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Injunction relating to Child in the Matrimonial Context

Family and Matrimonial Practice Series

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Urgent Injunction Application

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Jane and her husband are in the midst of a divorce proceedings and lives separately.

Recently, Jane had a heated argument with her Husband. Out of spite, the Husband forcefully and without Jane's consent abducted their five (5) month old daughter away from Jane and away from the matrimonial home where Jane is residing.

Jane has always been the main caregiver of their baby daughter since birth. After the Husband took their daughter away, he brought her to his parents' residence where he currently resides. None of them in the household had prior experience in looking after the baby girl.

Despite several requests by Jane for the Husband to return their daughter, the Husband and his family has refused to do so.

An interim care and control application has been filed by Jane, but the hearing will only take place in several weeks' time. Jane is extremely concerned about her baby daughter, yet she is at loss on how she could get her Husband to return her baby.

In this article, we will explore the possibilities of obtaining an urgent injunction application in such a matrimonial context.

Introduction on Injunction(s) in the Family Court

An “injunction” is a remedy imposed by the Court by which a person is to be ordered to stop doing something, or to actively do something.

Injunctions are not limited to Family Law, but rather, it is a mechanism that is used in a man civil law circumstance. In the matrimonial law context, it can be applied in the division of matrimonial property and also other family related matters. It is also commonly used in restraining a party from bringing a child overseas in the context of International Child Abduction Act.

The power to grant injunctive relief in relation to custody issues are governed by various Acts such as –

- (a) Family Justice Act;
- (b) Supreme Court of Judicature Act;
- (c) The Women's Charter Act; and
- (d) The International Child Abduction Act.

Injunction applications are commonly inter parte, however if the matter is one of urgency, it can be ex-parte (without notice to the other party).



The Law on an Interlocutory Injunctions

Given the scenario above, the Wife may seek for an interim mandatory injunction for the return of the baby to the matrimonial home (and under her care) and an interim prohibitory injunction to prevent the Husband from removing the baby from the matrimonial home (and from the Wife).

The test for granting an Injunction

In **ANB v ANC and Another [2014] 4 SLR 747**, the Court affirmed that the requirements for an interlocutory prohibitory injunction are the two-fold test in **American Cyanamid Co v Ethicon Ltd [1975] 1 AC 396**, as follows:-

- a. The Court must be satisfied that the claim is not frivolous or vexatious; and
- b. The Court should go on to consider whether the balance of

convenience lies in favour of granting or refusing the interlocutory relief that is sought.

At the first stage of the said test, the Court need not endeavor to resolve conflicts of evidence, and can accept the claim at face value unless the material available at the Court at the hearing of the application for an interlocutory injunction fails to disclose that the applicant has any real prospect of succeeding in the claim for a permanent injunction at the trial (also see **UDL Marine (Singapore) Pte Ltd v Jurong Town Corp [2011] SGHC 153**).

As for the second stage of the test, the balance of convenience is determined on the basis that if damages measurable at common law would be adequate remedy and the

Respondent would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the Applicant's claim appeared to be at that stage.

Whilst the law on injunctions are primarily applied in civil cases, where the law is applied in respect of a matrimonial context (in particular involving the interest of a child), **section 125(1) of the Women's Charter (Cap. 353, 2009 Rev Ed)** and **section 3 of the Guardianship of Infants Act (Cap. 122, 1985 Rev Ed)** requires that the court's paramount consideration remains that of the welfare of the child.

In determining what amounts to the welfare of a child, the Court of Appeal in **TSF v TSE [2018] 2 SLR 833** adopted the framework of relevant factors

proposed by the Family Law Review Working Group's Report titled "*Recommendations for Guardianship Reform in Singapore*" starting basis of factors the courts should consider when determining what amounts to the welfare of the child as (at [51]):

- a. The child's physical, emotional and educational needs, and his physical and emotional safety;
- b. The capacity of each parent to provide for the child's needs and ensure the child's safety;
- c. The child's relationship with each of his parents and with any other caregiver;
- d. The need to ensure a continuing relationship

between the child and the parents;

- e. The effect of any changes to the child's life; and
- f. Any other additional factors that relevant to the specific facts of the case.

The weight of these relevant factors will turn on the specific facts and circumstances of the case in question. These factors are non-exhaustive (at [51]-[52]).



Unlike the civil jurisdiction, it is our views that the family court cannot simply take into consideration the balance of convenience test which is aimed at securing the financial and proprietary interests of the parties.

There is an additional element of the welfare of the children in which the Court must consider. In this sense, in determining the balance of convenience, the Court should not just examine the parent's rights and positions, but also where the balance of convenience would lie taking into account the welfare of the child.

In fact, the Court of Appeal in **BNS v BNT [2015] 3 SLR 973 [TAB-14]** at [19], in the context of relocation matters, held that *“the welfare of the child is paramount and this principle ought to override any other consideration”*. Here, the Court of Appeal at [19] coined this the “controlling principle” and held that this principle is the “golden thread” that runs through all proceedings directly affecting the interests of the child”.

In an application for an injunction involving and affecting the welfare of a child the court must consider first the two-fold test as stated above. However, the Court would further need to consider a variety of factors taking into account the Women's Charter and Guardianships of Infants

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Act, and case laws. Further, the welfare of the child must have an overriding effect on any prejudice that arises in the grant of an injunction.



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

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