructed the domestic helper to pack their stuff in a bedsheet.

16 Despite the police being called to attend to the incident at the matrimonial flat on 28 August 2021, the police officers present allegedly allowed the Mother to leave the house with the Children. This, she argued, supported her case that it was blatantly obvious that the Children chose to leave with her.

17 As the Children now live with the Mother, she submits that it is in their welfare that the continuity of arrangements of stability and status quo should remain.

***The second material change of circumstances - the Father by his conduct ceded care and control of the Children to the Mother***

18 The Mother highlighted that even after the Consent Order was signed, the Father allowed her to remain as the primary caregiver of the Children (with the assistance of a domestic helper) notwithstanding that the latter was supposed to have care and control.

19 In support of this, the Mother gave evidence that she continued to pay for the Children's Chinese tuition lessons, food, groceries, and hobbies whilst the Father pays for their remaining expenses, including the domestic helper's salary. Despite reminders, the Father had not yet reimbursed the Mother for these expenses.

20 The Mother also sends the Children to school in the morning and is not dependant on the domestic helper to pick the Children after school. She also arranges for the Children's birthday party and enrichment classes and booked mini staycations for the family.

21 After the Mother moved out of the matrimonial flat with the Children, she disclosed that that parties engaged in a discussion and agreed that care of control of the Children will be given to the Mother, amongst other things. A perusal of the WhatsApp messages tendered by the Mother discloses that the Father sent her messages such as: “[Mother].. I have full intention to give you care and control”, and “once you have care and control, the kids will be staying with you”.

22 In view of these factors, the Mother submits that the Father, by way of his conduct, had ceded care and control to her. In so doing, this amounts to a material change of circumstances which warrants a switch of care and control to the Mother.

### **The Father's arguments on care and control of the Children**

23 The Father stressed that at the time the Consent Order was entered into, both parties were legally represented and there was no misrepresentation or mistake of fact which would vitiate the Consent Order. His replies to the Mother's other arguments are set out below.

#### ***The first material change of circumstances - the Children are now living under the Mother's sole care and control***

24 The Father did not dispute that the Children are now living under the Mother's sole care and control. He also does not appear to dispute that this amounts to a material change of circumstances. What the Father seeks to show

instead, is that the change in the Children's living conditions is completely self-induced by the Mother. The Mother's evidence was that she left the matrimonial flat after the Father said to her: "*this is my house, my rules. Not happy, you get out*". Conspicuously absent from the above was his invitation for the Mother to get out of the matrimonial flat ***together with the Children***.

25 Whilst the Mother had attempted to paint her leaving of the matrimonial flat as one of necessity arising from continual emotional blackmail by the Father, the latter highlighted portions of the Mother's own affidavit which paints a slightly different picture. Specifically, she stated that she moved out of the matrimonial flat on her own accord so as to avoid the Father, and because of tensions in the house where the Father was not amenable to discussing matters or talking with her.

26 Turning now to the Father's version of what transpired on 28 August 2021, he stated that at around 4.30pm that day, the Mother suddenly asked the Children to pack their belongings and they resisted at first as they were playing video games. However, the Mother started shouting at them and demanded that they pack their belongings and leave the house that very instance. Despite his pleas for her to stop, the Mother continued packing the Children's belongings and the Father had to resort to calling the police for assistance. The Father claimed that the police officer was unable to stop the Mother from taking the Children notwithstanding the Consent Order. The police further advised the Father not to do anything.

27 After the incident, the Father informed that instead of updating him on the Children's whereabouts, the Mother refused to reveal to him the location at which the Children were staying. He therefore had to seek legal redress by

applying for interim access to the Children and an order of committal against the Mother.

***The second material change of circumstances - the Father by his conduct ceded care and control of the Children to the Mother***

28 In response to the Mother's claim in this regard, the Father gave evidence that he had continued to take care of the children even after the Consent Order was entered. It was the Mother who would occasionally volunteer to send the Children to school and sometimes pick them up from the same. Whilst the Father was unable to bring the Children out for frequent activities due to the Covid-19 situation, he had sought some flexibility from work and arranged to work from home so that he could assist the Children in their home-based learning. The Father also tendered a timetable for the Children's daily activities which illustrated his daily care duties. Therefore, it was submitted that the father did not by his conduct cede care and control of the Children to the Mother.

**Issues to be determined**

29 Having set out the parties' respective arguments above, the following issues need to be decided

- (a) Does the fact that the Children now live with the Mother constitute a material change in circumstances?
- (b) If so, is such a material change in circumstances self-induced by the Mother?
- (c) If so, should such a self-induced material change be disregarded by the court?

- (d) By reason of the Father's conduct post-Consent Order, did he effectively cede care and control of the Children to the Mother?

### **My decision**

#### ***Whether a change in the Children's living arrangements constitutes a material change of circumstances***

30 If the terms of the Consent Order were faithfully complied with, the Mother would have had to move out of the matrimonial flat, the latest by end-September 2021. Nowhere in the Consent Order was it envisaged, expressly or otherwise, that the Mother would move out with the Children. There was no evidence that this was even contemplated by the parties. On the contrary, the Children were expected to remain with the Father in the matrimonial flat, as he had care and control over them. The fact that the Children now live with their Mother *prima facie* suggests that a change in circumstances had taken place.

31 Whilst the parties did not make any submissions on this point, I would for completeness give my decision on this. The answer is clear. Uprooting the Children from Sengkang West to Toa Payoh involves not only a physical change in living arrangements, but it also takes them away from their primary place of residence in which they have grown accustomed to. This amounts not only to a change in their living circumstances, but a material one. Therefore, I answer this question in the positive.

#### ***Whether the change in the Children's living arrangements was self-induced by the Mother***

32 Turning now to the Mother's arguments, she would like to have me believe that her choice to leave the house was an involuntary one, as she had no genuine alternatives but to leave. She also attempts to make the Children

shoulder part of the burden of her said choice, by justifying her taking of the Children from the house on the basis of the Children having exercised their autonomy of choice to follow her out of the house.

33 The Mother's explanation did not sit well with me, for there are a number of problems with her reasoning, especially when taken to its logical conclusion. For a start, which parent a child lives with primarily (with that parent as the daily caregiver) is determined by the parent with care and control. This question is ultimately an important one with potentially weighty consequences and must therefore be made by an adult parent with care and control (in this case the Father), and not the Children themselves especially since they were only 8 and 10 years old at the material time. As such, the Mother's taking of the Children from the house on the justification that they themselves wished to follow her is flawed from the outset.

34 By removing the Children from the house, the Mother had acted as though she has care and control and she now seeks to legitimise her actions with her current application. Her actions not only put the cart before the horse, but crucially undermined the care and control role of the Father vested in him by way of a court order.

35 Therefore, it did not matter whether the Children had agreed to leave with the Mother, and I make no finding in this regard. However, even if I had accepted that the Children did say they wanted to leave with her, the Mother's case runs into further difficulties still. Even taking the Mother's case at its highest, I note that she did not give the Children very much time to decide when she asked them whether they wanted to stay or follow her. Whether or not they were in the middle of playing video games at that time, as claimed by the Father, is immaterial. The crux of the matter is, even if I put aside the magnitude and

consequences of the decision that the Mother had asked the Children to make, the circumstances concerning the decision-making process is inherently unfair to the Children, as they only had mere minutes to decide, whereas the Mother herself had been contemplating for *months* whether or not to leave the matrimonial flat.

36 In short, I find that the Children did not have the capacity to decide for themselves where they wished to live and which parent they wanted to live with. In any event, their consent (if indeed given), could not be said to be well and truly informed. At best, I give zero weight to the Mother's argument that it was the Children themselves who chose to leave the matrimonial flat with her. At worst, I would find that the Mother had abducted the Children from under the Father's nose on 28 August 2021 in breach of the Consent Order. Neither advances the Mother's case any further.

37 In view of the foregoing, I find that the Children's change of living arrangements after 28 August 2021 was purely self-induced by the Mother's unilateral actions and she cannot shirk responsibility for her decision by pinning it on the Children. For completeness, I note that at the time she left the house, the Mother did not even have a place of her own to live in yet. I therefore doubt very much if her decision was even taken in the best interests of the Children at heart, or if it was one of self-preservation.

***Whether the Mother's self-induced material change in the Children's living arrangements should be disregarded by the court***

38 Where self-induced material changes are concerned, the Court of Appeal in *CDV v CDW* [2020] SGCA 100 at [88] held that if the unworkability of a maintenance order arises because the adverse change in circumstances was self-induced, the variation of the said order will be disallowed. The Court of Appeal

also extended this principle to the context of an order for the division of matrimonial assets. Where such an order becomes unworkable due to a self-induced change in circumstances, the court should not permit a variation.

39 In *Tan Huan Eng Agnes Florence v Trevor Symes* [2005] SGDC 83, the court had to consider whether or not to vary a maintenance order. It was held at [14] that a variation will be disallowed if the adverse change in circumstances is self-induced. This principle was also applied by the courts in *UWY v UWZ* [2019] SGFC 60 at [22] and *VCF v VCG* [2019] SGFC 120 at [79].

40 In the present case, even though the material change concerned the living arrangements of the Children instead of maintenance issues, I see no reason to depart from the general rule that a party should not be able to rely on his or her own self-induced material change in circumstances to justify a variation of a court order in his or her favour, for I am minded that *ex turpi causa non oritur actio* – from a dishonourable cause an action does not arise.

41 I therefore find that the Mother should not be permitted to rely on her self-induced material change of the Children’s living arrangements to justify a switch of their care and control to her. As no permitted material change in circumstances had taken place, my power to vary the Consent Order under section 128 of the WC did not arise, and I rest my decision on this. I therefore did not need to further consider whether and how I should exercise these powers which did not vest in me given the facts of this case.

***Whether the Father effectively ceded care and control of the Children by reason of his conduct after the Consent Order was recorded***

42 I move now to the Mother’s second argument, that the Father had by his conduct after the Consent Order effectively ceded care and control of the



Children to her. If I am persuaded by this argument, then such a finding may arguably amount to a material change in circumstances which in turn gives me the power to vary the Consent Order pursuant to section 128 of the WC. However, I was not persuaded by this argument.

*Events from time of Consent Order to 28 August 2021*

43 On its facts, this case is unlike most others. Ordinarily, parties (with children) after getting divorced each go their own way and live separately thereafter. In such cases, the courts make an order on care and control, so the parents know going forward, precisely which one of them would have the right to care for the child and make day-to-day short term decisions concerning their child's upbringing and welfare.

44 Turning back to the present case, the Mother's evidence is that even after the Consent Order was made, she continued her caregiving role by looking after the Children's needs. The Father countered with evidence that he had also continued to take care of the children even after the Consent Order was entered into. What then should the Court make of such evidence? On a balance of probabilities, I accept that there is some truth to both parties' respective accounts. In all likelihood, the parties had functioned on a shared care and control basis after the Consent Order because they were still living together as a family unit.

45 On the evidence before me, I was not prepared to go so far as to find that the Father, by allowing the Mother to play a co-parenting role with the Children, had ceded his care and control of the Children to the Mother. The reality was that the Mother was still living in the matrimonial flat and it was entirely natural for her to continue caring for the Children, albeit with some help from the domestic helper. Implicit in the Mother's argument was that the Father failed to

exercise his care and control after the Consent Order, and that was why she continued to do so exclusively. I disagree. As above, I found that the Father did exercise his care and control but allowed the Mother the latitude to remain involved in the Children's care for the time that she remained in the matrimonial flat. The Father had merely done what a reasonable father would have done in the circumstances, and for this reason it should not be held against him that the Mother was able to play, to a certain degree, a caregiver role for the Children.

#### *Events after 28 August 2021*

46 For completeness, I now address the WhatsApp messages sent by the Father to the Mother after 28 August 2021. To recap, the Father had sent her messages such as: “[Mother].. I have full intention to give you care and control”, and “once you have care and control, the kids will be staying with you”. On the face of these messages, it appears that the Father had intended to cede care and control of the Children after they had moved out with the Mother on 28 August 2021.

47 However, I would caution against reading these messages in isolation. Because when read against other text messages sent by the Father in the same chain of messages, it becomes clear that his text messages above were sent in the course of negotiations by the parties in respect of the cross-summons. For instance, the Father's text messages also include words like: “I really need you to revoke this current summon”, and “or else I have to continue to refute the items in the summon”. Ultimately, when snippets of these text messages are read in its proper context, the intentions of the Father become apparent immediately. His text messages arose from his primary motivation to reduce the litigation between parties. I therefore give little weight to the Father's text messages

which would otherwise suggest that he was prepared to give up care and control of the Children.

48 To sum up this point, I find that there is insufficient evidence on a balance of probabilities that the Father had intended to, or effectively ceded control of the Children to the Mother. There was therefore no material change in circumstances on the facts.

### **Reason for not calling for a custody evaluation report**

49 Where children's issues are concerned, the FJC is equipped with a myriad of tools to help Judges with the problem-solving process. One such tool available to me was the ability to call for a custody evaluation report prepared by the FJC's Counselling and Psychological Services team. Such a report can help the court gain a better appreciation of the family dynamics and the child's needs, so that an order can be made in the best interests of the child

50 However, I declined to call for such a report in this case because I was not even satisfied in the first place that my powers to vary the Consent Order had arisen. The idea of the child's best interests and welfare is important, but it can easily be confused with the question of whether a litigant had discharged her burden of proof. These issues are distinct. Here, the Mother failed to persuade me that a valid material change in circumstances had taken place which would have given me the powers to vary the Consent Order under section 128 of the WC.

51 If such a power had arisen, I would have no hesitation in calling for a custody evaluation report to aid my decision making. For the reasons I have given, it would be improper for me to do so here.

**Conclusion**

52 In view of the foregoing, I was not able to grant the Mother's application for care and control of the Children. She had failed to demonstrate that a valid and material change in circumstances had taken place. Regardless of whether or not the Mother's application was for the best interests of the Children, I simply did not have the power to grant her prayer since it did not even arise. To this end, I am ultimately guided by the High Court's remarks in *UHA v UHB* [2019] SGHCF 12 at [72], where it was stated that: "*One does not simply walk into the court to seek an order for any matter that is alleged to be in the best interests of the child; the court's jurisdiction and powers are prescribed by the law*".

53 I conclude by observing that the root cause of the present dispute is clear. In her motivation to avoid dragging out the divorce proceedings, the Mother had made an informed decision having had the benefit of legal advice in agreeing to the Consent Order. She now appears to suffer from consent remorse and wishes to undo the Consent Order on her terms. The proper way then was to first take out an application in court and then allow the law to take its course. Acting unilaterally in an express breach of a standing court order will attract consequences. In the premises, I made the following orders:

- (a) The Mother's prayer to have care and control of the Children is dismissed.
- (b) The Mother is to return the Children to the Father's care and control within two weeks from the date of this order.

54 As parties both submitted that each party should bear their own costs, I made no order as to costs. This will hopefully help prevent further fracturing of

the co-parental relationship between parties, and they can focus instead on acting in the best interests of the Children going forward.



Clement Yong  
District Judge



Ms. Sandra Ong and Mr. Keegan Lee (Gloria James-Civetta & Co)  
for the plaintiff;  
Mr. Ryan Yu (Aspect Law Chambers LLC)  
for the defendant.

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