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Clement Yong
District Judge
27 September 2022

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE
[2022] SGFC 73

Divorce No 436 of 2017
FC/SUM 2088 of 2020

Between

WEI

... Plaintiff

And

WEJ

... Defendant

GROUND OF DECISION

[Family Law] — [Costs] — [Legally Aided Persons]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND	2
THE PARTIES AND THEIR DISPUTE	2
THE HEARING OF SUM 2088/2020.....	3
MY DECISION IN SUM 2088/2020.....	7
THE PARTIES’ SUBMISSIONS ON COSTS IN SUM 2088/2020	8
THE LAW ON COSTS	11
GENERAL RULE	11
THE RULE IN CASES WHERE A PARTY IS LEGALLY AIDED	12
ISSUES BEFORE ME.....	13
MY DECISION	14
ISSUE 1 – WHETHER THE MOTHER IS LIABLE TO PAY COSTS TO THE FATHER.....	14
<i>Step 1: Possible interpretations of “acted improperly”</i>	<i>15</i>
<i>Step 2: The legislative purpose behind section 14(3)(b).....</i>	<i>17</i>
<i>Step 3: Wide interpretation should be preferred.....</i>	<i>20</i>
<i>The Mother is liable to pay costs to the Father due to her improper conduct in defending these proceedings</i>	<i>20</i>
ISSUE 2 – WHETHER I SHOULD EXERCISE MY DISCRETION TO ORDER THE MOTHER TO PAY COSTS TO THE FATHER	28
ISSUE 3 – WHAT QUANTUM OF COSTS, IF ANY, SHOULD BE PAYABLE BY THE MOTHER TO THE FATHER?	31
CONCLUSION	33

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**WEI
v
WEJ**

[2022] SGFC 73

Family Court – Divorce No. 436 of 2017 (Summons No 2088 of 2020)

District Judge Clement Yong

24 November 2020, 11 May 2021, 24 May 2021, 13 December 2021 24 February 2022, 17 March 2022, 7 April 2022, 12 May 2022 6 June 2022, 27 July 2022, 20 September 2022

27 September 2022

Judgement reserved.

District Judge Clement Yong

Introduction

1 At the substantive hearing of SUM 2088/2020 before me, the Plaintiff-father (the “**Father**”) applied to switch the care and control of their two children from the Defendant-mother (the “**Mother**”) to himself (collectively, the Father and the Mother shall be referred to as the “**Parties**”). The Father, represented by lawyers on a fee paying basis, succeeded entirely in his application. In other words, the Mother, represented by a lawyer on a legally aided basis, did not succeed. She had failed to resist the Father’s claim on the merits.

2 Arising from my decision above, the Father sought costs of \$40,000 against the Mother, notwithstanding that she was, and remained, legally aided. It is not often that costs are awarded against a legally aided person. At the time of writing, there appears to only be two reported cases at the district court level where such orders have been made, and none at an appellate court level. Therefore, I approached this issue in reliance on first principles and the submissions of the Parties before me.

3 Having considered the totality of the Mother’s conduct during these proceedings, I was of the view that she had acted improperly and thus could not avail herself of the statutory defence under section 12(4)(c) of the Legal Aid and Advice Act 1995 (the “**LAAA**”), which generally shields a legally aided person from having to pay costs to another party. As such, the Mother was liable to pay costs. On the facts, a nominal cost order would have been inappropriate, given the copious amount of work done and time costs incurred by the Father’s counsel. As such, I ordered the Mother to pay all-in costs of \$20,000, inclusive of disbursements.

4 I now give my reasons below.

Background

The Parties and their dispute

5 The full grounds of my decision are set out in *WEI v WEJ* [2022] SGFC 51) (the “**Judgment**”). Whilst I summarise some of the key facts here, a detailed perusal of the Judgment is required to fully appreciate the context behind the cost order I have made. In brief, the Parties got divorced in March 2017. Subsequently, care and control of their two children, aged 12 and 10 years old (the “**Children**”), were given to the Mother. In March 2019, the Children’s

relationship with the Father broke down completely. The Father took out the present summons seeking a switch of the Children's care and control to himself, citing that *inter alia*, the Mother had alienated the Children from him, and that the Children's welfare would best be served by preserving and rebuilding their relationship with him whilst under his care.

6 The Mother resisted the Father's application, claiming that neither herself nor her then-boyfriend ("BF"), whom she eventually married, had been alienating the Children from the Father. The Mother also denied being the cause of the breakdown in the Children-Father relationship. Instead, she claimed that she had always been supportive of co-parenting, and it was the actions of the Father which had hurt the Children and caused them to lose trust and confidence in him. The Mother categorically refused to take any responsibility for the Children's alienation from the Father.

The hearing of SUM 2088/2020

7 Following the Parties' submissions above, the crux of the case centred on whether or not, in the application of the welfare principle, the Children's welfare would be best served if the Father took over their care and control from the Mother.

8 On the surface, this issue appeared relatively straightforward. However, its resolution was anything but uneventful. The proceedings comprised 11 hearing dates which spanned over two years (from July 2020 to September 2022), during which 16 affidavits (totalling 1,473 pages) and 11 sets of submissions (totalling 425 pages) (excluding bundles of authorities) were filed by the Parties.

9 The reason for the lengthy proceedings can be better understood if I analogise the Father's relationship with the Children to that of a roller-coaster ride, which starts off smoothly before quickly going topsy turvy, followed by a period of relative calm and then entering a tailspin. All this while, the Mother appeared to be a bystander cheering the tumultuous parts of the ride¹.

10 Turning back to the case, the Father's relationship with the Children in recent years can broadly be partitioned into four phases² as follows:

Phase	Timeframe	Remarks
1	Before March 2019	A loving Father and Children relationship. Save for some difficulties, this period was otherwise uneventful.
2	March 2019 to November 2020	The first acrimonious period in the Father's relationship with the Children.
3	November 2020 to December 2021	Therapeutic intervention and a period of healing in the Father's relationship with the Children.
4	December 2021 to present	The second acrimonious period in the Father's relationship with the Children.

11 It should be noted that the Father took out the present summons during Phase 2 after his relationship with the Children started to deteriorate. Things got so bad that the Children refused to see the Father and even started calling him by his initials instead of 'papa'. Whilst there were indications that the Mother had contributed to this state of affairs, I gave her the benefit of the doubt and avoided engaging in a fault-finding exercise at that stage. As critical

¹ See my findings of fact in *WEI v WEJ* [2022] SGFC 51

² Reproduced from paragraph [15] of *WEI v WEJ* [2022] SGFC 51

intervention was more urgent and necessary, I called for a Custody Evaluation Report (“**CER**”) and directed parties to attend Divorce Support Specialist Agency (“**DSSA**”) counselling in November 2020. This brought about the end of Phase 2.

12 In Phase 3, which followed, I noted that with the assistance of DSSA, some progress was made in restoring the Father’s relationship with the Children in early 2021. The Children no longer displayed hostility toward the Father and became more open to spending time with him. Encouraged by that progress, I made an interim order on 24 May 2021, which in essence granted the Father step-up access to the Children. This included (i) DSSA supervised visitation every weekend for eight weeks, (ii) DSSA-conducted supervised exchange every Saturday for eight weeks thereafter, and (iii) unsupervised access every Saturday for eight weeks thereafter. To guard against any regression of the progress made, I also ordered the Mother and her then-boyfriend, BF:

- (a) Not to disparage the Father, whether directly or indirectly, explicitly or implicitly, in front of the Children.
- (b) Not refer to the Father by his initials or encourage the Children to do so.
- (c) To take steps to have the Children acknowledge and recognise the Father’s role.
- (d) To encourage the Children to interact positively with the Father.
- (e) To refrain from involving the Children in the litigation between the Parties.

13 It is important that I set out the orders above (which have been summarised) for reasons which will become clear later in the judgment. Turning back to Phase 3, the Father and the Children continued to make progress for much of 2021 in restoring their relationship, with no evidence of any hindrance by the Mother. I was hopeful that if the Parties continued down this path, the Father and the Children would be able to restore their relationship to what it was like during Phase 1. By December 2021, I had the benefit of reading the updated (albeit closed) DSSA report, and I decided on 13 December 2021 that step-up access to the Father shall continue incrementally. Specifically, this took the form of an order that the Father shall have overnight access with the Children on Friday nights with immediate effect, considering that it was also the December school holiday period.

14 Following my orders above, the proverbial calm before the storm ended, and the matter moved into Phase 4, where all the progress made by the Father and the Children in 2021 was utterly wiped out, and their relationship deteriorated once again to what it was like in Phase 2. In Phase 4, I heard the Parties over six days, and a summary of what transpired during each hearing is set out below:

Hearing date	Remarks
24 February 2022	Prior to this hearing, which was fixed for decision, the Parties filed further affidavits informing that the Father-Children relationship had taken a very sudden and severe turn for the worse, just two days after I had made the above interim order for overnight access.

	Taken by surprise and puzzled by this turn of events, I invited the Parties to make further submissions and they did so.
17 March 2022	I heard further substantive arguments from the Parties.
12 May 2022	I directed ³ the Mother's counsel to inform the Director of Legal Aid that the Mother had re-married on 13 March 2022 as this may have affected her household income and by extension, eligibility for legal aid. It was later confirmed that legal aid would continue to be extended to the Mother.
6 June 2022	I delivered my decision. Having considered all the facts, I put in place the necessary safeguards and ordered that, <i>inter alia</i> , care and control of the Children be switched to the Father.
27 July 2022	The Father having succeeded in his application, sought costs of \$40,000 against the Mother. I heard the Parties on the Mother's liability to pay costs, given that she was legally aided.
20 September 2022	Having found that the Mother had acted improperly during the proceedings and was thus liable to pay costs, I heard the Parties on the issue of quantum of costs payable. Having considered all the circumstances, I ordered the Mother to pay all-in costs of \$20,000 to the Father (inclusive of disbursements).

My decision in SUM 2088/2020

15 As alluded to above, I granted the Father's prayers, and my eventual orders were almost *in pari materia* with the orders that he sought. In summary, I found that the Mother had repeated (as with Phase 2) her alienating behaviours

³ And highlighted to counsel his duty under section 4(6) of the Legal Aid and Advice Act 1995

during Phase 4, which had the effect of undoing all the improvements in the Father's relationship with the Children during Phase 3. For reasons which I have fully set out in the Judgment, I found that the Children's interests would best be served if their care and control were switched to the Father in a staggered manner. It was on this basis that I granted the Father's substantive application.

The Parties' submissions on costs in SUM 2088/2020

16 By all measures, the Father had succeeded in his application. The Mother did not. Following this, the issue of costs arose.

17 The Mother highlighted that she was legally aided and that unless she was found to have acted improperly in bringing or defending the proceedings or in the conduct of these proceedings, she should not be liable for costs. She submitted that the threshold for costs to be ordered against a legally aided person is high and should only be granted in a narrow situation where such a person had acted improperly or dishonestly. As it was submitted that the Mother had done neither, the Court should order each party to bear their own costs.

18 The Father, on the other hand, actually took different positions regarding costs at various stages of the proceedings, which somewhat reflected the then-realities he was facing with the Children at the relevant stage. Let me elaborate.

19 During Phase 3, when the Parties were undergoing the therapeutic healing process and the Father was on track in restoring his relationship with the Children, he appeared to be prepared to bear his own costs and let the issue slide. This is best encapsulated by the following (truncated) exchange⁴ between

⁴ NE, 24 May 2021, Page 45, Line 31

the Father's counsel ("PC") and the Court on 24 May 2021 (during one of the hearings in Phase 3):

Ct: Alright. Okay. So, issue of cost for just today's hearing, do parties want to address me?

PC: Yes, Your Honour, actually, we are hoping to address Your Honour for cost leading up to this point actually including the 24th of November as well as the---I believe it was 10th of May---

Ct: be---before you---before you go on, isn't the Defendant legally aided now?

PC: Oh yes, Your Honour, oh, yes, that's right.

PC: Yes, Your Honour, thanks for reminding me on this point, actually, it just slipped my mind. Then naturally, I suppose we are constrained by the fact that the wife is legally aided but of course---

Ct: Yes, I---I am also bound by those constraints unless you are making any specific---

PC: No, Your Honour, I---I--- I don't intend to make any submissions to get around that issue.

Ct: Alright. So, I take it that that's all for today then?

PC: Yes, Your Honour.

20 However, the matter did not come to a resolution during Phase 3. If so, the matter would in all likelihood have concluded without the Father seeking costs. Due to the events which transpired during Phase 4, the matter ended up being bitterly contested by the Parties. From 13 December 2021 to 20 September 2022, the Father took pains to highlight that a significant amount of work had to be done during Phase 4 by the Parties, and this included:

- (a) The filing of four affidavits in support of the Plaintiff's case;
- (b) Four sets of written submissions tendered by the Plaintiff;
- (c) The filing of three affidavits in support of the Defendant's case;
- (d) Three sets of written submissions tendered by the Defendant;
and
- (e) Eight hearings and court attendances, during which substantive oral arguments were made by both counsels.

21 On the basis that the Mother's conduct during Phase 4 had resulted in a deterioration of the Father's relationship with the Children and that all the good progress made in Phase 3 had come to naught, the Father had a change of position regarding costs, and made a fresh submission that it was only fair that costs of \$40,000 should now be awarded to him for the *entire* proceedings. However, upon the Court's prompting that costs, if any, ought only to be awarded for work done in Phase 4, the Father recalibrated his submission and instead sought all-in costs of \$20,000 (inclusive of disbursements).

The law on costs

General rule

22 It is trite that costs generally follow the events, and the award of costs in family proceedings are awarded on a discretionary basis. In exercising such discretion, I am mindful of Rules 852 and 854 of the Family Justice Rules 2014 (“FJR”).

23 Rule 852(2) of the FJR provides:

(2) If the Court in its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Division, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

24 Rule 854 of the FJR provides that:

The Court in exercising its discretion as to costs must, to such extent, if any, as may be appropriate in the circumstances, take into account –

- (a) any payment of money into Court and the amount of such payment;
- (b) the conduct of all the parties, including conduct before and during the proceedings;
- (c) the parties’ conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution; and
- (d) in particular, the extent to which the parties have followed any relevant pre-action protocol or practice directions.

25 The High Court in *VVB v VVA* [2022] SGHCF 1 neatly summarised why costs generally follow the event, and the importance of a party’s conduct during the proceedings which will have greater relevance in how a court exercises its discretion in determining costs. I set out the relevant paragraphs below:

[9] Costs are generally ordered to follow the event because a successful party has had to institute proceedings in order to obtain what he deserved (r 852(2) of the FJR). Since the other party's conduct necessitated the litigation, it is fair that he bears the costs of the litigation (see *JBB v JBA* [2015] 5 SLR 153 ("*JBB*") at [9]).

[10] Rule 854 of the FJR (see [24] above) directs the court exercising its discretion as to costs to take into account the conduct of the parties. Indeed, "[it] is the conduct of the parties in the proceedings which will have greater relevance in the court's exercise of discretion in determining costs (see also rr 854, 856 and 857 of the FJR)" (*JBB* at [33]).

The rule in cases where a party is legally aided

26 Notwithstanding the general rule on costs stated above, certain statutory exceptions apply when a litigant is legally aided, as is the case with the Mother. Under section 12(4)(c) of the LAAA, a legally aided person shall not be liable for costs to another party in a proceeding for which a Grant of Aid was issued. However, under section 14(3)(b) of the LAAA, a legally aided person cannot avail himself or herself to this statutory defence if certain exceptions apply, such as if the legally aided person had acted improperly in the conduct of the proceedings. I set out below the relevant provisions of the LAAA:

- 12.—(4)** Where any Grant of Aid is so filed, the aided person —
- (a) shall not be liable in respect of any proceedings to which the Grant of Aid relates for court fees or for such fees payable for the service of process or for any fees due to the Sheriff or bailiff in connection with the execution of process;
 - (b) shall be entitled to be supplied free of charge with a copy of the judge's notes of evidence in any proceedings to which the Grant of Aid relates, and of any other document in connection with those proceedings as may be prescribed;
 - (c) shall not, except where express provision is made in this Act, be liable for costs to any other party in**

**any proceedings to which the Grant of Aid relates;
and**

(d) shall not be liable to pay any deposit which would have been payable to the Official Assignee under the regulations made under section 449 of the Insolvency, Restructuring and Dissolution Act 2018, where legal aid has been granted to the aided person to commence bankruptcy proceedings against a debtor.

14.—(1) Where it appears to a court that any of the circumstances mentioned in subsection (3) exists in relation to an aided person, the court may order the aided person to pay the costs of all or any of the following persons:

- (a) the Director;
- (b) the solicitor who acted for the aided person;

(c) the other party.

(3) For the purposes of subsection (1), the circumstances are as follows:

(a) the Grant of Aid issued to the aided person has been obtained by fraud or misrepresentation;

(b) the aided person acted improperly in bringing or defending any legal proceedings, or in the conduct of those proceedings.

[Emphasis added in bold above]

Issues before me

27 Given the submissions made by the Parties on costs, the issues before me can be distilled into the following:

- (a) Whether the Mother is liable to pay costs to the Father;
- (b) Whether I should exercise my discretion to order the Mother to pay costs to the Father; and

- (c) What quantum of costs, if any, should be payable by the Mother to the Father.

28 I now set out my reasons and conclusions for each of the issues below.

My decision

Issue 1 – Whether the Mother is liable to pay costs to the Father

29 It was not disputed that at all material times, the Mother was legally aided pursuant to a Grant of Aid issued under section 8 of the LAAA. Therefore, any liability on the Mother’s part to pay costs can only be triggered by section 14 of the LAAA. Here, the analysis would centre on whether the Mother had acted improperly in defending these proceedings or had acted improperly during the conduct of these proceedings.

30 This calls for an exercise in statutory interpretation. This process consists of three steps (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 (“*Tan Cheng Bock*”) at [37] and [54]):

- (a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole (“Step 1”).
- (b) Second, ascertain the legislative purpose or object of the statute (“Step 2”).
- (c) Third, compare the possible interpretations of the text against the purposes or objects of the statute. The interpretation which furthers the purpose of the written text should be preferred to the interpretation which does not (“Step 3”).

Step 1: Possible interpretations of “acted improperly”

31 The LAAA does not define the words “acted improperly”. Hence, it is open to interpretation as to what these words mean in the context of section 14 of the LAAA, read against the entire Act as a whole.

32 As alluded to above, there are only two reported cases at the district court level where a legally aided person was found to have acted improperly and was ordered to pay costs. The first is the case of *Pang Tee Gam v Chui Ah Mui* [2009] SGDC 400 (“*Pang Tee Gam*”), where the legally aided plaintiff filed for divorce on the ground of the defendant’s unreasonable behaviour. The court found that the plaintiff had no basis to bring the action against the defendant when he already knew at the outset that he had committed bigamy, which would have rendered the current proceedings unnecessary. The bigamy admission was conceded by the plaintiff in the early stages of the trial. However, the plaintiff chose to continue with the proceedings, and even cross-examined the defendant’s expert witness on a point which his own expert did not dispute. Hence, the plaintiff had put the defendant to even greater cost and expense that could easily have been avoided.

33 In the second case of *TCP v TCQ* [2015] SGFC 57 (“*TCP v TCQ*”), the legally aided defendant filed a variation application in respect of an ancillary matters order. The court found that the defendant’s conduct in bringing the said application was “unreasonable and improper” as the defendant had previously filed a “setting aside” application in respect of the said ancillary matters order which had been conclusively adjudicated on its merits and subsequently dismissed. The issues raised in the defendant’s variation application were, therefore, *res judicata*, and the court found that the variation application was an attempt to re-litigate the issues.

34 A common theme in the two cases above suggests that the legally aided persons were ordered to pay costs because each of them had abused the process of court, which amounted to acting improperly for the purposes of section 14(3)(b) of the LAAA.

35 To this end, the Mother submitted that the words “acted improperly” as phrased in section 14(3)(b) of the LAAA should be interpreted narrowly, meaning only if the Mother’s conduct were (i) dishonest or (ii) was an abuse of process would it amount to improper conduct, and trigger her liability to pay costs under section 14 of the LAAA. She had formulated this interpretation in reliance based on the two cases cited above, and on a particular reply given by the Law Minister during previous parliamentary debates (for which I will go through in Step 2 below).

36 The Father was also cognisant of the above-mentioned parliamentary debates as well as the two cases cited above. However, he came to a very different interpretation from the Mother on what the words “acted improperly” mean. He submitted that the words “acted improperly” should be given its literal meaning, as acting improperly in this context can cover a wide spectrum of conduct, and that the categories of improper conduct under section 14 of the LAAA is not closed (as the Mother had suggested). To this end, the Father relied on the above-mentioned parliamentary debate to arrive at his conclusion.

37 With respect, I have difficulty accepting the Mother’s position that the categories of what amounts to improper conduct cannot be a closed one. I will explain further below.

Step 2: The legislative purpose behind section 14(3)(b)

38 As stated above, the issue of when a legally aided person can be said to be acting improperly and therefore liable to pay costs was specifically addressed in Parliament by the then-Minister for Law, Professor S. Jaya Kumar, in response to a fellow parliamentarian's question on whether it may be unfair and punitive for a legally aid person to pay costs.

39 The question can be found in Parliamentary Debates, Budget, Ministry of Law, 8 March 2020, Volume 71: Columns 1454 and 1455. I present the truncated portions below:

Dr Lily Neo (Kreta Ayer-Tanglin): Sir, I would like to highlight an aspect of legal aid in Singapore today and urge the Minister for Law to look into it.

...

Section 14(3) enables the Court to direct the applicant to pay the costs of the Director, the solicitor and the other party's solicitor if the Court feels that the aided person has acted improperly in bringing or defending any legal proceedings or in the conduct of them. My view is that this is unfair and punitive. Before the Legal Aid Bureau takes on a case, the Director will assess the facts to see whether such a case is worth defending or litigating in. *It does not appear equitable to punish the aided person who relies on the legal advice and judgement of the Director and Legal Aid Bureau's solicitors.*

[Emphasis added in italics above]

40 The answer can be found in the same sitting, at Columns 1460 – 1465. The truncated portions are set out below:

The Minister for Law (Prof. S. Jayakumar): Sir, my colleague, Minister of State Ho Peng Kee, and I will answer the points raised by Members within the time allotted to us. And I hope if any points are cut off by the guillotine, Members will file questions at subsequent sittings.

...

[Dr Lily Neo] also asked about the seemingly unfair punitive provision in ordering costs against aided persons. Here again, there may be a misunderstanding. This is not a provision applied often and frequently across the board. This is to take care of a very narrow situation where it may be *found out later* that the person who obtained legal advice or legal aid *actually had acted improperly or even dishonestly*.

He might have even told lies. In that kind of situation, *it is not equitable that a person be seen to have got off scot-free*. So this is the narrow situation where costs may be awarded against that person. In fact, as far as I could find out from the Legal Aid Bureau, they can recall only about two or so instances when an aided person has been asked to pay cost under this provision.

[Emphasis added in italics above]

41 Based on the above exchange in Parliament, the Parties came to very different conclusions on how the words “acted improperly” in section 14(3)(b) of the LAAA should be interpreted. On legislative intent alone, the Mother seemed to suggest that an element of dishonesty or should be read into the interpretation of these words⁵. Alternatively, the Mother submitted that the test

⁵ See Mother’s written submissions dated 18 July 2022 at paragraphs [11] and [26]

of what “acted improperly” means is a “plan and obvious⁶” one, suggesting that a literal interpretation should be taken.

42 I cannot accept the Mother’s first argument, for that is a classic fallacy in reasoning. On a proper reading of the then-Law Minister’s reply, he did not say that all improper conduct requires dishonesty. What he said was dishonesty or telling lies amounts to improper conduct. In other words, picture a venn diagram with one circle inside another with the bigger circle representing improper conduct and the smaller circle representing dishonesty – not all improper conduct is dishonest, but all dishonesty is improper conduct.

43 I prefer the Mother’s alternative argument, that a literal interpretation should be given to the words “acted improperly”. This, in my view, is consistent with legislative intent, and as the Father also pointed out⁷, Parliament has clearly not seen fit to prescribe or circumscribe the meaning of having “acted improperly” to fixed categories. This may also be seen from the then-Law Minister’s speech in which he referred to the touchstone of the legally-aided litigant having acted “inequitably” in the situation where the said litigant would be ordered to pay costs. It would have been impossible for Parliament to prescribe, exhaustively and *a fortiori*, the categories of cases in which a litigant could be said to have acted improperly.

⁶ NE, 27 July 2022, Page 20, Lines 11-12

⁷ See Father’s written submissions dated 25 July 2022 at paragraph [6]

Step 3: Wide interpretation should be preferred

44 For the reasons given above, a literal reading should be applied to the words “acted improperly”, and that would encompass a wide interpretation instead of the Mother’s submission that improper conduct be limited to narrow situations involving dishonesty or abuse of process by the legally aided person.

45 Such a wider interpretation would also be consistent with legislative intent that the exception under section 14(3)(b) of the LAAA should only be applied in narrow situations to prevent inequitable outcomes. For instance, allowing a legally aided person who brought an unmeritorious action utterly devoid of merit to be immune from paying costs would clearly lead to an inequitable outcome, least of all for the winning party who had to commit resources to defend the proceedings due to no fault of his/hers. In the cases of *Pang Tee Gam* and *TCP v TCQ*, it is clear that once the courts had found the conduct of the legally aided persons to be improper, costs naturally were therefore ordered against them to avoid an inequitable outcome, very much as Parliament had intended.

46 To sum up this part, I am of the view that in interpreting the words “acted improperly”, the test of what constitutes improper conduct in this context under section 14(3)(b) of the LAAA is a wide one for the reasons I have given above. Whilst the test may ultimately only be applied in narrow situations, it is not to be confused with being a narrow test in itself.

The Mother is liable to pay costs to the Father due to her improper conduct in defending these proceedings

47 Applying the test of whether the Mother had acted improperly in the present case, so much so that she loses the immunity under section 12(4)(c) of

the LAAA, which protects her against paying costs, it is my finding of fact that the Mother had acted improperly in defending these proceedings. It is not because she was dishonest, or that she had abused the process of court, or that her defence was bound to fail at the outset. I find that the Mother had acted improperly because she had disobeyed interim court orders, which led to the unnecessary prolonging of the matter by another nine months, during which time the copious amount of work done by both sets of counsels could have been avoided.

48 With reference to paragraph [12] above, I had made a number of interim orders on 24 May 2021 to provide a problem-solving framework for the Parties to adopt going forward so that the Father can work on the restoration of his relationship with the Children. However, the Mother had disobeyed these orders and frustrated the court's efforts to address the parental alienation effects on the Father. The evidence of the Mother disobeying the court's interim orders had already been categorically listed out in the Judgment. For ease of reference, I reproduce below the relevant portions extracted from the Father's submissions⁸, which set out the examples of how exactly the Mother had breached the interim orders made by the Court on 24 May 2021:

⁸ See Father's written submissions dated 27 June 2022 at paragraph [23]

s/n	The 24 May 2021 interim order	Findings of Fact in the Judgment
1.	(3)(a): The Defendant and her boyfriend [BF] shall not disparage, whether directly, or indirectly, explicitly or implicitly, the Plaintiff and/or the Plaintiff's family to or in front of the Children.	<p>[105] <i>“Considering all these incidents collectively, I observe a disconcerting pattern of the Mother and BF consistently putting up a unified front to berate and humiliate the Father in the presence of the Children”</i></p> <p>[106] s/n 10 <i>“Over the course of a few months, there had been a disconcerting pattern of the Mother and BF consistently putting up a unified front to berate and humiliate the Father in the presence of the Children.”</i></p>
2.	(3)(c): The Defendant and her boyfriend [BF] shall take steps to have the Children acknowledge and recognise the Plaintiff's position and role as the Children's father.	<p>[106] s/n 6 <i>“The Mother had without any good reason cut the Father out of a very important moment in any parent's life, that is, to see their children walk up on stage to receive an award. As a coparent, the Mother is expected to not conscientiously exclude the Father from an event celebrating the children's academic success in school.”</i></p> <p>[106] s/n 7 <i>“Despite the Father having travelled all the way to the hospital upon hearing that the Older Child suffered a suspected head injury, the Mother refused to let the Father visit the child and instead stonewalled him by keeping him waiting for over an hour on site without any updates. She also left the hospital with the Older Child without giving the Father an opportunity to speak with him.”</i></p>

		<p>[106] s/n 9 <i>“The Mother refused to engage the Father in co-parenting the Children, especially the Older Child...Having been made aware of the Children’s and especially the Older Child’s reluctance to spend time with the Father, the Mother demonstrated an unequivocal reluctance to positively improve the Father’s relationship with the Older Child by doing a simple act of having a meal with eh Father and Children to talk about the relevant issues affecting their relationship. Instead, the Mother limited her role to merely prescribing that the Father should apologise to the Older Child, and as far as she was concerned, that was the end of the matter.”</i></p>
<p>3.</p>	<p>(3)(d): The Defendant and her boyfriend [BF] shall encourage the Children to interact positively with the Plaintiff.</p>	<p>[69] <i>“Without the Mother’s supervision and assistance in personally facilitating a smooth handover to the father, it appeared that the Children felt emboldened to pursue an outcome where they did not have to spend time with the Father. This manifested in them running away upon seeing the Father on the occasions cited above. The Mother’s deliberately lax attitude and hands-off approach is very telling. She simply did not care if the access sessions were well facilitated and instead left the Father to handle the Children and deal with their adolescent whims on his own. This is not what co-parenting looks like, especially since the Mother must have become aware of the Children’s behaviour of running away by the third or fourth time it happened.”</i></p> <p>[70] <i>“From her failure to personally facilitate access during these incidents, I find that the Mother had failed to take any ownership of her responsibilities as a co-parent, which I</i></p>

	<p><i>stressed to her counsel during Phase 3 of the proceedings. Specifically, I had stated that the Mother should take positive steps to help the Children recognise their father and encourage them to interact positively. Unfortunately this was not heeded by the Mother.”</i></p> <p>[106] s/n 1 <i>“The Older Child sent vitriolic text messages to the Father. The Mother, despite knowing about these messages, not only justified but did not discipline or correct the Older Child for sending such disdainful messages to the Father.”</i></p> <p>[106] s/n 2 <i>“The Children caused mayhem at the Father’s house during the first overnight access...The Mother blamed the Father for being negligent in leaving the spray can in the Children’s room without supervising them. In relation to the eggs, the Mother dismissed the Children’s act of leaving broken eggs underneath a couch in their grandfather’s room as a mere “prank”. The Mother did not take any disciplinary or remedial actions on the Children for their behaviour that night.”</i></p> <p><i>“The Children ran away from the Father during an access session at United Square. They were later reunited at the police station after the Father filed a missing person’s report...The Mother showed no interest in providing timely updates to the Father after she found out where the Children were, and her deliberate omission led to the Father going on a wild goose chase for the Children. In re-framing BF’s berating of the Father in front</i></p>
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		<p><i>of the Children at the police station and brushing this off as merely using a “harsher tone”, the Mother had expressly endorsed BF’s conduct and this reinforced and amplified the Children’s unhappiness with the Father.”</i></p> <p>[109] <i>“In the present Phase 4, I observe that the Mother now exhibits the following behaviours:</i></p> <p><i>(a) She strongly supports the Children’s rights to make their own decision about visiting or having access with the Father;</i></p> <p><i>(b) She (and to an extent, BF) confirmed for the Children that the Father is not worthy of the Children’s attention; and</i></p> <p><i>(c) She and BF denigrates the Father in the Children’s presence, and there was at least one occasion where the Children were encouraged to point out the Father’s faults.”</i></p>
<p>4.</p>	<p>(5): The Plaintiff and the Defendant, whether by themselves or their agents and / or friends and / or family members are restrained from involving the Children in the litigation between them, whether ongoing or in the past, including verbal or written communication of the proceedings, showing the Children</p>	<p>[75] – [78], [80]</p> <p><i>“I find that the Mother had started the ball rolling by asking the Children to write their frustrations down for the Father. However, it was not clear if she had read or vetted the document before permitting the Children to show it to the Father. Whilst there were a number of possibilities, none of them bode well for the Mother. First, if she had read the document and nonetheless permitted the Children to negotiate access timings, then she had fallen far short of the parental standards expected of her. Namely, not to expose the Children to litigation, or as the</i></p>

	<p>copies of any legal or court documents and / or otherwise sharing with the Children any correspondences, emails or any other communication pertaining to the said proceedings or discussing the same with the Children in whatever form or substance.</p>	<p><i>Father puts it, a matter for the grownups. Alternatively, if she knew that the Children had prepared the document but chose not to review it before allowing the Children to show it to the Father, such wilful blindness amounts to actual knowledge, and he will be equally blameworthy for the consequences which follow.”</i></p> <p>[106] s/n 5 <i>“The Children were allowed to propose their own access terms to the Father on a document... The Mother had instigated the making of this document. Despite knowing or having ought to have known the contents of this document, the Mother permitted the Children to show it to the Father and unilaterally begin discussions on their own access terms. This demonstrated a dereliction of the Mother’s parental duties and a lack of insight into her responsibilities as a coparent.”</i></p>
<p>5.</p>	<p>(6): The parties are to conduct themselves in accordance with, and adhere to, the spirit of this Order, and shall do all things and take all steps necessary to give effect to the Court’s intentions underlying the Order. Such steps and actions include and are not limited to facilitating the access ordered, attending and participating in counselling sessions, and cooperating with all other parties who</p>	<p>[106] s/n 3 <i>“Unsupervised by the Mother, the Children ran away from the Father at the beginning of access sessions on at least eight different occasions... Through the Mother’s lax attitude and hands-off approach, she had emboldened the Children in diminishing the quality of their access sessions with the Father. She simply did not care if the access sessions were well facilitated and instead left the Father to handle the Children and deal with their adolescent whims on his own.”</i></p>

	<p>may be involved, including not limited to counsellors and welfare officers.</p>	<p>[106] s/n 8</p> <p><i>“The Mother refused to give the Younger Child’s handphone number to the Father despite the latter asking multiple times...The Mother had failed to facilitate the opening of a direct line of communication between the Father and Younger Child. Her omissions in this context had contributed to an increased isolation in the Father’s relationship with the Younger Child.”</i></p>
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49 Categorically, these collective breaches of the interim orders during Phase 4 by the Mother, during which time she also consciously failed to co-parent and cooperate with the Father, had the irrefutable effect of unnecessarily prolonging the proceedings, which in my view demonstrated improper conduct.

50 This is not to say that the Mother should not have defended the proceedings from the start. In doing so, especially in Phases 2 and 3, partaking in the court proceedings was not only necessary, but *encouraged*, as her participation allowed the Parties and especially the Father and the Children to move forward and heal with the help of a multi-disciplinary team of social workers, counsellors, and psychologists. All these were done under a therapeutic justice framework through which active and genuine participation by the Parties was required.

51 That said, the improper conduct of the Mother in defending the proceedings really only thoroughly surfaced during Phase 4, when her recurrent alienating behaviours began to undermine all the progress made in Phase 4, which led to an unnecessary lengthening of the proceedings. This was despite the Mother already being shown the path to healing and therapy. Her alienating

behaviours in Phase 4 were therefore entirely unnecessary, and the entire set of proceedings in Phase 4 could well have been avoided but for the Mother's actions.

52 Therefore, as the Mother's conduct was not improper during Phases 2 and 3, she is afforded immunity under section 12(4)(c) of the LAAA up to December 2021. However, this immunity dissipates in Phase 4 owing to her own improper conduct in continuing to wilfully defend the proceedings whilst at the same time actively disobeying the interim court orders, which had the effect of prolonging the matter. Thus, I hold the Mother liable to pay costs for proceedings in Phase 4, that is, after December 2021.

Issue 2 – Whether I should exercise my discretion to order the Mother to pay costs to the Father

53 Given my finding above, there is still the question of whether I should exercise my discretion to order the Mother to pay costs, notwithstanding that I have found that she is *liable* to do so.

54 As stated above, the starting point is to look at Rule 854 of the FJR, where namely, I would have to consider the conduct of the Parties before and during the proceedings. Here, the focus is once again on the Mother's conduct during the proceedings. In the analysis above, I have explained why I found the Mother's conduct in defending the proceedings to be improper. To rely in isolation on the same grounds in the exercise of my discretion to order costs against the Mother, it may be perceived, whether fairly or otherwise, by the Mother that I am 'double-counting' her conduct against her.

55 However, there is a new and disturbing finding of fact which I also make that will explain why I exercised my discretion to order the Mother to pay costs in the circumstances.

56 The Father had stated on affidavit⁹ that during Phase 4, in January 2022, the Mother's then-boyfriend asked him how much he was spending on his legal fees. The Father responded that whatever it was, to him, it was worth it as his Children are priceless. The Mother then allegedly retorted that she could "play with you (i.e. the Father)" for as long as possible as she was on the Legal Aid Bureau's pro bono scheme.

57 The Mother replied to the allegation in her own affidavit¹⁰, in which she denied that the Father said that "whatever it was, to me it is worth it as my children are priceless". The Mother also denied that she said that she could "play with you (i.e. him)". Instead, the Mother said the Father was clearly flaunting his financial ability to spend on exorbitant legal fees through the conversation they had.

58 In my view, if what the Father said was true, then what Mother was trying to do was to exploit her status as a legally aided person to prolong litigation at the expense of the Father, without due regard for any sort of cost consequences for herself. Unfortunately for the Mother, the evidence suggests that on a balance of probabilities, what the Father said was more likely to be true. I make this finding having assessed the Mother's factual behaviours in Phase 4¹¹, which were not consistent with the behaviours of a person with

⁹ See Father's affidavit dated 21 February 2022 at [106(e)(iv)]

¹⁰ See Mother's affidavit dated 11 March 2022 at [35]

¹¹ See findings of fact made in the Judgment

genuine cost concerns or constraints. The Mother seemed content to continue her alienating behaviours, which resulted in an unnecessary prolonging of the proceedings. Had she been more cost-conscious, she would have known that it was in the interests of all parties involved to cease her alienating behaviours and bring the matter to a quick end.

59 Also, what struck me in the Mother’s reply to the Father’s allegation was her lack of denial that she was on the Legal Aid Bureau pro bono scheme. She denied saying she could “play with [the Father]”. But she did not deny making mention of the fact that she was legally aided. On a balance of probabilities, the Mother, in all likelihood, had a Freudian slip that she later tried to deny. In short, the Mother, being acutely aware of her status as a legally aided person and the protection it affords, no longer had the incentive to settle the matter expeditiously, and her resulting words and actions were clear manifestations of her underlying indifferent attitude towards costs, or the financial toll it was exacting on the Husband.

60 I do not think that the LAAA was enacted to afford cost immunity or protection to litigants under such circumstances. Legal aid under the LAAA in Singapore is provided to ensure that the less privileged members of Singapore who cannot afford to pay for private legal advice and court representation out of their own pockets will nonetheless be able to afford them. On a broader level, this ensures that when given to deserving persons of limited means, legal aid can effectively enhance access to justice for such persons¹².

¹² *Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 at col 2130 (Dr Vivian Balakrishnan, the Minister for Community Development, Youth and Sports)

61 Applying the policy considerations behind the legal aid scheme to the present case and having considered the totality of the Mother's behaviours during the proceedings, especially during Phase 4, I find that her conduct during that phase of the proceedings, and the negative consequences which followed, justified an award of costs against her. As with the decision in the case of *Pang Tee Gam*, I am not prepared to allow the Mother to behave improperly in these proceedings and then hide behind the mantle of being legally-aided to avoid paying the Husband his costs.

Issue 3 – What quantum of costs, if any, should be payable by the Mother to the Father?

62 Having found the Mother liable to pay costs and having explained why I exercised my discretion to order costs against the Mother, I now turn to the quantum of costs to be paid.

63 The Mother submitted that a nominal award of costs against her would suffice as there was no trial in the present case, with all evidence adduced by way of affidavits. She also highlighted that the present application was not a committal proceeding for which the Mother was found to have breached an order of court. Finally, the Mother submitted that she could not be said to be unreasonable in defending the action even during Phase 4.

64 I am unable to agree with the Mother's submissions. The quantum of costs awarded should be very much guided by the amount of work done and is independent of the form of the hearing. Even though this was not a committal hearing, a finding of fact was made that the Mother had breached interim court orders during Phase 4, which amounted to improper conduct, and this resulted in a determination of her liability to pay costs. Once a litigant is found to have acted improperly in breach of court orders, the outcomes, whether by way of an

adverse cost order, or being subject to a committal hearing, are not mutually exclusive.

65 Conversely, I am inclined to agree with the Father's submissions on costs. In claiming all-in costs of \$20,000 (including disbursements) for work done and time and costs incurred during Phase 4, the Father was not unreasonable. The Father had set out in his submissions a detailed breakdown of the work done, which can be summarised as follows:

- (a) The filing of four affidavits in support of the Plaintiff's case;
- (b) Four sets of written submissions tendered by the Plaintiff;
- (c) The filing of three affidavits in support of the Defendant's case;
- (d) Three sets of written submissions tendered by the Defendant;
and
- (e) Eight hearings and court attendances, during which both counsels made substantive oral arguments.

66 In *Pang Tee Gam*, the Court ordered the legally aided litigant to pay costs of \$20,000 as the trial took more than three and a half days. In the present case, for Phase 4 alone, there were at least two and a half days of substantive hearings fixed. Given the numerous other affidavits and submissions filed, I was persuaded by the Father that all-in costs of \$20,000 (including disbursements) against the Mother would be fair and reasonable in the circumstances.

67 For completeness, this was a clear-cut case where nominal costs would not have been appropriate. On my watch, I am not prepared to send the signal to legally aided persons who game the system and expand state resources by

prolonging litigation beyond what is necessary, that there would be no cost consequences to this flippant strategy beyond a mere slap on the wrist by way of a nominal cost order. To this end, a maxim of Roman law comes to mind – *interest rei publicae ut sit finis litium* (it is in the interest of the state that there should be an end of litigation).

Conclusion

68 For the reasons given above, the Mother is ordered to pay all-in costs of \$20,000 (including disbursements) to the Father.



Clement Yong
District Judge



Johnson Loo Teck Lee and Lew Zi Qi (Drew & Napier LLC)
for the plaintiff;
Poh Jun Zhe, Malcus (Chung Ting Fai & Co.)
for the defendant.
