

UPI and another v UPJ
[2022] SGFC 12

Case Number : Originating Summons No. 111 of 2019

Decision Date : 26 January 2022

Tribunal/Court : Family Court

Coram : Sheik Mustafa

Counsel Name(s) : D Ganaselvarani (D Rani & Co) for the plaintiffs; Cheryl Tan, Patrick Fernandez
(Fernandez LLC) for the defendant.

Parties : UPI — WAC — UPJ

Family law – Guardianship – Wardship – Access to child

26 January 2022

District Judge Sheik Mustafa:

Introduction

1 In this case an aunt and a grandmother of a child seek to be appointed as his guardians, or to be granted weekly access to him. The child’s mother is the defendant, and she opposes the application.

2 The application is premised on section 10 of the Guardianship of Infants Act and section 17 of the Supreme Court of Judicature Act.

3 I heard the parties and dismissed the application entirely. The aunt and grandmother now appeal against my decision.

Facts

The parties

4 The child is 5 years old. I will refer to him as “the Child”.

5 The defendant is the Child’s biological mother. I will refer to her as “the Mother”.

6 I will refer to the biological father of the Child as “the Father”.

7 There are 2 plaintiffs. They are the mother and sister of the Child's biological father; in other words, they are his paternal grandmother and paternal aunt. I will refer to them as "the Grandmother" and "the Aunt", or collectively as "the Plaintiffs".

Background to the dispute

8 The Child was born to the Mother and to the Father in December 2016. They lived with the Grandmother at her home.

9 In June 2017, the Child's parents moved into a rented flat with him. The Child was left with the Grandmother's care whilst the parents were at work.

10 In August 2017, the Father passed away. The Mother took the Child home. There was a dispute, and she refused to allow the Grandmother to see the Child. The Grandmother filed an application to this Court under OSG xxx/2017^[note: 1], citing section 5 of the Guardianship of Infants Act, seeking to be given sole or joint custody of the Child. The matter was heard, and the application was dismissed on 28 June 2018. The Grandmother appealed against the decision.

11 In spite of the dismissal of the Grandmother's case, an agreement was reached between parties in which the Grandmother was to have access to the Child on alternate Sundays. In November 2018, the Grandmother withdrew her appeal.

12 In February 2019, the Plaintiffs requested for increased access to the Child. They noted in their letter to the Mother's solicitor that the Child had some injuries. The Mother did not agree to the request for increased access.

13 The Grandmother and Aunt claim that during the agreed access, they observed bruises and injuries on the Child. They brought the Child to a doctor to be examined for what they believed to be a cigarette burn and made a police report. They suspected that the Child was suffering from abuse or unhealthy living conditions. They took photographs of the Child and filed the present originating summons in July 2019.

14 There were confrontations during access. The Mother alleges that the Plaintiffs insulted her, calling her a prostitute, and accusing her of killing her husband. The Mother claims that she received repeated calls and was harassed by the Plaintiffs. She reported it to the police. She ceased the access.

15 Somewhere in November 2019, the Child was referred to the KK Women's and Children's Hospital based on the allegations of abuse by the Plaintiffs. The Child was admitted by the hospital for evaluation and was discharged 2 days later. After concluding that the physical examination of the Child was unremarkable except for multiple hyper-pigmented lesions of various sizes over his lower limbs and arms, the hospital released the Child to the Mother. This is contained in a medical report by the hospital dated 13 February 2020 addressed to the Mother's solicitors.

16 The case underwent several conferences. In September 2020, the Plaintiffs filed a summons requesting an order that the Mother consent to a further medical report on the Child based on photographs of the Child that they had produced, alleging that the doctors who examined the Child did not have the benefit of seeing the photographs. They also asked that the Mother bring the Child to see a doctor in the event that the doctor requires to see and examine the Child. In November 2020 I granted the request and that the Plaintiffs have to bear the costs involved.

17 Pursuant to my order, the Plaintiffs' solicitor sent the photographs to the KK Women's and Children's Hospital, requesting for a further medical report based on them. The hospital replied in a report dated 4 January 2021 that the Child had previously been referred to it in November 2019 and stated their findings as

above. Regarding the latest enquiry by the Plaintiffs concerning the alleged injuries in the photographs however, the hospital stated that it was not able to comment on the photographs alone.

18 The Plaintiffs went to another doctor. They produced a handwritten memo dated 8 February 2021 from the doctor, who is a consultant paediatrician at a private clinic. The memo states that the Plaintiffs had come to see the paediatrician and shown him the photographs, indicating their concern that the Child was being physically abused at home. The paediatrician opined that “the photographs [were] sufficiently suspicious to open an investigation to rule out child abuse”. The paediatrician had not examined or met the Child.

19 The Mother brought the Child for another examination at the KK Hospital on 15 March 2021. A doctor there examined the Child and put up a report dated 28 June 2021. The report noted that the Child was “well-looking and cheerful, with good interactions and eye contact with his mother”. The doctor noted that the Child had “multiple hyper-pigmented lesions over both lower limbs and forearms”, and that there were “no liner marks, no bruising and no tenderness elicited.” It also stated that the remainder of his body was normal, and that he was in fair general condition. The Child was discharged to his Mother.

20 The Grandmother also sought assistance from the Ministry of Social and Family Development through her Member of Parliament. In a letter dated 13 April 2021, the Child Protective Service (“CPS”) informed her that they had conducted checks on the Child and found that there were no child protection concerns. It also stated that the Child’s school and a Family Service Centre “will continue to monitor his well-being and report immediately to the Police or CPS should there be any concerns.”

21 The Mother maintains that the Child is not abused, and that the Plaintiffs believe that they ought to have the care of the Child because they blame her for the Father’s death. Her learned Counsel argues that the Plaintiffs lack the requisite locus standi to pursue their case.

Issues to be determined

- (a) Do the Plaintiffs have locus standi in these proceedings?
- (b) Is this an appropriate case where the Court ought to exercise its wardship jurisdiction to place the Child in the Plaintiffs’ care?
- (c) Should the Plaintiffs be granted access to the Child?

Do the Plaintiffs have locus standi?

22 The learned counsel for the Mother raised this issue based on the decision of the High Court in *UMF v UMG*^[note: 2]. This issue was also raised by the Mother at the previous proceeding which was dismissed on 28 June 2018.

23 In that case the applicant was the grand aunt of a child who sought to be appointed as her guardian pursuant to section 5 of the Guardianship of Infants Act which provides:

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 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.

[emphasis added]

24 The High Court held that a non-parent does not have locus standi to invoke section 5:

“31 In the present case, the Plaintiff had been caring for H since he was seven days old. She was seeking orders for custody and care and control of H. Thus, leaving aside the court’s wardship jurisdiction (which will be discussed below), her application could only have been made under s 5, but that only refers to applications by parents and court-appointed guardians. The Plaintiff, being neither, had no *locus standi* to apply under that provision.”

25 The present case, however, is filed pursuant to section 10 of the same Act, which provides:

Removal of guardian

10. The court may remove from his guardianship any guardian, and may appoint another guardian in his place.

26 This provision was also examined by the High Court in the same case:

“38 I observe that in these cases cited, the courts contemplated the removal of guardians who had earlier been appointed by will or under the applicable legislation. Section 10 does not envisage the removal of a natural parent as a guardian of the child.”

27 In the present case, the Mother is not a guardian, and therefore section 10 is not a relevant provision. Based on this, the Plaintiffs’ case fails.

Is this an appropriate case where the Court ought to exercise its wardship jurisdiction to place the Child in the Plaintiff’s care?

28 The Plaintiffs also seek to invoke section 17 of the Supreme Court of Judicature Act which provides:

Civil jurisdiction – specific

17.—(1) Without prejudice to the generality of section 16, the civil jurisdiction of the High Court shall include —

...

(d) jurisdiction to appoint and control guardians of infants and generally over the persons and property of infants;

...

29 The High Court in the case of *UMF v UMG*^[note: 3] laid down the requirements when an application to invoke the court’s wardship jurisdiction may be commenced. Firstly, it is by an originating summons. Secondly, any one with a genuine interest may apply. Thirdly, the question is when one may apply:

“66 Third, what is the threshold to be satisfied before the court’s wardship jurisdiction can be invoked? I have said earlier that parents and court-appointed guardians may apply under s 5 of the GIA, while other interested adults (such as the Plaintiff) will need to invoke the court’s wardship jurisdiction. If such

jurisdiction could be easily invoked, the underlying rationale for the distinction between these two different groups of adults, ie, parents and court-appointed guardians on the one hand and other interested adults on the other, would be undermined. Indeed, such an approach would render the locus standi requirements in s 5 otiose. Therefore, to preserve the balance of authority between these groups of adults, the threshold for invoking the court's wardship jurisdiction must necessarily be a high one.

67 One should start from the premise that wardship jurisdiction is protective in nature: see [52] above. It therefore follows that the jurisdiction should only be invoked where a child is in some need of protection. Thus, Baroness Hale of Richmond and Lord Toulson held in *In re B (A Child) (Reunite International Child Abduction Centre and others intervening)* [2016] AC 606 that the "real question" was whether the child required "protection": at [60]. And as Lam VP put it in CLP, the "crucial consideration" is whether there is "any real need" for the court to exercise its jurisdiction "in the interest of the child": at [1.2]. One example would be where both parents of a child are alive but do not wish to care for him or her. In such circumstances, a grandparent may invoke the court's wardship jurisdiction and seek to be appointed the child's guardian. The facts in the *Lim Chin Huat Francis* cases could and would support the invocation of the court's wardship jurisdiction, as neither of Esther's parents wanted to parent or care for her."

30 The principal points to derive from this are that-

- (a) The threshold for invoking the court's wardship jurisdiction is a high one, and
- (b) It should only be invoked when the child is need of protection.

31 I apply these to the present case. Is the Child in need of protection? I examined the photographs of the alleged injuries of the Child, and I do not see any obvious sign of non-accidental injury. However, an expert opinion is required on this issue, and it was for this reason that I ordered the Child to be examined by doctors at KK Hospital. The doctors at KK Hospital who physically examined the Child and who actually saw the marks did not find them to show any non-accidental injury. I note that the Child was examined by different doctors at KK Hospital on two separate occasions, in November 2019 and in March 2021. Both examinations found nothing that shows that the Child is in need of protection from the Mother. It certainly does not meet the high threshold required to invoke the court's wardship jurisdiction as required by *UMF v UMG*.

32 Other than that, the Plaintiffs have nothing else to support their suspicion of mistreatment of the Child. In addition, given that the Plaintiffs' own evidence indicates that the safety of the Child is being monitored by the Child Protective Service, I find that the Child is not in need of the court's protection.

33 For the foregoing reasons, I find that the Plaintiffs' case fails on this issue.

Should the Plaintiffs be granted access to the Child?

34 The court's power to grant access to a child is an extension of its powers under section 17(1)(d) of the Guardianship of Infants Act. As the Plaintiffs have failed to show that they have locus standi for that provision, this application fails as well.

Conclusion

35 Given that the Plaintiffs did not have locus standi to have conducted these proceedings, I find that I am not in a position to order that the parties undergo counselling to work towards reconciliation.

36 It is evident that the Plaintiffs are traumatised by grief at the loss of the Father, and it is understandable that they wish to retain a connection to him through his child. However, the bridge of familial trust has burned down. Although it is heartening that after the last case, the parties did arrive at an amicable arrangement for access, that arrangement did not last. I hope that all parties will be able to overcome their mutual distrusts and come to another arrangement again.

[note: 1]Redacted.

[note: 2][2018] SGHCF 20.

[note: 3]At paragraph 62.

BACK TO TOP

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