

**VIJ v VII**  
**[2021] SGFC 29**

**Case Number** : SS 1185/2018, HCF/DCA 117/2020

**Decision Date** : 15 March 2021

**Tribunal/Court** : Family Court

**Coram** : Chia Wee Kiat

**Counsel Name(s)** : Mr Nandwani Manoj Prakash ( Gabriel Law Corporation ) for the Applicant; Respondent in Person.

**Parties** : VIJ — VII

*Family law – Family violence – Orders for protection*

15 March 2021

**District Judge Chia Wee Kiat:**

**Introduction**

1 This is an application by the applicant ("the Father") for a personal protection order ("PPO") against the respondent ("the Mother") in connection with family violence allegedly committed by the Mother against the Father and the two children of the marriage. The application was contested by the Mother.

2 At the trial before me, the Father and the Mother were the only witnesses who gave evidence. At the conclusion of the trial, I found that the requirements for a PPO under s 65 of the Women's Charter (Cap. 353) ("the Charter") were not satisfied on a balance of probabilities and dismissed the application.

3 As the Father has appealed against my decision, I now set out my grounds of decision.

**Background**

4 The parties have been mired in litigation since 2013. The detailed history of proceedings is recorded in my earlier decision (*VII v VIJ [2020] SGFC 48 ("VII")*) rendered in respect of the ancillary matters ("AM") in the divorce proceedings (FC/D 3401/2018 ("D3401")) filed by the Mother.

5 It is unnecessary to revisit the earlier proceedings in detail, but a few salient aspects are worth highlighting as they help provide context to the current PPO application.

6 The parties were married on 4 February 2020 in India. There are two children to the marriage who were referred to as [J] and [K] (redacted names) in VII. For consistency, I shall adopt the same redacted names in these grounds of decision. J is currently living with the Father and K with the Mother. The children turn 13 and 11 respectively this year.

7 The Father started work in Singapore in 1997 and obtained Singapore Permanent Residency in 1999. The Mother obtained Singapore Permanent Residency in 2003. J was born in May 2008 and K in June 2010. Faced with various challenges while living with the Father, the Mother left the Father in 2013 with the children.

8 On 20 June 2013, the Father filed OSF 272/2013/S ("OSF 272") seeking joint custody of the children with care and control to him and reasonable supervised access to the Mother.

9 On 30 July 2013, the parties entered into a consent order giving parties joint custody of the children with interim care and control to the Mother and interim access to the Father. The interim access orders were subsequently varied on two occasions.

10 On 14 October 2013, the Mother commenced divorced proceedings (Divorce Suit No. D 5061 of 2013 ("D 5061")) against the Father on grounds of unreasonable behaviour. D 5061 was dismissed by District Judge Wong Keen Onn ("the DJ") on 19 July 2016 after a 14-day trial.

11 On 4 November 2016, the Mother obtained a PPO (PPO 1176/2016) in SS 2992/2014 ("SS 2992") against the Father.

12 On 26 May 2018, the Father failed to return the children after exercising his lawful access. On 27 May 2018, the Mother made a police report.

13 The Mother found out on 29 May 2018 that the Father had taken the children to Kandang Kerbau Hospital ("KKH") on 26 May 2018 and lodged a report that she had abused them. She was subsequently contacted by the Child Protection Service ("CPS") of the Ministry of Social and Family Development ("MSF") to arrange for a meeting.

14 On 1 June 2018, the Father filed the current PPO application (SS 1185/2018 ("SS 1185")) against the Mother from committing family violence against him and the children.

15 On 13 June 2018, the Mother was informed that CPS and the police found no evidence of abuse and the matter was closed. She was also handed a Case Card with the classification "No offence disclosed" by the police officer present.

16 On 22 June 2018, the Father filed FC/SUM 2242/2018 ("SUM 2242") in OSF 272 to seek, *inter alia*, care and control of the children.

17 In July 2018, K returned to the Mother out of her own volition whilst J continued to reside with the Father.

18 On 23 July 2018, the Mother commenced D 3401 on grounds of four years' separation. The Father contested the divorce.

19 On 7 March 2019, an Interim Judgment was granted by the DJ after a one-day trial with costs of \$3,500 to be paid by the Father to the Mother. The AM were adjourned to be heard in chambers.

20 The AM and SUM 2242 came up for hearing before me on 8 October 2019. The matters for determination were custody, care and control of the children and access, division of matrimonial assets and maintenance.

21 At the AM hearing, the Father acknowledged that parties have filed numerous applications against each other (see *VII* at [58]):

There have been numerous applications filed by both parties in respect of interim custody, care and control, access, maintenance, orders relating to the passports of the Children, orders for the Defendant to vacate the matrimonial home, as well as the filing of various police reports, applications for Personal Protection Orders ("PPOs") and contempt proceedings from before D5061 to date.

22 Indeed, the level of acrimony between the parties was high. As I had observed in *VII* (at [59]-[61]):

59 Both have made serious allegations against the other. The Wife says the Husband is in breach of the access orders but the Husband says it was the Wife who has repeatedly denied him access to the children. The Wife says the Husband has been abusive towards the children but the Husband says the Wife has deliberately caused hurt to J on several occasions. The Wife says K has chosen to stay with her but the Husband says J has chosen to stay with him. The Wife says the Husband has turned J against her but the Husband says the Wife has deliberately alienated the children from him. The Wife says the Husband has forced a wedge in the relationship between J and K but the Husband says the Wife has deliberately pit the children against each other. The Wife says she does not trust the Husband that he will not use harsh disciplinary method on the children but the Husband says the Wife should provide an undertaking that she will not use family violence against the children.

60 The inability of the parties to see eye to eye and the deep mistrust for each other have led to multiple applications in court. Both are insisting that the care and control of the children should be awarded to them, each claiming that they are acting in the best interests of the children.

23 On 26 May 2020, I rendered my decision with full written grounds in the hope that my decision and the observations provided therein would provide some finality in the matter and help the parties let go and move on. I found that the children had been triangulated in the parents' disputes (see *VII* at [55]) and impressed upon the parties the need to reduce conflict and minimise acrimony and reminded them of their responsibility to facilitate the children's relationship with the other parent (see *VII* at [57]).

24 Both parties claimed to have acted in the best interests of the children but as I have noted in *VII* (at [61]):

The unfortunate reality is that the children are caught in the crossfire of their parents' conflicts. It is apparent to me that the children are sad, confused and worried by all that has transpired. The parties seem oblivious to the fact that their endless conflicts have exacted a toll on the children, which must be overwhelming for any child to bear.

25 I assessed that any transfer of care and control to the other parent would be too drastic for the children, which might subject them to even more anxiety. I found that it would be in the children's best interests for them to remain under the care of the current respective parent. This would support the children's stability and continuity in the children's current living arrangements and minimise the anxiety and uncertainty the children had been experiencing regarding their living arrangements.

26 I have no doubt that both parties love the children deeply and was hopeful that they could acquire the necessary skills to establish a co-operative parenting relationship with the help of a trained counsellor.

27 With these considerations in mind, I made the following orders with respect to the welfare of the children:

(a) The parties be granted joint custody of the children with care of control of J to the Husband and care and control of K to the Wife.

(b) The parties be granted facilitated access with the child not living with them with the support of the Divorce Support Specialist Agency ("DSSA"). The DSSA counsellor is to assess the progress of parent-child readiness and commence contact time at a suitable stage as determined by the counsellor. The parties shall cooperate and work with the DSSA counsellor.

(c) The parties and the children are to attend such counselling and therapy as may be deemed appropriate by the DSSA counsellor to address the difficulty with regard to access as well as the following areas:

(i) promoting each child's relationship with both parents;

(ii) promoting sibling relationship ;

(iii) address divorce-related stress and grief for parents and children ;

(iv) coaching parents on boundaries and age-appropriate autonomy; and

(v) restoring adequate parent, co-parenting and parent-child roles.

(d) The children should be encouraged to have regular contact time to bond with each other without the interference of either parent.

(e) Subject to the prevailing regulations on Covid-19 to safeguard public health, the children shall have weekly contact time with each other, to be facilitated by the school counsellor, at the school till the start of the year-end holiday.

(f) The children shall have weekly contact time with each other at the DSSA from the start of the 2020 year-end holiday.

(g) The parties may, with the help from the DSSA counsellor, work out an access plan that caters to the developmental needs of the children whilst assuring them, to the greatest extent possible, of a normal family life with two parents.

(h) The DSSA may, in its discretion, conduct such facilitated access, counselling or therapy via online platforms having regard to the prevailing risks and regulations on Covid-19 to safeguard public health and parties shall comply with such guidelines as may be prescribed by the DSSA for the remote services.

(i) The parties shall bear the costs of such assisted access, counselling and therapy, if any, equally between them.

28 Orders were also made in respect of the division of matrimonial assets and maintenance. The detailed reasons for my determination in respect of these other issues were provided in my written grounds in *VII*. The final judgment of divorce was granted on 18 January 2021.

29 The Father appealed against the whole of my decision. The appeal was heard and dismissed in the High Court by the learned Lai Siu Chiu J.

30 The Father also proceeded with the PPO application (SS 1185), which had been stood down pending the determination of the AM. Having considered the evidence tendered at the trial and the respective submissions, I dismissed the Father's application.

31 With this contextual background, I now turn to the substance of the Father's PPO application and explain why the application was dismissed.

### **The Father's case**

32 The Father lodged a Magistrate's Complaint on 1 June 2018 for a PPO for himself and the two children. The Father alleged that the Mother had used physical violence, vulgarities, pitted one child against another, used inappropriate and aggressive discipline and provoked fear in him and the children.<sup>[note: 1]</sup> This application was made soon after he failed to return the children on 26 May 2018.

33 Three specific incidents, alleged to have taken place in February 2018, 24 May 2018 and 31 May 2018, were highlighted in his affidavit dated 5 July 2019 filed in support of the PPO application.<sup>[note: 2]</sup> At the PPO trial, a fourth specific incident, alleged to have taken place on 17 June 2018, was added.<sup>[note: 3]</sup>

34 A summary of the Father's allegations in respect of the four specific incidents is as follows:

(a) The February 2018 incident: The Father alleged that on the day of his access, the children informed him that the Mother had hit J for being late. The children wanted the Father to help them but did not want the Father to reveal to the Mother that they had complained about her as they feared facing further consequences upon returning to the Mother. The Father submits that the Mother has wilfully and/or knowingly placed the children in fear of hurt.<sup>[note: 4]</sup>

(b) The 24 May 2018 incident: The Father alleged that K had alerted him about the violence that had been committed upon J by the Mother on 24 May 2018. J had asked the Father to take him to the hospital as the Mother had not attended to the wound. At the hospital, the children were interviewed separately and the doctor had lodged a police report upon concluding that this was a case of child abuse.<sup>[note: 5]</sup> The Father exhibited several letters from KKH pertaining to the incident.<sup>[note: 6]</sup> The Father submits that the Mother has instilled fear and a fear of being hurt in K. The Father alleged that K told him that the Mother "will kill" K if K complained about the Mother.<sup>[note: 7]</sup>

(c) The 31 May 2018 incident: The Father alleged that on 31 May 2018 at Woodlands Regional Library, the Mother hurled vulgarities, such as "Bloody bastard, wife beater, liar, kidnapper" in public. The Mother had lunged forward to hit the Father, thereby causing hurt to the Father, despite the police officer's warning that she would be arrested if she continued.<sup>[note: 8]</sup>

(d) The 17 June 2018 incident: The Father alleged that the Mother attended the church and sat rows in front of the Father and was taking recordings of the Father and the children. The Father, the children and the paternal grandmother wanted to avoid the Mother and attempted to leave the church, but the Mother had started to chase after them. The Mother restrained the Father from leaving and hit, punched and slapped him across his face and on his back.<sup>[note: 9]</sup>

35 In his affidavit dated 16 April 2019, the Father exhibited a police report lodged by J on 21 December 2018. J stated in the police report as follows:

On 13/12/2018, at about 2130hrs, my father namely [redacted] brought me to outside of Bukit Gombak NPP to hand over myself to my mother namely [redacted] under the court order for tchoukball trip. I wish to state that my father and mother are currently under separation since 28/03/2013 and I had been living with my mother until 26/05/2018.

On the same day, when my mother came down to fetch me, she told me to come to her, however I refused. My mother then started taking photos and video recording me which I felt harassed. I told her to stop and asked for the reason and she said he wanted to show it other people. Subsequently, my mother started to approach me with the phone and started chasing me between 2 pillars while video recording me. I felt afraid, thus, I got away from her using my skateboard and away from the place.

I wish to state that I felt afraid of my mother because she had previously hit me without reason on many occasions, even after the separation of my father and mother. I had a case of Child abuse against my mother under Tanglin Police Division on sometime in May 2018 which I was not sure if it was still ongoing. It was a case whereby my mother scratched my right upper arm causing it to bleed and she accused me of doing it on myself but it was not true. I had also reported the child abuse case to MSF, however the case was already closed.

On 17/06/2018, my mother came to look for me at Church, took videos of me and started hitting my father out of nowhere which caused me to feel distressed. This was also the reason why I felt afraid of my mother and this was also reported to the police.

Sometime in July 2018, my mother also came down to my school and wanted to bring me to somewhere else where I refused. She then started taking videos of me and chasing after me, similar to the incident on 13/12/2018. This had happened multiple times. It was also reported to the police.

I had an Expedited order (EO), EO 827/2018 since 01/06/2018 which restraints her from using family violence, including harassment, against me. My EO had expired on 20/12/2018 and I have yet to renew it.

I had only come to report the incident to the police because my father wanted to attend the court mediation with my mother first on 20/12/2018. However, I felt that something needs to be done about this.

I am lodging this report in the view of exercising the EO against my mother.

36 The Father points out that J was a mere 10 years old and was the informant himself as he signed the complaint himself. The Father says it is heart wrenching for a child to lodge a police report and even more disturbing that the police report is made against his own mother.<sup>[note: 10]</sup>

37 The Father submits that ever since J had moved in following the "violent incident case" by the Mother on 26 May 2018, J was terrified and refused to spend any time alone with the Mother.<sup>[note: 11]</sup> The Father says that he has no access to K since 5 October 2018. He has thus tried to gain access through the school, by sending messages through the counsellors, by sending mails to the Mother, making provisions to celebrate K's birthday at the Family Service Centre even if he is not present. The Father, while fearful of the Mother, has reached out on a number of occasions to the Mother to grant him access, either a phone call with K, or on important occasions. However, the Mother had refused his requests. The Father says the Mother has breached the interim orders for access.<sup>[note: 12]</sup>

38 The Father submits that following the AM hearing on 26 May 2020, a PPO will be vital in providing legal structure to support and assist the implementation of the orders made on 26 May 2020 to preserve the peace within the family. The Father, whilst fearful of the Mother, has attempted to gain rightful access to K in order to preserve the family unit. However, the Father has not had access to K from 5 October 2018 to date.<sup>[note: 13]</sup>

39 The Father says that he has been trying to avoid unnecessary interaction with the Mother. Most recently was the event at the Community Centre near the matrimonial flat, where the Father had gone to collect masks. J and the Father were crossing the car park and coincidentally the Mother had also just parked her car. The Mother started to video-record the Father and J, which had caused them much fear and distress.<sup>[note: 14]</sup>

40 The Father says that on J's birthday in May 2020, the Father had hoped for some interaction between the children and an exchange of presents. The Father brought J to the matrimonial home where the Mother resides with K. He kept some distance away from the apartment in order to minimise provoking the Mother. J was being shouted at by the Mother and was asked to leave. The Mother had shouted vulgarities and J did not have a chance to give his gift to K. J was not able to see K and was very distressed by the incident.<sup>[note: 15]</sup>

41 The Father submits that whilst he is fearful of the Mother, he is trying his best to facilitate bonding and access between the children. The Father says that he has hesitantly resorted to committal proceedings to restore, replenish and revive these broken relationships. Short of intervention from the authorities and the court, there is little hope parties can ever hope to minimise the destruction ensuing from their broken marriage.<sup>[note: 16]</sup>

### **The Mother's case**

42 In her affidavit dated 21 February 2019, the Mother states that she had been a victim of domestic violence throughout her marriage with the Father. On 23 March 2013, unable to tolerate the Father's behaviour, she took the children and moved and stayed away from the Father. Despite living separately, the Father continued to harass her. She commenced divorce proceedings and in 2016 obtained a PPO against the Father.<sup>[note: 17]</sup>

43 The Mother states that the Father's allegation that she had abused her children is a malicious lie. According to the Mother, on 26 May 2018, the Father exercised his access by fetching their daughter K at 10.30 am from her residence. This was in accordance to the Order of Court. The Father had access to the children every Saturday from 10.30 am to 7.45 pm. On the same morning, the Mother sent J for Tchoukball practice at 8 am. The Father fetched J after his practice from the school.<sup>[note: 18]</sup>

44 The Father was supposed to return the children by 7.45 pm in the evening on the same day but failed to do so. The Father instead sent the Mother a text message stating that the children would be staying the night at this home. The Mother did not object and felt that it would be beneficial for the children to spend time with the Father unbeknownst to her that the Father had an ulterior motive.<sup>[note: 19]</sup>

45 The Mother states that on following day, the children were not returned to her. The Mother says the Father was aware that the children had Chinese Mental Arithmetic enrichment lesson on 27 May 2018. She was informed by the staff from the enrichment centre that the children did not attend their session that morning. She contacted the Father and he informed her that the children were asleep. She was worried for her children's well-being as the Father has a history of abuse. On 27 May 2018, she made a police report as she was worried for her children's safety. She continued her attempts to contact the Father but he refused to answer her calls.<sup>[note: 20]</sup>

46 On 29 May 2018, she contacted the DSSA counsellor to alert her of the situation of the children not being returned to her. She learned from the counsellor that the Father had taken the children to KKH at 8 pm on 26 May 2018 and lodged a report that she had abused them. The Mother then proceeded to KKH and met the social workers who were in charge of the matter.<sup>[note: 21]</sup>

47 The Mother gathered from communicating with the social workers that the Father did not reveal to them the existence of the Order of Court in relation to his access times to the children. When she met the social workers they contacted the Investigation Officer ("IO") from Tanglin Police Station by phone in her presence to verify the status of the investigation. The Mother learned that the police were closing the matter and that there was no abuse.<sup>[note: 22]</sup>

48 The Mother states that on 1 June 2018, she received a notice from the Family Court that the Father had made an application for a PPO. On the same day, she was also contacted by an officer from the CPS to arrange for a meeting at her office. She attended her office at about 2 pm on the same day.<sup>[note: 23]</sup>

49 On 9 June 2018, MSF arranged for a meeting between the Mother and the children. The Mother states that following the meeting it was concluded that the children were not fearful of her and that there was no abuse.<sup>[note: 24]</sup>

50 On 13 June 2018, the Mother was informed by MSF that there was no evidence of abuse of her children and that the matter was closed. She was also handed a Case Card with the classification "No offence disclosed" by the police officer present. On that basis the Father was directed to return the children to the Mother at 7.45 pm and to comply to the Order of Court. According to the Mother, the Father was not agreeable and threw a fit.<sup>[note: 25]</sup>

51 On the same day at 7.45 pm, the Mother waited at Home Team NS at the foyer for the return of her children who had been away from her for three weeks. The Father did not make his appearance with the children. Despite calling and texting the Father, there was no response. The Mother called the police for assistance and was informed by the police that they too received no response from the Father. The Mother was advised by the police to lodge a police report and did so accordingly.<sup>[note: 26]</sup>

52 The Mother states that the Father's allegation in his complaint that there was "physical abuse, continued harassment, emotional abuse deliberate neglect" and that the children were afraid to return to her are untrue. K returned to her on her own volition despite the Father's attempts to keep her away from the Mother.<sup>[note: 27]</sup>

53 In her affidavit, she provided the following responses to the 24 May 2018 and 31 May 2018 incidents:

(a) The 24 May 2018 incident: The Father has alleged in his complaint that on 24 May 2018, the Mother had hit and scratched J and that she had routinely punished the children. The Mother denies the allegations by the Father. The Mother says that on 24 May 2018, she had taken the children to cinema at Jurong Point Golden Village (GV) to watch a movie. They were refused admission as the children were underaged. The Mother then suggested that they go to the supermarket as she needed to shop for groceries. J was unhappy for being denied admission to watch the movie. His displeasure continued when they went to the supermarket. At the supermarket, K was seated in the shopping cart. J was annoying K by pushing the cart in a haphazard manner and threw jelly at her which caused K to cry. When the Mother attempted to restrain J, he evaded her and ran round the aisle and grazed against the shelf. The children then decided to have dinner. They proceeded to KFC and while in the restaurant the Mother noticed J scratching his arm. She noticed a small scratch wound and gave him a wet tissue to clean the scratch.<sup>[note: 28]</sup>

(b) The 31 May 2018 incident: The Mother says that on 31 May 2018 at about 12.30 pm, she was at Woodlands Regional Library as J had Junior Readers Club training, hoping that J and K would be present so that she could bring them home with her. The Mother saw the Father while J was in class. Upon seeing her, the Father contacted the police. When they arrived, the Mother tried explaining to the police that she was in possession of an Order of Court and that the Father was in breach of the Order. The Father kept insisting that she had abused the children and that the Order of Court had "expired". The Father called and eventually managed to contact the MSF officer who informed all present that she had just been informed of the allegation of abuse and the allegation needed to be investigated. The Mother says she barely spoke to the Father during the incident and all communication was directed to the police officer. The Mother says she did refer to the Father as "big liar", "wife beater" and "kidnapper". All she wanted was to fetch her children home. When she managed to speak with J during his lunch break, he mentioned that he would return after his visit to Universal Studios which was promised by the Father.<sup>[note: 29]</sup>

54 The Mother says that J is a very active boy who indulges in various active sports. He plays football, floorball and Tchoukball. It would not be surprising for him to sustain grazes and scratches. <sup>[note: 30]</sup>

55 She says that the Father has manipulated the facts to cast her in bad light. She says that the Father has been harsh in his discipline of the children yet he complains about her. The Father has attempted to go through many routes to show that she has abused the children despite having been told by the officials that there is no abuse.<sup>[note: 31]</sup>

56 The Mother says that the Father raises methods of parenting as abuses. To the Father, every innocuous act by her is an abusive act. The Father alleges that she had pitted one child against the other, but the Mother says she does not understand what the Father means as he has not provided instances. The Mother says she longs for her children and would desperately want the children to be together as siblings and would never separate them. [note: 32]

57 The Mother says the marriage and the last 5 year's fight over the divorce was highly conflictual and a violent relationship. It gives her a lot of stress having to just ensure their safety and would not like to have any confrontations with the Father anymore. Her plea is to stop allowing the Father to harass her. [note: 33]

## **My decision**

### ***The law***

58 Section 65(1) of the Charter states:

#### **Protection order**

**65.—(1)** The court may, upon satisfaction on a balance of probabilities that family violence has been committed or is likely to be committed against a family member and that it is necessary for the protection of the family member, make a protection order restraining the person against whom the order is made from using family violence against the family member.

59 There are two requirements that must be met before a court may grant a PPO:

(a) First, the court must be satisfied that family violence has been committed or is likely to be committed.

(b) Second, the PPO must be necessary for the protection of the family member.

60 Family violence is defined in s 64 of the Charter as follows:

"family violence" means the commission of any of the following acts:

(a) wilfully or knowingly placing, or attempting to place, a family member in fear of hurt;

(b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;

(c) wrongfully confining or restraining a family member against his will; or

(d) causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member,

but does not include any force lawfully used in self-defence, or by way of correction towards a child below 21 years of age

61 An applicant must meet the two requirements of s 65(1) of the Charter on a balance of probabilities for a PPO to be granted by the court.

***Whether family violence has been committed or is likely to be committed***

*The February 2018 incident*

62 In the Magistrate's Complaint, the Father described the February 2018 incident in these words:<sup>[note: 34]</sup>

In February 2018, [J] came with a scratch on his arm. He and [K] told me that their mother hit him (but spared her) for returning late and the injury happened then. They wanted me to help but without letting their mother know that they told the incident to me fearing further consequences when they go back. They live in a climate of fear constantly. I related this to the counsellor and friends. Seeing my children getting tortured on account of their love for me causes me great agony. But my wife and her parents and friends continue this to make me give up my contact with children. The nail scratch injuries are far too numerous to discard as accidental.

63 The Father's allegation against the Mother is that she had hit J on his arm causing a scratch injury. However, it is clear from the above account that the Father did not witness the Mother causing hurt to J. Based on the Father's account, the material witnesses who could provide direct evidence of the alleged incident are J and K but neither of them was called by the Father to give evidence. These out of court assertions by J and K which are tendered in court as evidence as to the truth of the content therein are inadmissible as hearsay.

64 In *Soon Peck Wah v Woon Che Chey* [1997] SGCA 79 ("Soon Peck Wah"), the Court of Appeal held as follows:

26 The rule against the admissibility of hearsay evidence is firmly ingrained in our law of evidence and procedure. Jeffrey Pinsler, in his book, *Evidence, Advocacy and the Litigation Process* (Butterworths, 1992), gives a succinct definition of the rule at p 64:

[T]he assertions of persons made out of court whether orally or in documentary form or in the form of conduct tendered to prove the facts which they refer to (ie facts in issue and relevant facts) are inadmissible unless they fall within the scope of the established exceptions.

Thus, assertions which are made out of court and which are tendered in court as evidence as to the truth of the content therein will be inadmissible as hearsay.

27 The rationale for the hearsay principle is that the witness cannot verify the truth of the facts of which he has no personal knowledge. As the person who does have personal knowledge of the facts is not in court, the accuracy of his perception and his veracity cannot be assessed and tested in cross-examination. Such evidence is unreliable and should hence be excluded from consideration. In Singapore, the rule against hearsay is reflected in s 62 Evidence Act (Cap 97, 1990 Ed). Section 62(1) provides:

Oral evidence must in all cases whatever be direct —

- (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact;
- (b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;
- (c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in that manner;
- (d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

65 In *Soon Peck Wah*, the wife had applied for a variation of an interim child custody order under which the care and control of their four-year-old child had been granted to her husband with liberal access on weekends to her. Her application was dismissed by the trial judge. The Court of Appeal allowed the wife's appeal and held, *inter alia*, that the alleged accounts of the wife's violent behaviour by the infant to the husband's sister contained in the latter's affidavit was hearsay and should not have been admitted into evidence. The court found that the trial judge erred in placing reliance on the affidavit of the husband's sister in coming to her decision.

66 There are exceptions to the hearsay rule but the burden is on the person seeking to rely on an exception to prove the exception. For example, in *Tan Peng Kwang v Zimerick LLP* [2021] SGHC 45, the High Court observed as follows:

28 The appellant relied on *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ("Gimpex"). There the Court of Appeal had admitted hearsay evidence under s 32(1)(j) (iv) of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"), which is an exception to the hearsay rule and provides that the statement is admissible where the maker of the statement "being competent but not compellable to give evidence on behalf of the party desiring to give the statement in evidence", refuses to do so. The respondent rightly pointed out that in Gimpex, the Court of Appeal noted at [127] that there was evidence of Gimpex Ltd's attempts to procure the attendance of the witness at trial. In contrast, while Derique had informed the appellant that he "would like to be excluded", the appellant did not follow up with him, nor seek a subpoena. The burden is on the person seeking to rely on s 32(1)(j) of the Evidence Act to prove the ground of unavailability and a mere allegation of unavailability is not acceptable (see Gimpex at [97]). The appellant has not discharged this burden of proof. I agree with the DJ's assessment that Derique's evidence was inadmissible and even if admissible, would carry very little weight.

67 The Father did not explain why he did not call the children as witnesses, particularly with respect to J who lives with him and has, according to the Father, lodged a police report against the Mother. In the police report, J made it clear that "something needs to be done" and he was lodging the report "in the view of exercising the EO against my mother". Taking the police report at face value, J appears to be articulate and mature for a young boy of his age.

68 As the Father has not proved that an exception to the hearsay rule exists, I could not place any reliance on the out of court assertions of J and K as evidence as to the truth of the content therein.

69 Even if the evidence is admissible, it would carry very little weight. As the Court of Appeal observed in *Soon Peck Wah* (at [34]):

... In such cases, the opposing parties fighting for the custody of the child tend to, and quite understandably so in the particular circumstances where both parents love the child equally and cannot bear to part with their offspring, exaggerate their claims, especially of wrongdoing on the other side, in a bid to bolster their chances for an order in their favour. It is difficult enough for the court, even with the help of cross-examination, to decide which party's version of the events is of greater veracity, as the perception by each party of the situation is so subjective and inevitably biased. All the more so if the evidence is hearsay. The court will not be able to have the benefit of cross-examination of the witness at the trial...

70 The PPO application was filed by the Father in the midst of acrimonious custody proceedings. He failed to return the children to the mother, filed for PPO and soon after applied for care and control of the children. In circumstances where a PPO application may have been filed for a collateral purpose, it is important to test the veracity of the evidence so that the truth can be ascertained. As the Father did not call J and K to take the witness stand, the veracity of the out of court assertions could not be tested and verified in court.

71 For the above reasons, I find it has not been proved, on a balance of probabilities, that the Mother has caused hurt to J or has wilfully or knowingly placed the children in fear of hurt. It has not been proved, on a balance of probabilities, that family violence has been committed or is likely to be committed against the children by the Mother.

#### *The 24 May 2018 incident*

72 In the Magistrate's Complaint, the Father described the 24 May 2018 incident in these words:[note: 35]

On 24<sup>th</sup> May 2018, my wife hit him and ended up scratching him severely. She left the wound untreated and [J] requested me to treat it as it was hurting and itching. The doctor who attended to him suspected child abuse and alerted police and MSW. Children were mortified at the thought of facing their mother if she came to know as the mother routinely punishes them (physically, emotionally) for raising their concerns.

73 In his affidavit dated 16 April 2019, the Father elaborated as follows:

20. On 24<sup>th</sup> May 2018 itself, the Defendant was with our Children at the supermarket. At the material time our Son engaged in childish but otherwise harmless behaviour, by throwing a jelly cup in his sister's lap. [J] explained to me that he did this because he was unhappy that he could not sit in the shopping trolley because his sister was occupying it. I pause to note that [J] is ultra-competitive with his sister [K], meaning to say that he does not mind losing in games and recreational activities to friends or strangers but a similar loss to [K] affects him in a disproportionately inflated way. I will elaborate below on how this state of affairs came about.

21. The Defendant, however, was not amused. She flew into a rage and used both hands to pummel [J]'s back and slap his right arm. At the moment [J] is about 1.4m in height and weighs about 45kg. Against this assault, [J] being of much smaller size than the Defendant who is 60-70kg could not protect himself from the flurry of blows and tried to disengage by running away.

22. At some point during our Son fleeing from the Defendant, one of her series of blows (from the slapping motion) apparently did not connect with full force on his arm but instead struck in a glancing way. This resulted in an "Abrasion on the lateral aspect of the right arm, measuring 2 cm by 5 cm" ("Wound").

74 In his evidence in court, the Father clarified that he was told of the 24 May 2018 incident when he picked up K for access on 26 May 2018 and K alerted him to the incident. He picked J up later that day after his football training. The Father noticed that there was an open wound on J's right hand which was several centimetres long and a bit deep, and it was already a day old when he saw it.<sup>[note: 36]</sup> The Father brought J to KKH Children's Emergency to be medically examined the same day.<sup>[note: 37]</sup>

75 The Father referred to three letters from KKH to support his allegation that the Mother had caused hurt to J. <sup>[note: 38]</sup> The material parts of the letters state as follows:

Letter dated 16 January 2019

Dear [Father]

CLARIFICATION OF MEDICAL REPORT OF [J]

I refer to the earlier medical report dated 7 August 2018.

As per the clinical documentation in KKH Children's Emergency (CE), the history obtained by the attending doctor during the medical consultation was from the patient himself.

As there was a concern about the patient's well-being and safety, police notification was initiated by the attending CE doctor. In addition, the option of hospital admission was offered by the attending CE doctor. After a discussion with the hospital medical social worker (MSW), it was decided that the patient could be safely discharged to the care of his father until the next MSW review on 28 May 2018.

Letter dated 21 January 2019

Dear [Father]

RE: [J]

According to our records, your son, [J] sustained abrasions on his right arm and you brought him to KKH Children's Emergency on 26 May 2018 for a medical examination. After which, he was referred to the Medical Social Work Department for alleged non-accidental injury.

On 28 May 2018, you and your children, [J] and [K], were interviewed at the Medical Social Work (MSW) Department. Both children were interviewed together. [J]'s account on how he sustained the abrasions is as follows:

According to [J], he was at the supermarket with [K] and their mother [the Mother] on 24 May 2018. [J] related that he was unhappy because [K] was sitting on the supermarket cart instead of him. Out of anger, he threw a jelly cup onto [K]'s lap. [Mother] was angry at his behaviour and hit his back repeatedly and slapped his right arm, causing the abovementioned abrasions.

[Mother] was not interviewed on the same day as she was not present. As such, we were unable to assess children's well-being under [Mother]'s care. After the sessions with both children and yourself, it was established that you were able to provide interim care arrangements while we arranged to interview [Mother] at a later date.

The investigation of both children's well-being was subsequently managed by Child Protection Services (CPS) on 31 May 2018.

Letter dated 21 January 2019

Dear [Father]

RE: [K]

On 26 May 2018, you brought both your children, [K] and [J] to KKH Children's Emergency (CE). [J] had sustained abrasions on his right arm and a medical examination was done. After which, he was referred to the Medical Social Work (MSW) Department for alleged non-accidental injury.

On 28 May 2018, you and your children [J] and [K] were interviewed at the Medical Social Work (MSW) Department. Both children were interviewed together. [K]'s account on how [J] sustained the abrasions is as follows:

According to [K], she was at the supermarket with [J] and their mother [Mother] on 24 May 2018. [J] threw a jelly cup onto [K]'s lap out of anger as he was unhappy with [K] for sitting on the supermarket cart. [K] shared that it did not hurt when [J] threw the cup at her. Nonetheless, [Mother] was angry at his behaviour and hit his back repeatedly and slapped his right arm, causing the abovementioned abrasions.

[Mother] was not interviewed on the same day as she was not present. As such, we were unable to assess children's well-being under [Mother]'s care. After the sessions with both children and yourself, it was established that you were able to provide interim care arrangements while we arranged to interview [Mother] at a later date.

The investigation of both children's well-being was subsequently managed by Child Protection Services (CPS) on 31 May 2018.

76 Although the Father was able to give a vivid account on how the Mother had allegedly "flew into a rage and used both hands to pummel [J]'s back and slap his right arm" at the supermarket and how J "could not protect himself from the flurry of blows and tried to disengage by running away", it is clear from the clarification given in court that the Father did not witness the incident. Similarly, the accounts of the incident reported in the letters were obtained from the interview with the Father and the children. The material witnesses who could provide direct evidence of the alleged incident are J and K but they were not called by the Father to give evidence. The out of court assertions by J and K which are tendered in court as evidence as to the truth of the content therein are inadmissible as hearsay.

77 Furthermore, the CPS has found the accounts provided on how the injury was sustained to be inconsistent and has advised the parents from triangulating the children in their marital conflicts. In a letter dated 9 April 2019 to the Father, the CPS stated as follows:[note: 39]

Dear [Father]

[J]

[K]

I refer to the above named children who were referred to the Ministry's Child Protective Service (CPS) in May 2018 due to concerns over alleged inappropriate disciplinary methods after [J] was noted to have sustained abrasions on his right arm.

**2 CPS' investigations have completed and it was noted that the accounts provided on how the injury was sustained were inconsistent.** The investigations however revealed that [J] and [M] had been subjected to parents' ongoing marital conflicts and disagreements over custody matters of the children, hence CPS had referred your family to Fei Yue (Bukit Batok) Family Service Center (FSC) to be equipped with parenting skills, co-parenting of [J] and [M] and **to refrain from triangulating the children in your marital conflicts.**

...

[Emphasis in bold added]

78 This was acknowledged by the Father in his affidavit dated 16 April 2019 (at [24(e)]) as follows:[note: 40]

I now understand that because the Children's accounts are conflicting, MSF is unable to make a conclusive finding.

79 The police have similarly investigated into the matter and found no offence disclosed.[note: 41] In the same affidavit dated 16 April 2019 (at [24]), the Father said as follows:

(c) I understand subsequently from [J] that when the police interviewed him, they informed him that if the Defendant caused the Wound she may go to jail. Despite [J]'s mistreatment at the hands of the Defendant, he did not want her to be imprisoned and **lied that it was accidental.**

[emphasis in bold added]

80 By the Father's account, J lied to the police. As J's credibility has been put in doubt, there is all the more reason to treat the content of J's police report and other out of court assertions with caution. Without proper verification as to their veracity, the weight to be attached to such hearsay evidence, even if admissible, is very little.

81 Apart from the above observations, there is clear evidence that J is an active boy prone to injuries.<sup>[note: 42]</sup> In cross-examination, the Father described one such incident as follows:<sup>[note: 43]</sup>

... Even the skateboard injury, that skateboard he fell off a---a---a cliff there was an injury here, that also I help him heal...

I want to correct. It is not a cliff, it was a skating path with a down slope with a curve. So, [J] was taught to navigate such curves but he had to use a different skateboard, the longboard. But on that day, he was using the short board, he shouldn't have done that. I was, uh, going behind him. But before I could say anything, he went over it and then he tripped and fell.

...

And that caused an---eh---injury and abrasion on---on him and that is what we are talking about. It is not like he fell off some place or anything, I'm sorry if I used the word "cliff". It is a---a curve that he went over using his short skateboard and then he flipped.

82 The Father has also given evidence in cross-examination that J has sensitive skin and if he has an injury, he will scratch it causing the wound to bleed.<sup>[note: 44]</sup>

A ... So, that is one, another is **[J] has this skin condition, very sensitive skin, so, he itches and scratch. If he has a---a small injury, after 1 week it will become a huge injury because before it heals he'll scratch then it will bleed. Bleed on the uniform, bleed on everywhere.** So, when I had access to them, I dressed the wound. I put Paraffin gauze and I dress. When I send the dressing to him and to just tell him that, "You can do this on your own and this will not happen. How to take care of his wound." Then, what I use is a Quickbond because if you just tie it the tying can come unloose. So, sometimes I give the---the sleeve. A sleeve meaning that you insert---you cut from a long yard-like form, then you cut 2 sides and then you insert, it's like a sleeve, then it will stay, it won't come out.

Q So, he is warned that that is not a sling, it is a Quickbond in a triangular form it is called a "Tubigrip".

Witness: Your Honour, I got the name. So, it's a Tubigrip.

A So, I have taught him that how not to scratch it, I've cut the nail how not to scratch it or make it worst. What can we do, how to do the dressing properly. So, when they return I will dress again and such wound have healed. **Previously, the wounds will not healed. He has gone to the school with the same socks red colour bleeding socks so many times** and I felt pain. So, I took this upon myself to, uh, help him and not only him, [K] also, I've taught her, so they

used to think that I'm a doctor. Uh, my PhD doctor, doctor that is putting---I'm a medical doctor, but there is no sling. Even the skateboard injury, that skateboard he fell off a---a---a cliff there was an injury here, that also I help him heal. Also did not occur in sling.

[Emphasis in bold added]

83 It is also undisputed that on the day of the alleged incident, J had misbehaved by throwing the jelly cup at K. When considered against these undisputed facts, the Mother's account that J had run away from her when she tried to restrain him when he caused K to cry and J grazed against the shelf is not unbelievable. The Mother's account that she noticed J scratching a small scratch wound is also consistent with the evidence that J tends to scratch a wound causing it to bleed because of sensitive skin.

84 In contrast, there are serious doubts as regards the veracity of the hearsay evidence tendered by the Father. The Father has given a vivid account of the alleged incident when he has not witnessed the incident himself and has acknowledged that the children have given conflicting accounts of the incident to the authorities and that J has lied to the police.

85 In the circumstances, I find it has not been proved on a balance of probabilities that the Mother caused hurt to J or has wilfully or knowingly placed K in fear of hurt. In respect of the latter, I note further that K went back to live with the Mother on her own accord in spite of all that has been alleged by the Father. I find it has not been proved, on a balance of probabilities, that family violence has been committed or is likely to be committed against the children by the Mother.

#### *The 31 May 2018 incident*

86 The Father alleged that the Mother hurled vulgarities at him at Woodlands Regional Library on 31 May 2018 and this had caused the Father to be placed in fear of hurt. The Father also alleged that the Mother had lunged forward to hit the Father, thereby causing hurt to the Father, despite the police officer's warning that she would be arrested if she continued.<sup>[note: 45]</sup>

87 There are hence two allegations against the Mother in respect of the 31 May 2018 incident: (a) placing the Father in fear of hurt and (b) causing hurt to the Father.

88 With respect to the first allegation, the context is important. The Father had failed to return the children to the Mother on 26 May 2018. The Mother found out on 29 May 2018 that the Father had taken the children to KKH on 26 May 2018 and was told that he had lodged a report that she had abused them. The Mother denied abusing the children; in her mind, the children had been kidnapped by the Father. The Mother was anxious and upset and had visited the library on 31 May 2018 hoping to see the children there and bring them back with her.<sup>[note: 46]</sup> It is evident from the following evidence that the Mother was in a state of distress:

Q So, you said earlier that the police walked to you to the car park at around 6:00pm?

A No. I said---I said---what I said was the police was when they came at around 1:30---

Q Yah.

A after that, they were there for the whole day until 6:00pm---

Q Yah.

A uh, when [J] was handed back to the father and asked to leave after speaking to Deborah the conclusion by the police was that I should be going back to MSF tomorrow morning to sort out the matter and, uh, for---since the MSF has called me to go down there. So, at the moment, let the father---let the child go back with the father itself. So, when they have decided that, so [the Father] took away---took [J] and went off from there and then the, uh, pro---yah, the police car was also there at the car park and I also had parked my car at the car park. And so, they walked along with me, **I was very distressed, I was, uh, crying, I was---I was talking about how the kidnap had happened to the police as well. I was narrating all those things how suddenly children went missing on 26th May and I don't know what's going on that I'm completely dumbfounded that during the day earlier with the social workers, uh, they inform that they had told father all these but he didn't---still inform you.**

Q Yah.

A So, all such---whatever information I had, **I was crying and talking and we went down**---we came down the lift together to the car park.

...

Q And then you say [the Mother], you were distressed, right?

A **I was distressed all along.**

Q Right.

A Yah.

Q And if---in your---in your---

A **Well, I don't know if I---if any other mother would feel---sitting their happy---**

Q Sure.

A **that when you know that on 26th, you sent the kids for access and you don't know where the kids are, you don't know what's going on even.**

Q Yah. So---

A **I don't think so anybody would be sitting happy or even be able to keep their sanity.**

Q And the---

A Yah.

Q how did so---what are you saying? How did you lose your sanity then? What do you mean?

A I said anybody would---I said anybody, I talked about anybody.

Q And what---

A Yah.

Q about yourself?

A **Of course I did. I was crying, I was screaming, I was like, you know---**

Q Screaming at who?

A **I was asking them where is [K]? Ask---found out from him, where is [K]? I---see, as a mother, you know that the kids were supposed to be with you from this time to this time. After the 26th May, where you actually allowed children to go for access and when they don't come back, and you don't even have---I have not seen them after 26th May. [J] after 26th May---**

Q So---

A **I'm seeing [J] for the first time on 31st May.**

Q Ms. [the Mother], who were you screaming at?

A Who am I screaming at?

Q Yes.

A Right now?

Q No, Ma'am, listen to---

A The---

Q my question.

A Uh.

Q I'm repeating what you said. You said you were at the library and you were screaming. So, I'm asking you who were you screaming at?

A No. **I was not screaming at anybody in particular. I was crying, see---I---I---I don't know how to tell you who---who doesn't want to believe that a mother can be crying, screaming, don't know what is happening to her children. Don't know even what is going on. That's what I said. On 26th morning after I drop [J] at the, uh, Tchoukball play place at [school] then the next time that I'm seeing him is on 31st May when he's walking into the---**

Q So, what were the words you used as you were screaming? What kind of words were you using?

A I don't remember clearly. **I was crying, I was upset, I was---I was a mum all lost out.**

[Emphasis in bold added]

89 Given the volatile situation, it is entirely conceivable that the Mother did hurl vulgarities at the Father as alleged. Indeed, the Mother admitted in her affidavit that she referred to the Father a "big liar", "wife beater" and "kidnapper".<sup>[note: 47]</sup> However, it is also clear that the Mother was in a state of distress as a result of the Father's failure to return the children to her and she being told that the Father had lodged a report accusing her of abusing the children.

90 Limbs (a) and (d) of the definition of family violence under s 64 of the Charter require a mental element of "wilfully or knowingly" placing a family member in fear of hurt or causing continual harassment "with intent to cause or knowing that it is likely to cause anguish". In my judgment, the Mother did not possess the requisite mental element at the material time to enable the court to make a finding that she had wilfully and knowingly placed the Father in fear of hurt or for that matter, caused continual harassment with intent to cause or knowing that it is likely to cause anguish. The evidence shows that all she wanted was to have her children back with her, as would be expected of a frantic and distressed mother in her predicament.

91 With respect to the second allegation, the Father has alleged in his written submissions that: <sup>[note: 48]</sup>

The Respondent lunged forward to hit the Applicant, thereby causing hurt to the Applicant, despite the police officer's warning that she will be arrested if she continued.

92 However, I note that the allegation of hurt in the written submissions is neither borne out by the Father's Magistrate's Complaint nor his evidence in court. The material part of the Magistrate's Complaint states as follows: <sup>[note: 49]</sup>

She lunched forward to hit me with the police officers informing her that she will be arrested if she continued.

93 The Father clarified in court that the word "lunched" in the Magistrate's Complaint was a spelling error and that he had intended to say in the Magistrate's Complaint that the Mother was "moving aggressively forward":<sup>[note: 50]</sup>

A Uh---uh, excuse me, Manoj, there is correction that I want to make in this spelling.

...

Q Of the handwritten note?

A Yes. In the 2nd paragraph I, um, used to word---I---I meant to use lunge forward in the sense of moving aggressively forward. I spelt it as lunge but I want to correct that.

Q So, what is the correct spelling?

A L-U-N-G-E, lunge forward.

94 It is also clear from his subsequent evidence on this issue that the Mother did not hit him:<sup>[note: 51]</sup>

Q And your evidence is that when she lunged forward to you, this was in the presence of the police?

A That's right.

...

Q Referring to your handwritten note.

A Yes. The library---

Q 31st May.

A the library---what, uh, she did was---we were there for a fair bit of time. And it was a continuing something like 5, 6 hours of, uh---uh, harassment. **Many occasions she would just lunge forward. And she is saying that, "I will hit you and then tell you that you've breached the PPO and I'll get you arrested."** That was, uh, I---it was very deliberate.

Q Alright.

A And then, she provoked with those words to elicit some actions from me. The police officers repeatedly told her, "Madam, if you don't restrain yourself, we'll have to arrest you." But they kept doing it. At the end I asked them, "Why is it that she is allowed to continually do this?" Yah.

....

Q I---I got that. So, I just want to understand the 20 f---31st May incident.

A Okay. So, that library at Woodlands Library had this place going to the downstairs where [J] was attending the programme. So, it was not a very wide space with---so, she would just come forward. The 2 police officers, she just brushed forward at me and I'm standing there. I also do not have a place to go away because **she rushed forward at me to hit me, and she's telling me that she would hit. So, she come very close to me like that.**

[Emphasis in bold added]

95 In the circumstances, there is simply no evidential basis for the court to make a finding that the Mother caused hurt to the Father on 31 May 2018 as alleged in the written submissions.

96 For the above reasons, I find it has not been proved on a balance of probabilities that family violence has been committed or is likely to be committed against the Father by the Mother in respect of the incident at the Woodlands Regional Library.

#### *The 17 June 2018 incident*

97 In his affidavit dated 5 July 2019 in support of the PPO application, the Father states (at [3]) as follows:

The particular incidents which give rise to my application are set out in my written statement made in support of my application. In summary it concerns the incidents sometime in February 2018, 24<sup>th</sup> May 2018 and 31<sup>st</sup> May 2018 ...

98 The 17 June 2018 incident, which occurred after the application was made, should be disregarded as the PPO hearing is in respect of the incidents that gave rise to the application: see *Teng Cheng Sin v Law Fay Yuen* [2003] SGHC 76 (at [19]-[21]) and *Yue Tock Him @ Yee Chok Him v Yee Ee Lim* [2011] SGDC 99 (at [118]).

99 Even if the 17 June 2018 is taken into consideration, I find it has not been proved, on a balance of probabilities, that family violence has been committed or is likely to be committed against the Father and the children by the Mother.

100 I note that the Mother did not and could not have responded to the 17 June 2018 incident in her affidavit dated 25 February 2019 as the incident was not part of the Magistrate's Complaint lodged by the Father. This leaves the Mother in an unsatisfactory position of having to respond, as a litigant in person, to the allegations at the trial.

101 Despite being put in an unsatisfactory position, the Mother was able to provide a cogent account of the incident on the witness stand under cross-examination.<sup>[note: 52]</sup> The Mother explained that since the Father failed to return the children on 26 May 2018, she had been kept in the dark by the Father and did not know what was going to happen to the children. In her mind, the Father had kidnapped the children.<sup>[note: 53]</sup> The Father had a lodged a report of child abuse against her but despite MSF's investigations showing that they did not find any abuse on the child, the Father failed to return the children on 13 June 2018.<sup>[note: 54]</sup> Between 13 and 17 June 2018, she had been making frantic attempts to find out where they were.<sup>[note: 55]</sup> She spent most of the days calling the police asking for their help.<sup>[note: 56]</sup> On 17 June 2018 at 5.30 pm, when she saw that they were in church for the mass, it struck her that she must take a photograph of the children.<sup>[note: 57]</sup>

102 The Mother says that when she went to receive her communion, she saw the Father leaving with the children. The Mother followed them outside and said, "Stop. No. I have to get back my children. I have to see my children all the time. I want to know what is going on. You've been told to return the kids and still you are not returning."<sup>[note: 58]</sup> The Father was standing and holding so that the children did not go to her.<sup>[note: 59]</sup> One of the priests came down and urged the parties not to make a scene.<sup>[note: 60]</sup> The police arrived subsequently.

103 The Mother disputes the Father's allegation that she assaulted him. The Mother says she held on to K's leg and wanted the Father to stop and put K down.<sup>[note: 61]</sup> She says that there is a CCTV camera in the church which could have been obtained by the police if she had assaulted the Father as alleged.<sup>[note: 62]</sup> There were also volunteers who came to pacify the situation.<sup>[note: 63]</sup>

104 The Father did not provide any evidence to substantiate his allegations. He says that the Mother "rained slaps" and "rained punches on my back and shoulder in rage typical of my wife" but did not produce any medical report to substantiate the injuries sustained.<sup>[note: 64]</sup> The incident happened in the church but no independent witnesses were produced to corroborate his account even though it is his evidence that two people tried to separate the Mother from him and they had given their contacts to the police officers who arrived at the scene.<sup>[note: 65]</sup> The evidential burden of proof lies with the Father as he is asserting that the Mother assaulted him (see *UJF v UJG* [2018] SGHCF 1 at [55]) but I find that his bare allegations alone in these circumstances are not sufficient to discharge the burden.

#### *Other occasions*

105 Apart from the four specific incidents discussed above, the Father also referred to a plethora of other incidents in support of his application.<sup>[note: 66]</sup> Two of the alleged incidents – the incident relating to the collection of masks<sup>[note: 67]</sup> and the incident on J's birthday<sup>[note: 68]</sup> – were incidents that took place after the application was made and should be excluded (see [98] above). In any event, I did not find the evidence sufficient to establish that family violence has been committed or is likely to be committed by the Mother.

106 The other occasions referred to by the Father consist of a smattering of allegations that were vague or lacking in details and specificity. Some were made by way of casual references in the course of the trial. For example, in cross-examination, the Father accused the Mother of stepping on [J] with her feet when J was still crawling.<sup>[note: 69]</sup> I find it troubling that such a serious allegation made in court was not set out in his Magistrate's Complaint or his affidavit in support of the PPO application.

107 Whilst the courts will take a firm stance against any form of family violence, it is necessary to recognise that there are criminal consequences that follow a breach of a PPO: see *UNQ v UNR* [2020] SGHCF 21 (at [1] and [28]).

108 In *Mok Kah Hong v Zheng Zhan Yao* [2016] SGCA 8, the Court of Appeal made the following observations (at [61]):

It is a fundamental rule of justice that a person being called upon to answer a charge must first know the precise case that he has to meet and should be accorded ample opportunity to refute the allegations.

109 Although the above observations were made in the context of committal proceedings, I am of the view that the rationale is equally applicable to a PPO application. As a PPO carries with it possible criminal sanctions, a person called upon to answer an allegation of family violence must know the precise case he or she has to meet and should be accorded ample opportunity to refute the allegations. There must be sufficient specificity and clarity in respect of the incidents which an applicant is relying on to support the PPO application. I do not find this to be the case in respect of the plethora of other allegations made by the Father nor was there sufficient evidence to enable the court to make a finding that family violence has been committed or is likely to be committed in respect of those allegations.

### *Summary*

110 In summary, I find that on the evidence before me, the first threshold requirement – that family violence has been committed or is likely to be committed – has not been met. On this basis alone, the application should be dismissed.

### **Necessity**

111 The second threshold requirement is that the PPO must be necessary for the protection of the family member. As it has not been established that family violence has been committed or is likely to be committed by the Mother against the Father and the children, it would follow as a consequence that a PPO is not necessary.

### ***Facilitation of access***

112 The Father submits that the PPO is required to "facilitate peaceful access within the family unit".<sup>[note: 70]</sup> He has, in that regard, also taken out committal proceedings against the Mother "to restore, replenish and revive broken relationships".<sup>[note: 71]</sup>

113 However, the potential use of a PPO as a tool to facilitate access is an irrelevant consideration. As noted in *UNQ v UNR* (at [39]):

... the potential use of the PPO as a tool to encourage meaningful access between a parent and a child is an irrelevant consideration. A PPO is a court order with serious criminal consequences. Instead of encouraging meaningful access, it may well be that the PPO discourages access entirely or sends a message to a child that she needs protection from her own parent. Similar to the granting of care and protection orders, state intervention through the courts in the form of ordering a PPO may risk entrenching the status quo at the time of parental conflict and reinforce a child's negative perception of one parent (see *UNB v Child Protector* [2018] 5 SLR 1018 at [60]). At the same time, it may also be that in some families, a PPO assists in promoting smoother access (though I emphasise that this effect in itself is not a relevant consideration in determining whether a PPO should be granted, but a consequence of the PPO). Each case must be considered on its own facts and circumstances.

114 In the present case, the Mother has expressed concern that the Father will use the PPO as a tool for manipulation:<sup>[note: 72]</sup>

... I leave it to the Court to decide if [the Father] should be given a PPO ... But I don't see that in any way if you are giving a manipulator ... a key to a door and telling him not to go inside. I'm sure he will wait for the right opportunity to use it ... the incidents that he has mentioned is nowhere near his premises nowhere and it has happened after 2018 after he had kidnapped the children and kept it with him, kept the children with him. So ... it is just like that simple natural phenomenon. As I see it, it is a simple natural phenomenon where chickens has his 10 chicks around and sees an eagle flying high. So, what does the chicken do? As much as possible try to get the chicken under its hood so that the eagle doesn't snatch it away. And, Your Honour, this is only---this is what I had done when he did not return the kids as per the order of access...

115 In my view, the answer to the Father's prayer "to restore, replenish and revive broken relationships" does not lie in the grant of a PPO or the filing for more committal applications. No amount of external intervention could help the parties if the parties themselves are unable or unwilling to let go of past hurts and work towards a path of healing and restoration, which brings me to my final observations.

## Conclusion

116 In a letter dated to the Court dated 8 March 2021 to enquire about the status of these grounds of decision, the Father through his counsel stated:

By way of background, the orders made by Chia Wee Kiat DJ on 26 May 2020 governing access, inter alia, which had been confirmed by Lai Siu Chiu J in HCF/DCA 46/2020 on 21 October 2020 have yet to be implemented, and is pending vis-à-vis the present appeal.

117 I am disappointed that the parties have yet to implement the orders made on 26 May 2020. The access orders have not been stayed and there is no reason why the implementation should be "pending vis-à-vis the present appeal".

118 I have taken pains to put in place a structure to enable access to resume and the parents to acquire the necessary skills to establish a co-operative parenting relationship with the help of a trained counsellor. As explained in VII,

66 As the current level of acrimony is high, the intent of these orders is to create some stability for the children in the coming two years. When J becomes 14 years of age, he would likely require more time for himself like most teenagers would. He may then require more flexibility to his schedule and not want to stick to the weekly contact time at the DSSA. So too would K. Hence, the access arrangements will need to evolve and be fitting to the children's developmental needs. Under the access orders, there is room for the parties to mutually adjust the contact time based on the interest and needs of the children with the help of the DSSA counsellor.

67 As noted in *VDN v VDO* [2019] SGFC 146 (at [19] & [20]), no one is in a better position to help the children lead normal and happy lives in the post-divorce family than the parents themselves. Decisions made by the parties themselves allow for greater flexibility that is necessary to cater to changes to the schedules of the parties, the changing needs of the children and the vicissitudes of life that can never be fully anticipated in a court order. The Covid-19 pandemic is a stark reminder. It is hope that with the anticipated stability experienced by the children, the parties may see the benefits and begin to rebuild some trust, confidence and motivation as co-parents.

119 Ultimately, the wellbeing of the children is in the hands of the parents. The parties have been embroiled in litigation since 2013. For the sake of the children and the wellbeing of the parties themselves, it is time to heal.

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[note: 1]Father's affidavit dated 5 July 2019 at [3].

[note: 2]Father's affidavit dated 5 July 2019 at [3].

[note: 3]Applicant's Written Submissions at [13] & [33].

[note: 4]Applicant's Written Submissions at [14].

[note: 5]Applicant's Written Submissions at [15]-[16].

[note: 6]Applicant's Written Submissions at [17]; Father's affidavit dated 16 April 2019 at pp.29-31.

[note: 7]Applicant's Written Submissions at [22].

[note: 8]Applicant's Written Submissions at [23].

[note: 9]Applicant's Written Submissions at [30]-[32].

[note: 10]Applicant's Written Submissions at [38].

[note: 11]Applicant's Written Submissions at [10].

[note: 12]Applicant's Written Submissions at [11].

[note: 13]Applicant's Written Submissions at [12].

[note: 14]Applicant's Written Submissions at [35].

[note: 15]Applicant's Written Submissions at [36].

[note: 16]Applicant's Written Submissions at [36].

[note: 17]Mother's affidavit dated 21 February 2019 at [4]-[6].

[note: 18]Mother's affidavit dated 21 February 2019 at [7]-[8].

[note: 19]Mother's affidavit dated 21 February 2019 at [9].

[note: 20]Mother's affidavit dated 21 February 2019 at [10]-[11].

[note: 21]Mother's affidavit dated 21 February 2019 at [12].

[note: 22]Mother's affidavit dated 21 February 2019 at [13]-[14].

[note: 23]Mother's affidavit dated 21 February 2019 at [15] & [22].

[note: 24]Mother's affidavit dated 21 February 2019 at [22]-[23].

[note: 25]Mother's affidavit dated 21 February 2019 at [23]-[24].

[note: 26]Mother's affidavit dated 21 February 2019 at [25].

[note: 27]Mother's affidavit dated 21 February 2019 at [16].

[note: 28]Mother's affidavit dated 21 February 2019 at [17]-[18].

[note: 29]Mother's affidavit dated 21 February 2019 at [19]-[21].

- [note: 30] Mother's affidavit dated 21 February 2019 at [27].
- [note: 31] Mother's affidavit dated 21 February 2019 at [32].
- [note: 32] Mother's affidavit dated 21 February 2019 at [26].
- [note: 33] Mother's Submissions at "Conclusion".
- [note: 34] Applicant's Bundle of Documents at Tab 1 pp.7-8 (hand paginated).
- [note: 35] Applicant's Bundle of Documents at Tab 1 p. 2 (hand paginated).
- [note: 36] Transcripts of Proceedings dated 9 July 2020 at pp. 28-29.
- [note: 37] Transcripts of Proceedings dated 9 July 2020 at p. 29.
- [note: 38] Applicant's Written Submissions at [17].
- [note: 39] Father's affidavit dated 16 April 2019 at p. 34.
- [note: 40] Father's affidavit dated 16 April 2019 at [24(e)].
- [note: 41] Mother's affidavit dated 21 February 2019 at [23] and p. 18.
- [note: 42] Transcripts of Proceedings dated 9 July 2020 at pp. 91-92.
- [note: 43] Transcripts of Proceedings dated 9 July 2020 at
- [note: 44] Transcripts of Proceedings dated 9 July 2020 at pp.142-143.
- [note: 45] Applicant's Written Submissions at [23].
- [note: 46] Transcripts of Proceedings dated 3 August 2020 at p. 25.
- [note: 47] Mother's affidavit dated 21 February 2019 at [31].
- [note: 48] Applicant's Written Submissions at [23].
- [note: 49] Applicant's Bundle of Documents at Tab 1 p. 8 (hand paginated).
- [note: 50] Transcripts of Proceedings dated 9 July 2020 at p. 10.
- [note: 51] Transcripts of Proceedings dated 9 July 2020 at pp. 10, 16, 26-27.
- [note: 52] Transcripts of Proceedings dated 3 August 2020 at pp. 66-96.
- [note: 53] Transcripts of Proceedings dated 3 August 2020 at p. 76.
- [note: 54] Transcripts of Proceedings dated 3 August 2020 at p. 67.
- [note: 55] Transcripts of Proceedings dated 3 August 2020 at p. 67.
- [note: 56] Transcripts of Proceedings dated 3 August 2020 at p. 66.
- [note: 57] Transcripts of Proceedings dated 3 August 2020 at p. 68.
- [note: 58] Transcripts of Proceedings dated 3 August 2020 at p. 69.
- [note: 59] Transcripts of Proceedings dated 3 August 2020 at p. 70.
- [note: 60] Transcripts of Proceedings dated 3 August 2020 at p. 70.
- [note: 61] Transcripts of Proceedings dated 3 August 2020 at p. 93.

[note: 62]Transcripts of Proceedings dated 3 August 2020 at p. 75-76.

[note: 63]Transcripts of Proceedings dated 3 August 2020 at p. 76.

[note: 64]Applicant's Bundle of Documents at p. 16.

[note: 65]Applicant's Bundle of Documents at p. 17.

[note: 66]Applicant's Written Submissions at p. 13.

[note: 67]Applicant's Written Submissions at [35].

[note: 68]Applicant's Written Submissions at [36].

[note: 69]Transcripts of Proceedings dated 9 July 2020 at p. 97

[note: 70]Applicant's Written Submissions at p. 4.

[note: 71]Applicant's Written Submissions at [36].

[note: 72]Transcripts of Proceedings dated 23 November 2020 at p. 19.

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