



WMH Law Corporation

Advocates & Solicitors

6 Eu Tong Sen Street, #07-17/18, The Central, Singapore 059817

Shared Care and Control

Family and Matrimonial Practice Series

Author's Details:-

Hazell Ng

- Equity Director
- Head of Private Wealth & Matrimonial Practice

HP: (+65) [8686 3386](tel:86863386)

Office: (+65) [6514 6353](tel:65146353)

Email: hazell.ng@wmhlaw.com.sg

www.wmhlaw.com.sg

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Shared Care and Control – Can it really work?

Shared Care and Control Can it really work?

It is a Wednesday morning. Josiah* packs up his bag while mummy sends him off to school. He has spent the last 4 days with mummy at his maternal grandparents' home, and will be spending the next 3 days with daddy at his apartment. He anticipates daddy picking him up this evening after school. He is excited that he could finally play his Nintendo Switch and Play Station 5 for the next few days without listening to mummy nagging him to finish up his homework. Besides, he could eat anything he wants at daddy's as daddy would order his favourite McDonalds or KFC, while he could only eat healthy home-cooked dishes whenever he is with mummy.

Josiah is under shared care and control of his divorced parents. He alternates under the care of mummy and daddy, with his first half of the week with mummy and the second half of the week with daddy. Ideally, Josiah gets to spend almost equal amounts of time with each parent and could have “the best of both worlds”. However, could we truly say that such an arrangement would be in Josiah's best interest?

In this article, we will explore the concept of shared care and control, its workability and implications.

Introduction on Shared Care and Control

An order of care and control **determines which parent the child should live with**. The parent given care and control of the child will be the primary caregiver who oversees the child's daily necessities and is responsible for their day-to-day life such as the child's meals, activities, bedtimes, transport arrangements etc.

On the contrary, the other parent (who is not the primary caregiver) will be granted an order to have reasonable access to the child.

Traditionally, it is common that a parent is granted sole care and control of the child while the other parent has access to the child. However, more recently and in appropriate cases, the Court may grant both parents shared care and control provided it is feasible and determined to serve best for the child's welfare.



Determination of Care and Control by the Court

In making orders on care and control, there is no legal presumption that a shared care and control is always in a child's welfare but rather, the focus is whether such an arrangement would be in the best interest of the child.

In **VFS v VFT [2020] SGFC 15**, the parents of the child litigated over the child's care and control and child's maintenance. The District Judge ordered for parties to be granted shared care and control and stated as follows:-

"[21] There was no dispute between the Parties on the applicable legal principles to be applied. In deliberating the appropriate care orders to be made, s. 125 of the Women's Charter [Cap 353, 2009 Rev Ed] prescribes that the paramount consideration for the court shall be the welfare of the child. Having considered the Parties' respective submissions and

affidavits, I was of the view that it is in the children's best interests in the circumstances of this case that the Parties be granted shared care and control, on a two-week modality.

...

[23] First, I was of the view that a shared care and control arrangement will continue to afford each parent significant time with their children and will continue keeping both parents actively involved in their children's development bearing in mind the status quo of their children's care arrangements. This will ensure better outcomes for their children, and it is the next best alternative to the existing split interim care and control of their children. It was clear that the status quo care arrangement should not continue since the siblings had limited opportunities to bond at such a crucial stage of their development. It was apparent that the Parties recognised this as neither parent submitted for

the status quo to continue and both had rightly agreed for the siblings to spend time together, albeit that it was only for the weekends while the Parties go through the divorce process.

[24] Second, it was clear to me that the Parties are both well placed to care for their children and it cannot be said that one parent is better than the other. The Parties love their children dearly and both have exhibited in the status quo that they are more than capable of looking after their children individually.[note: 19] The Parties are both working full-time jobs and both averred that they have flexible work arrangements that afforded them the time to care for their children – the Wife being able to work from home when needed, and the Husband being granted time off when required. Similarly, the Parties both have competent family support to assist with the care of their children and both intended to have the children enrolled in day care.

[27] Third, the Parties had clearly exhibited their ability to co-parent for the best interests of their children. Since the breakdown of the Parties' relationship and after the Wife moved out of the matrimonial flat, the Parties exhibited how they are capable of making decisions that are in the children's best interests notwithstanding their differences of opinion and disagreements. When the Parties previously discussed their children's care arrangements, both at various points agreed for the other parent to have care and control. The Parties also ensured that the siblings continued to see each other by way of having the siblings reside together over weekends and having the siblings communicate regularly over video conferencing. In fact, the Husband kept a record of the Parties' co-parenting relationship after the breakdown of their marriage. Though his intention was to show how proactive he was in looking

after their daughter so as to lend weight to his prayer for sole care and control, the records unintentionally detailed the Parties' capability to work together for the children's care arrangements. Whilst not perfect and the Parties had several disagreements documented, the records clearly showed the ability of the children to live in two households.

...

[33] In light of the close relationship that both children share with the Parties, I was of the view that it was imperative for the Parties to find better solutions that are in their children's best interests, and where required, make the necessary sacrifices for them. They ought to do so because the two-week modality affords each parent significant time to bond with the children in light of the unique circumstances of this case. For example, the Parties should make their best efforts to

move into a common neighbourhood so that the children can be located in the same day care and have short commutes regardless of the homes they are to reside in for a particular week. I suggested this approach to the Parties during the hearing and the Husband was agreeable to move to the [address redacted] part of Singapore, the midway point between both of their respective families. The Husband also indicated that he is happy for the status quo to continue until the matrimonial flat is sold and while the Parties plan ahead to implement the shared care and control order. I found the Husband's attitude constructive, one which ought to be encouraged."

In **TAU v TAT [2018] SGHCF 11**, the parents of the child were divorced and began litigating over the child's care arrangements and the proceedings culminated into an appeal in the High Court. The Father applied to vary the orders made by the District Judge declining his request for a shared care and control of the child. The High Court of Family Justice dismissed the Father's appeal in relation to shared care and control of the child, stating as follows:-

"[29]I did not think that the DJ was wrong in coming to his decision that shared care and control of Emma would not be workable because of the acrimonious relationship between the parties as well as their very different parenting styles. He held at [44] of the grounds of decision ("GD") in TAT v TAU [2017] SGFC 48:

In this case, parties are unable to see eye to eye in respect of almost all the aspects relating to the child's life. They are unable to agree on the child's religion, unable to agree on the type and nature of medical care that the child is entitled to, unable to

agree on schooling issues including the type of food that the child is able to eat in school, unable to agree on the type of exercises that the child should be involved in given her medical conditions. This is but to name a few of the differences between the parties. The parties also continue to blame each other as the party at fault. I also note that the parties are very acrimonious towards each other and there is absolutely no trust between the parties.

....

[32]Considering all the circumstances, the DJ's order for sole care and control to the Mother with liberal access to the Father was not wrong and in fact supported Emma's welfare."

In **AQL v AQM [2011] SGHC 264**, the High Court denied the Father's request for a shared care and control of the child, citing several reasons as such:-

[17] The second reason was that the child is too young for a shared care and control arrangement. In my opinion, children of a young age require a certain constancy in their routine. Uprooting the child every 3-4 days (or even every fortnight) to a new home will be overly disruptive. Young children require a familiar and secure base-camp to which they may retreat when confronted with the myriad challenges of growing up. A sense of dislocation may result where the presence of two competing primary caregivers results in the child feeling that she has none.

[18] The third reason is closely allied to the second. The wife and husband appear to have markedly different ideas on how to bring up the child. In particular, the husband's love for the child manifests itself in a single-minded pursuit of what he feels is the best for his child. For example, he says in his fifth affidavit (at para 34) that he has taken, or intends to take his

three year old child for enrichment classes, speech and drama, art and craft, and Chinese language classes. He has also tried to develop the child's musical ability through singing sessions with his mother, and has brought her to the supermarket to teach the child independence. In contrast, the wife's parenting style seems more laid-back and less insistent on endless "enrichment" sessions.

[19] **When a child is very young, a strong clash in parenting styles is something that is relevant when deciding whether shared care and control should be ordered. One may expect that a young child will be considerably stressed if forced to adapt to different expectations and approaches every few days. Such strain cannot be beneficial at such an early stage in the child's development.**

[20] This concern is exacerbated by the parties'

seeming inability to compromise. One example illustrates this point. I was informed by counsel at the hearing that the child presently attends pre-school classes at two different centres. This is because each parent thinks he or she knows best and both refuse to budge. The result is an unsatisfactory arrangement where the child attends pre-school at one place from 10.00am–12.00pm, and at a second place from 2.00pm–4.00pm, every weekday. It was my fear that, if both have shared care and control of the child, each parent will pursue his (or her) own agenda for the child's development without taking into account what the child is enrolled in by the other parent. The worst case (but on the facts, not totally implausible) scenario will be where the child attends school at one place for half the week, and school at another for the other half.

[21] For these reasons, I decided to err on the side of caution. In my opinion, at this

stage in the child's development, her interests will be best served by awarding sole care and custody to one parent. That will at least allow the child a certain measure of stability and consistency in her development. The husband conceded at the hearing that he was no longer arguing for sole care and control of the child. It followed that once I rejected the submission of shared care and control, the wife would have the sole care and control. But even if the husband had not made such a concession and after taking into account his numerous allegations, I would still have found that sole care and control ought to be granted to the wife. The maternal bond is given primacy; it cannot be displaced merely by showing that the husband might be more meticulous in his care of the child.



Suitability of Shared Care and Control

As noted by the Court in **AQL v AQM** and **TAU v TAT**, a shared care and control is seen to be unworkable in cases where the parents of the child are acrimonious and have very stark contrast in parenting styles. Granting shared care and control in such a situation would mean placing a considerable amount of stress on the child in order for the child to toggle between different expectations of each parent and such stress, would not be beneficial for the child's development.

On the other hand, the Court also noted in **VFS v VFT** that a shared care and control arrangement will allow each parent significant and almost equal time with their children and will allow both parents to be actively involved in their children's developments, which in turn would result in better outcomes for the children. The Court also further urged the parents to set aside their differences, to find better solutions for the children's best interest, and where required make necessary sacrifices for them.

**“Suitability of Shared Care
and Control**



Application

As seen from the above cases, there is no hard-and-fast rule where shared care and control may be granted. The Court generally considers a multitude of factors prior to deciding whether a shared care and control would be in the best interest of the child. Such factors includes the child's needs at that stage of life, the level of acrimony between the parents, the extent to which the parents are able to co-operate within such arrangement, and whether it is easy for the child, bearing in mind of the child's age and personality, the lifestyle of each parent and their parenting styles etc.



For more information on the article, or if you wish to learn more about the topics discussed, please contact:-

Hazell NG
Equity Director
Head of Private Wealth &
Matrimonial Practice

HP: (+65) [8686 3386](tel:+6586863386)
Office: (+65) [6514 6353](tel:+6565146353)
Email: hazell.ng@wmhlaw.com.sg
www.wmhlaw.com.sg

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