

Dispute Resolution

High Court Examines Threshold for Sole Custody Orders Involving Parental Absence

Introduction

Does a parent's absence from a child's life warrant the making of a sole custody order? Custody of children, which gives a parent the right to make significant decisions concerning long-term matters affecting the child's welfare, is an important parental right. Sole custody is a draconian order which is only made in exceptional circumstances. The case of *WMR v WMQ* examines the threshold for the making of sole custody orders, in particular, where parental absence is involved.

In this case, the Family Court had granted the Mother's application to vary a joint custody order to sole custody to her. The children were around 11 and 12 years of age at the material time. The sole custody order was premised on, among other things, the Father's six-year absence from the children's lives.

The Father appealed against the Family Court's decision to the High Court. The High Court overturned the Family Court's decision and reinstated the Father's right to custody over the children by way of a joint custody order.

Kevin Tan and Shawn Teo of Rajah & Tann Singapore LLP acted as instructed counsel for the Father (instructed by Montague Choy and Aisyah Jailani from Imperial Law LLC) in this successful appeal.

Brief Facts

The Father (an Indonesian citizen) and the Mother (a Singapore citizen) were married in 2010. They had two children before getting divorced in 2015. They subsequently entered into a Consent Order which included joint custody and reasonable access to the children.

The Father did not keep in contact with the children for a six-year period from 2016 onwards. The Father's position was that the Mother had, sometime in 2015, made it difficult for him to see his children post-divorce and linked his access to the children to his ability to make maintenance payments. He also faced financial difficulties and then fell into depression.

In 2022, the Mother applied to the Family Court to vary the joint custody order to sole custody in her favour. She asserted that she had to make decisions for the children without the Father's involvement since 2016. In this regard, she faced difficulties enrolling the children into Primary school and wanted to have sole custody so that she could apply for them to have Singapore citizenship.

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The Family Court granted the Mother's application for sole custody. The District Judge found that exceptional circumstances existed in the present case, and noted that there had been cases where exceptional circumstances had been premised on a parent being absent from the children's lives for an extended period of time. On the facts, he also found that there was significant difficulty in registering the first child into Primary 1, and that the circumstances pointed to Singapore citizenship being in the children's best welfare.

The Father appealed against the District Judge's decision. Counsel for the Father made the following key arguments: (i) the District Judge failed to apply the appropriate legal threshold to the present case; (ii) parental absence in and of itself did not constitute an exceptional circumstance warranting a sole custody order; and (iii) the District Judge erred in relying on the issues of schooling and citizenship in making the sole custody order.

Holding of the High Court

The High Court overturned the District Judge's decision and reinstated the joint custody order. The High Court held that the District Judge had erred in principle and in his appreciation of crucial facts in deciding that sole custody was justified in this case.

Some key findings are as follows.

Exceptional circumstances

Counsel for the Mother argued that the Court did not need to consider the requirement of exceptional circumstances in dealing with the Mother's application to vary the joint custody order. The High Court rejected this position and agreed with counsel for the Father that in varying a joint custody order to a sole custody order, the Court will need to be satisfied that following a material change in circumstances, exceptional circumstances exist such that sole custody is in the best interests of the children.

Parental absence

The High Court accepted counsel for the Father's position that there is no general rule or principle which dictates that a parent's absence from his child's life must always and inevitably be treated as an exceptional circumstance warranting a sole custody order. The High Court stated that each decision turns on the facts of the case.

The High Court also highlighted that the rationale for the 'exceptional circumstances' requirement is that all things being equal, it should be in the best interests of the child for both parents to have joint responsibility for making the major decisions in his or her life.

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Facts of the case

The High Court found that the District Judge had erred in his appreciation of key facts in determining whether sole custody was justified. The High Court agreed with the Father's position that there was no significant difficulty faced by the Mother in registering the first child into Primary 1, and that it was wrong in principle for a Court to impose its own opinion on the issue of a child's citizenship.

The High Court observed that while the Father's past behaviour was not without blame, the Father had put in effort at forging a better path ahead in his relationship with the children. All in all, the Court did not consider the Father to be incapable of contributing positively to long-term decisions about the children such that it was in their best interests to deny him an equal say in the decisions.

Concluding Words

The High Court's decision clarifies the correct legal test in determining whether a sole custody order should be made. The paramount consideration when it comes to custody is the best interests and welfare of the child. In considering the best interests of the child, the Court will take cognisance of the fact that it promotes the child's welfare to have the direct involvement of both parents in his or her life. Joint custody signals to the child that both parents continue to be involved in his or her life. Unless there are exceptional circumstances, joint custody should be ordered.

The Court's approach in this case is also consistent with the ideals of therapeutic justice to allow healing and restoration to the family unit and repairing the bridge between parent and child. A sole custody order may not be the solution simply because a parent has been absent in a child's life for a period of time.

For further queries, please feel free to approach our team below.

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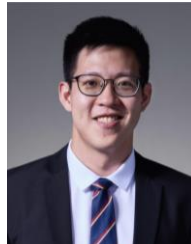
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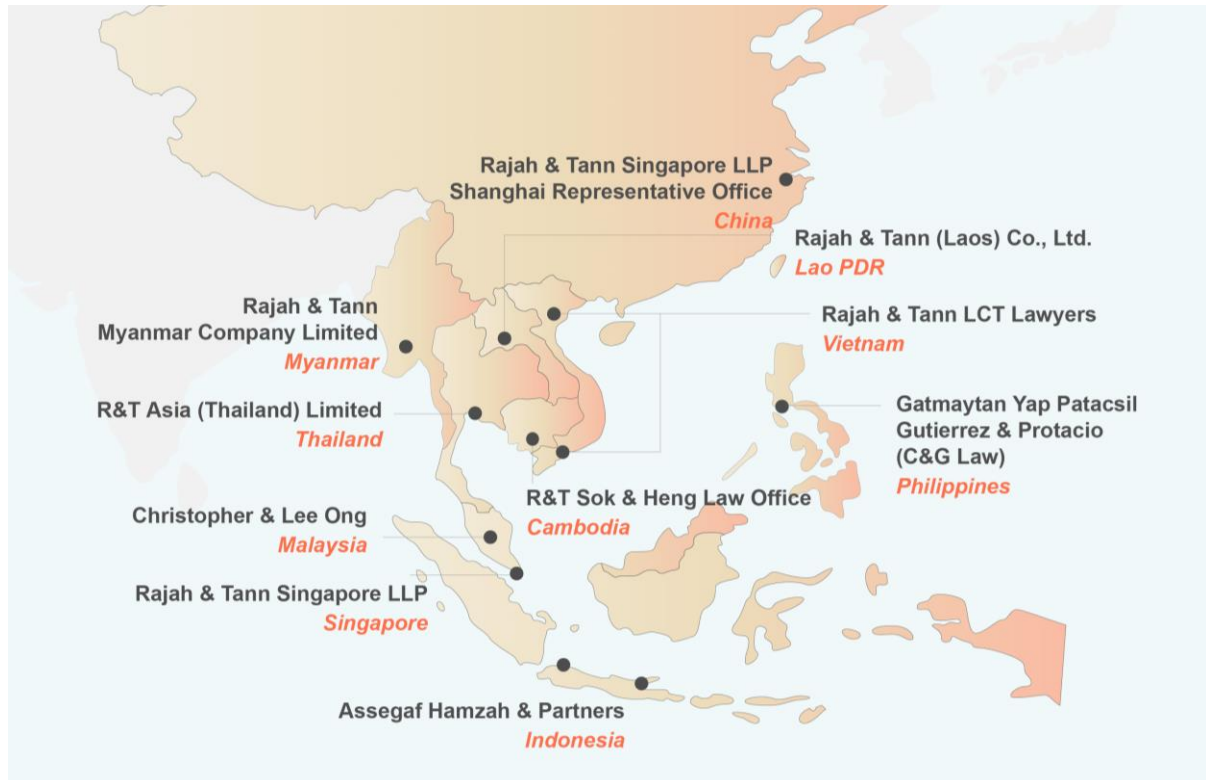
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