

SINGAPORE / JUDGMENT

YHY v YHZ

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IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGFC 121

FC/OAG 26/2026

Between

YHY

... App licant

And

YHZ

... Respondent

grounds of decision

[Family Law — Guardianship — Testamentary guardian]

[Family Law — Procedure — Discontinuance — Permission under P 16 r 4 of the Family Justice (General) Rules 2024 — Child’s welfare]

]

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YHY

v

YHZ

[2026] SGFC 121

Family Justice Courts – Originating Application 26 of 2026

District Judge Kathryn Thong

16 April 2026, 6 May 2026, 19 May 2026, 17 June 2026, 28 August 2026

28 August 2026

District Judge Kathryn Thong:

Introduction

1 This judgment sets out my reasons for declining, at the first hearing, to grant the Applicant immediate permission to discontinue her application under s 17(1)(d) of the Supreme Court of Judicature Act 1969 (“SCJA”) for the Court to exercise its wardship jurisdiction to appoint her—the maternal aunt of the child in question—and the child’s biological father as joint guardians.

2 The Respondent, the biological father of the child (“F”), did not object to the discontinuance but sought costs of \$3,500 which the Applicant resisted.

3 After hearing arguments on costs, I was not prepared immediately to grant the Applicant permission to discontinue the proceedings.

4 Instead, I preserved the proceedings and directed the social services to conduct a home visit and report on how the child was faring in the care of the F, with whom she was residing. Upon receiving that information, I granted permission for the proceedings to be discontinued and ordered costs against the Aunt.

5 All names used herein are pseudonyms.

Background facts and the Application

6 At the heart of the Application is 11-year-old Eve. She is the only child from the marriage of the F and the Aunt’s sister. In 2020, Eve’s mother (“the M”) filed for divorce and final judgment was granted on 7 November 2023 granting Eve’s mother sole custody, care and control of Eve and supervised access to the F. The M was to also solely maintain Eve.

7 Shortly after the divorce was finalised, the M’s health began to deteriorate. She eventually suffered a stroke, fell and injured her head. She underwent brain surgery, which impaired her eyesight such that she was unable to care for Eve. Eve thus began living with the Aunt, who also prepared meals for the M and arranged for them to be delivered to her sister.

8 In April or May 2024, the M was hospitalised. She passed away a year later, in May 2025. In June 2025, the Aunt reached out to the F, stating that she and her husband wished to care for Eve. The couple, I point out, have three young sons of their own.

9 This was objected to by the F, who wanted full care and control of Eve.

10 From August 2025, Eve would spend her weekdays at the F’s residence and Fridays to Sundays would be spent at the Aunt’s place. This arrangement was brokered by Protective Service (“PSV” and formerly known as Child Protective Service), after the F had agitated for more access to Eve.

11 At some point in time, the Aunt was advised by a social worker to put in an application for guardianship so that she could sign off as Eve's guardian and have Eve assessed for depression and autism. The Aunt also sought shared care and control of Eve with the F, which the latter objected to. In September 2025, the Aunt filed an application under the Guardianship of Infants Act ("GIA").

12 This application was also motivated by the Aunt's concerns that the F was unable to care for Eve adequately as Eve had shared that she only had milk, biscuits or instant noodles on those occasions that she stayed with her F during this period. The Aunt also pointed out that the F had not seen much of Eve until PSV facilitated some access in May 2025.

13 In October 2025, the F filed an application for a personal protection order on behalf of Eve against the Aunt's husband ("the PPO"), accusing him of asking Eve to touch his private parts. Owing to this, Eve stopped residing with the Aunt altogether and moved in with the Father. The Aunt got to see her occasionally on weekends but even then, such access appeared challenging for the Aunt who claimed that the F was stonewalling attempts to reach out to Eve. However, during the hearing before me, counsel for the Aunt, Ms Susan Tan ("AC"), acknowledged that Eve was rather cool during "access" with the Aunt.

14 While the PPO is irrelevant to the proceedings before me, for completeness, I state it was dismissed entirely in April 2026, and no appeal was filed by the F. At the time of writing, Eve continues to stay with the F.

15 The Application sought the following prayers:

1. The guardian to be appointed to act together with [the F]
2. The parties shall have joint custody of the child
3. The Applicant and Respondent shall have shared care and control of the Child. The shared care and control arrangements shall be as follows:
...
4. That the Applicant shall be authorised to open a new bank account in the joint names of the Child and herself ("the Child's Designated Bank Account") which is to be solely operated by the Applicant. All monies due or payable to the Child are to be deposited into the Child's Designated Bank Account. That the Applicant will be able to give a good and valid receipt for all monies received by the Child or by the Applicant on behalf of the Child and to deposit all such monies received into the Child's Designated Bank Account pursuant to section 17(1)(d) of the Supreme Court of Judicature Act 1969.

5. That the Applicant be authorised to advance to the Child on a monthly basis from the Child's Designated Bank Account such sum as shall be sufficient for her living expenses, educational expenses or any other purposes as the Applicant deems fit until a trust is set up for the Child with the Special Needs Trust Company ("SNTC") pursuant to section 17(1)(d) of the Supreme Court of Judicature Act 1969.
6. That the Applicant be authorised to deposit the monies from the sale of the Child's mother [xxx] property known as [xxxx] into the Child's Designated Bank Account pursuant to section 17(1)(d) of the Supreme Court of Judicature Act 1969.
7. That subject to the approval of the SNTC, the Applicant be authorised to open a trust account for the Child with the SNTC ("the Child's SNTC Account") after the Applicant has called in the monies payable to the Child, deposited the monies into the Child's Designated Bank Account and paid any outstanding amounts owing for the Child's living, educational and medical expenses pursuant to section 17(1)(d) of the Supreme Court of Judicature Act 1969.
8. That the Applicant be authorised to set up the Child's SNTC Account in such a manner that it will be managed by SNTC and SNTC will pay for the Child's expenses, including her living, educational and medical expenses or any other purposes as necessary for the Child's welfare pursuant to section 17(1)(d) of the Supreme Court of Judicature Act 1969.
9. That the Applicant be authorised to close the Child's Designated Bank Account after the Child's SNTC Account has been set up and all monies in the Child's Designated Bank Account have been transferred to the Child's SNTC Account pursuant to section 17(1)(d) of the Supreme Court of Judicature Act 1969.
10. Each party to bear own costs.

The hearing on 16 April 2026

16 At the hearing on 16 April 2026, Ms Tan submitted that, based on the photographs exhibited in the F's affidavit, the Aunt believed that Eve was well cared for by him. The Aunt therefore wished to discontinue the Application.

17 When queried if the Aunt had personally ascertained from Eve that she was living well with the F, AC responded that this was the Aunt's belief and that she was prepared to be less involved in Eve's life.

16 When the Court raised the question of financial provision for Eve, given the extensive prayers concerning the proposed SNTC account, AC said that the Aunt would probably establish a bank account for Eve's benefit. The Aunt intended to sell the flat and, after deducting \$150,000 which she said her late sister owed her, deposit the remaining sale proceeds into that account.

17 Ms Chong Xin Yi, counsel for the father (“RC”), submitted that the Application was plainly unmeritorious and that Eve had always enjoyed a good relationship with the F until Eve started living with the Aunt and he saw less of her. Even if the Aunt had harboured doubts over the F’s suitability to care for Eve, MSF’s visit in October 2025 should have allayed her concerns.

18 RC also expressed concerns over how the Aunt would be managing the sales proceeds – the F disputed that the M even owed the Aunt a sum of \$150,000 to begin with.

19 Given the multifarious issues the F had with the Aunt’s management of the estate on Eve’s behalf notwithstanding the M’s appointment of the Aunt as executor and trustee, and his position that Eve was living well in his care, the obvious inference from his affidavits was that he did not wish for the Aunt to be involved in Eve’s life. When queried by the Court, Ms Chong confirmed that her client intended to apply to remove the Aunt as testamentary guardian.

20 This took AC by surprise, who responded that the Aunt had simply wished to honour her sister’s wishes to look after Eve. The reason for the Application was that a social worker had advised the Aunt to obtain a court order appointing her as Eve’s guardian, so that she could send Eve for a formal assessment as to whether she was autistic and depressed.

21 When queried why the Aunt had to apply for a court order to be appointed a guardian even though she is Eve’s testamentary guardian, Ms Tan suggested that the Aunt may have been “wrongly advised” by the social worker. With respect, this did not address the crux of the Court’s concern – that despite being legally advised, the Aunt proceeded with a prayer to be appointed Eve’s guardian.

22 This had costs implications as outlined below (see [75]).

23 In any event, it was apparent that the Aunt was seeking to discontinue the action under P 16 of the FJ(G)R:

Discontinuance of action, etc., without permission (P. 16, r. 2)

2.—(1) Subject to paragraph (2), the applicant in any proceedings commenced by originating application may, without permission of the Court, discontinue the proceedings, or withdraw any particular claim made by the applicant, as against all or any of the respondents as follows:

- (a) where the respondent concerned has not, or all the respondents have not, been served with the originating application — by filing a notice in Form 111 on the respondent concerned or all the respondents (as the case may be) at any time;
- (b) where the respondent concerned has, or all the respondents have, been served with the originating application — by producing to the Registrar a written consent in Form 111 signed by the respondent concerned or all of the respondents (as the case may be) at any time before the Court disposes of the entire proceedings.

24 Ms Chong did not object to the discontinuance but sought costs of \$3,500; for this reason, RC had not filed a written consent ahead of the hearing.

The applicable legal principles

General principles governing discontinuance

25 As no written consent had been filed under Form 111, the application for discontinuance fell to be decided by the Court as per P. 16 r. 4 of the Family Justice (General) Rules 2024 (“FJ(G)R”):

Discontinuance of action, etc., with permission (P. 16, r. 4)

4.—(1) Except as provided by Rule 2 or 3, a party must not discontinue any proceedings or summons, withdraw any particular claim made by him or her therein or withdraw any Reply, without the permission of the Court.

- (2) The Court hearing an application for the grant of permission mentioned in paragraph (1) may order the proceedings or summons to be discontinued, any particular claim made in those proceedings or summons to be struck out or any reply to be struck out, as against all or any of the parties against whom the originating application is brought.
- (3) An order made under paragraph (2) may be made on any terms as to costs, the bringing of a subsequent action or otherwise that the Court thinks just.
- (4) Where the Court makes an order under paragraph (2) against a party (X), and X is liable to pay the costs of any other party in the proceedings, X must not take out a new originating application for the same or substantially the same cause of action unless —
 - (a) X has, before taking out the new originating application, paid the costs for which X is liable; or
 - (b) with the permission of the Court.

26 Where both parties consent to a discontinuance of proceedings, it may appear to be a foregone conclusion that the Court would allow the discontinuance.

27 The language of P 16 r 4(1), however, should disabuse one of any notion that the Court accepts the parties’ agreement to discontinue proceedings without question. In granting permission for discontinuance, the Court necessarily exercises discretion and must therefore apply its mind to whether permission should be granted.

28 As for what guides the Court’s exercise of discretion under this Part, there is no known authority on P. 16 r. 4(1) or its predecessor, rule 431 of the repealed Family Justice Rules 2014. Rule 431 was derived from O 21 r 3 of the Rules of Court 2014 (since repealed), which in turn is materially similar to O 16 r 3 of the Rules of Court 2021 (“ROC 2021”):

Discontinuance of action, etc., with permission (O. 16, r. 3)

3.—(1) Except as provided by Rule 2, a party may not discontinue an action (whether begun by originating claim or otherwise) or counterclaim, or withdraw any particular claim made by him or her therein, without the permission of the Court, and the Court hearing an application for the grant of such permission may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against all or any of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as the Court thinks just.

(2) An application for the grant of permission under this Rule may be made by summons.

29 Authorities on O 16 r 3 ROC 2021 would thus be germane to how the Court may approach a discontinuance under P 16 r 4(1). In this regard, the case of *Victory International Holdings Pte Ltd v Borrelli, Cosimo* [2024] SGHC 79 (“*Victory*”) is instructive.

30 In *Victory*, the High Court refused to allow the applicant to rely on O 16 r 6 of the ROC 2021 to withdraw a summons or alternatively, hold the summons in abeyance pending a determination of the originating application. Instead, it proceeded to determine and eventually dismissed the summons.

31 O 16 r 6 of the ROC 2021 simply provides that “A party who has taken out a summons in a cause or matter may not withdraw it without the permission of the Court.”

32 Observing that there was a dearth of authority on O 16 r 6 of the ROC 2021 relating to the withdrawal of summonses, the High Court referred instead to O 16 r 3, which pertains to the discontinuance of an action or claim. It remarked at [31]:

... that the court’s permission is needed under O 16 r 6 of the ROC 2021 before a party can withdraw a summons, must necessarily mean that a court is imbued with the discretion to decide whether to grant such permission or not . In the absence of directly applicable case law to O 16 r 6 of the ROC 2021, a court exercising this discretion can have regard to the body of case law and principles that have been developed in relation to the court’s discretion to order that an action or claim be discontinued pursuant to O 16 r 3 of the ROC 2021, which is identical to O 21 r 3 of the ROC 2014. These provisions constitute a complete code on the subject of withdrawal and discontinuance of the whole or part of an action, defence, and counterclaim (see *Singapore Civil Procedure 2021* (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 21/5/1).

(at [31] of *Victory*)

33 Referring to various academic commentaries and practice guides, the High Court found that these provisions aim to discourage frivolous and unnecessary applications. Broadly speaking, “[a] party must not assume that he can simply disengage from the court process at whim, particularly if he is responsible for its initiation of the step he wishes to revoke” (see Jeffrey Pinsler, *Singapore Civil Practice* (LexisNexis, 2022) at para 16.1.2, cited in *Victory* at [31]).

34 It traced the rationale of these provisions from the English Court of Appeal decision in *Fox v Star Newspaper Company* [1898] 1 QB 636 (at 639), where Chitty LJ remarked:

... The principle of the rule is plain. It is that after the proceedings have reached a certain stage the plaintiff, who has brought his adversary into court, shall not be able to escape by a side door and avoid the contest. He is then to be no longer dominus litis, and it is for the judge to say whether the action shall be discontinued or not and upon what terms. ...

(at [32] of *Victory*)

35 At [34] of its judgment, the High Court summarised the relevant principles having regard also to the Court of Appeal case of *Rohde & Liesenfeld Pte Ltd v Jorg Geselle and others* [1998] 3 SLR(R) 335. Adverting to the applicability of the relevant case law in relation to O 16 r 3 of the ROC 2021 to O 16 r 6, it stated:

34 ... First, since no party should be compelled to proceed with a summons against its will, a court should generally give permission for a party who had brought the summons (the “applicant”) to withdraw it. Second, however, a court can depart from this general approach if such a withdrawal would cause injustice to the counterparty. This is especially crucial in the context of O 16 r 6 of the ROC 2021 because it appears that a court generally lacks the power to impose conditions on a party’s withdrawal of a summons, such as precluding the applicant from bringing a fresh summons at a later stage. After all, O 16 r 6 of the ROC 2021, unlike O 16 r 3(1) of the ROC 2021, does not expressly provide that a court can impose conditions if it allows a summons to be withdrawn.

35 As for what “injustice” to the counterparty could entail, Covell Matthews suggests (at 879) that such prejudice could include the deprivation of an “advantage” in the litigation that the counterparty had already enjoyed. In my view, such “advantage” includes, for example, the counterparty having a clearly superior case to the applicant as may be objectively ascertained. In some cases, the superiority may be marked to such an extent that the applicant effectively concedes that, if the summons were determined, it would not succeed in the summons. Concurrently, or in other cases, the superiority may arise from the fact that the applicant’s stated reasons for withdrawing the summons effectively mirror the reasons advanced by the counterparty for resisting the summons.

36 In such situations, where the counterparty is on the cusp of victory, it would be clearly prejudicial to allow the applicant to withdraw the summons. This is because the practical effect of a discontinuance or withdrawal is that the plaintiff remains free to bring another action for the same claim (see *Rohde & Liesenfeld* at [11]). Additionally, the counterparty would suffer further prejudice if the applicant indicated its desire to withdraw the summons close to the hearing date. This is because the counterparty would not only have tendered extensive submissions to resist the summons, but the party who brought the summons would have had the benefit of reading those submissions. Further, in so far as the public interest may be relevant (see *Rohde & Liesenfeld* at [13]), it is more likely that the court would have also made substantive preparations towards the hearing of the summons.

[own emphasis]

36 In the subsequent case of *EC-Council Pte Ltd v WPP Singapore Pte Ltd* [2026] SGHC 125 (“EC-Council”), Coomaraswamy J reviewed several authorities, including *Victory*, and identified a general rule, a qualification and an exception governing applications to withdraw. His Honour’s explanation of the policy underlying each limb was particularly illuminating.

37 The general rule is that withdrawal will ordinarily be allowed because it is undesirable to compel an unwilling litigant to continue. It applies whether what is sought to be withdrawn is an originating process, an interlocutory application or a single prayer in an interlocutory application (see *EC-Council* at [18]–[20]).

38 The rationale is threefold. First, in an adversarial system such as ours, litigation belongs to the parties: a claimant chooses when and how to commence it, and when and how to end it. The court does not impose on parties’ litigation which they seek to abandon (see *EC-Council* at [23]). Second, the rectitude of the court’s decisions might be diminished if an unwilling litigant advances half-hearted arguments in support of a position it has sought to withdraw. Third, judicial resources are scarce and finite public resources which should not be expended on unnecessary litigation (see *EC-Council* at [23]–[25]).

39 The qualification to the general rule is founded on the policy that the court’s process should not become an instrument of unfairness (see *EC-Council* at [27]–[31]). This qualification occurs in two forms: the first where the withdrawing party would be conferred an unfair forensic advantage by the withdrawal; or the second, where withdrawal deprives the opponent unfairly of a forensic advantage or subjects it unfairly to a forensic disadvantage. The touchstone is unfairness of a kind that makes the withdrawal an abuse, rather than mere inconvenience or added expense. This was exemplified in *The ‘King Darwin’* [2019] 5 SLR 800, where the action was kept alive on terms as a vehicle for an intervenor’s claim because the intervenor would otherwise suffer prejudice which could not adequately be compensated by costs (see *EC-Council* at [31]–[32]).

40 Coomaraswamy J pointed out further at [33] that:

Where the qualification points towards compelling a determination on the merits, rather than merely preserving the proceedings as a vehicle for the party opposing withdrawal, a further condition applies. That course is appropriate only where the court can be satisfied that the applicant’s change of heart will not impair the quality of the court’s decision-making

41 The general rule and both forms of its qualification are concerned with fairness between the parties. The exception is concerned with “something else”, namely cases—

...in which there is a public interest in the subject matter of the parties’ litigation that transcends the merely private interests of the parties.

In such cases, the court may refuse a withdrawal if doing so would advance that interest (see [45]–[46]).

42 In my view, these principles are instructive in guiding the Court's exercise of discretion under P. 16 r. 4(1) of the FJ(G)R.

43 The first and most fundamental principle is that the Court has discretion whether to permit discontinuance. It is not constrained to grant permission. Victory makes this clear. Consequently, it should not be taken to be a foregone conclusion that the Court will permit a discontinuance simply because both parties agree to it.

44 The second is that the Court will generally permit discontinuance unless it would cause injustice or prejudice to the other party such that the court's process becomes an instrument of unfairness. Notably, the Court in EC-Council observed that "[r]efusal is reserved for the rare case in which the prejudice is real and neither a term nor an order of costs will serve to cure it" (at [44]).

45 The third principle is the public-interest exception to the general rule favouring withdrawal. EC-Council identified examples of such an interest: (a) the apex court ventilating its views on the merits of a legal point of general significance even after an appeal has been discontinued; (b) upholding the administration of justice by visiting punitive consequences on those who breach court orders; and (c) determining whether the court's procedures have been flouted or abused: EC-Council at [45]–[51].

The paramountcy of the child's welfare

46 While these principles uncontroversially apply to civil proceedings where withdrawals are concerned, it is this Court's view that in family court proceedings where children are concerned, these principles are necessarily overlaid by the "golden thread" of the welfare of a child as being paramount and overriding any other consideration. As was unequivocally stated by the Court of Appeal at [19] of BNS v BNT [2015] SGCA 23 ("BNS v BNT"), where proceedings directly affect the interests of children, the "first and paramount consideration" is necessarily the child's welfare.

47 In family proceedings where the interests of children are directly affected by the application at hand, there is a further and independent principle within the body of established principles governing withdrawals generally: the child's welfare and best interests are the paramount consideration. That consideration necessarily transcends the private interests of the parties.

48 In fact, this principle finds statutory expression in P. 1 r. 4(2)(d) of the FJ(G)R, which provides that the Rules are to enable the Court to achieve the Objective "where a child is a party to or a subject of the proceedings, [of] placing the child's welfare as the paramount consideration".

49 P 1 r 4(3) reinforces this position by requiring the Court to seek to give effect to the Objectives when interpreting the FJ(G)R, exercising any power under it, and making any order or giving any direction:

- (3) The Court must seek to give effect to the Objectives in interpreting these Rules, exercising any power under these Rules and in all its orders or directions.

50 The paramount consideration of the child's welfare arises independently from P. 1 r. 4(2)(d) and (3) and governs the exercise of every power under the FJ(G)R where a child is the subject of the proceedings.

51 Accordingly, the discretion conferred by P 16 r 4 should not be exercised solely by reference to party autonomy, forensic advantage or disadvantage, or the public-interest considerations identified in EC-Council . Where discontinuance may affect a child who is the subject of the proceedings, the Court must consider its consequences for that child and treat the child's welfare as paramount.

52 These principles must also be situated within the therapeutic justice ("TJ") philosophy of the Family Justice Courts. While TJ is neither a principle of law nor a specific rule (per Choo J in XNG v XNH [2026] SGHCF 4 at [6]), it is a "lens of care" that underlies family proceedings and distinguishes Singapore's family justice system from the traditional adversarial model of litigation: WKM v WKN [2024] SGCA 1 at [40]. TJ is forward-looking. As Teh J observed in TTZ v TTY [2024] SGHCF 46 at [52], the FJC's TJ Model urges parties to address underlying issues in the long-term interests of the family, with the welfare of the children always placed first.

53 Pertinently, while TJ seeks to encourage parties not to see each other as adversaries and to focus on healing and moving forward, this does not mean that proceedings before the Court are devoid of procedural discipline. Parties are urged to remember that familial ties remain beyond the litigation, and that fighting to the bitter end causes further hurt and pain while rendering any victory potentially pyrrhic. It does not mean that the rigours of litigation are abandoned.

54 As such, I find that the principles enunciated in EC-Council and Victory apply with equal force in withdrawal applications in family proceedings in the FJC, save that the "overriding consideration" (per Phang JA at [19] of BNS v BNT) remains that of the child's best interests and welfare, and that the TJ philosophy would inform any case management directions.

Whether the Court should grant permission to discontinue the Application

55 At the outset, the Application was misconceived insofar as it sought to appoint both parties as Eve's guardians. The F, as Eve's surviving parent, was already her guardian under s 6(2) of the GIA. The Aunt also did not require an order appointing her afresh as a testamentary guardian—her appointment under the M's will had taken effect upon the M's death pursuant to s 7(2) of the GIA. There was accordingly no need to invoke the Court's wardship jurisdiction for either appointment.

56 Although it was regrettable that Eve appeared to have a lukewarm or even frosty relationship with the last remaining link to her late mother, the Aunt's status as testamentary guardian did not confer an automatic right to Eve's care and control or to access. Under s 7(3) of the GIA, a testamentary guardian acts jointly with the surviving parent only so long as the surviving parent does not object. The F's position made clear that he objected to the Aunt acting jointly with him.

57 The appropriate statutory route was therefore an application under s 7(4) of the GIA, rather than an invocation of the Court's wardship jurisdiction to appoint the Aunt afresh. Under s 7(4), where the surviving parent objects, the testamentary guardian may apply to the Court, which may refuse to make any order, order that the testamentary guardian act jointly with the surviving parent, or order that the testamentary guardian be the sole guardian.

58 It would nonetheless have been too facile to permit discontinuance solely because the Application had proceeded under the wrong legal route. Discontinuance at that stage would have left several questions unanswered, the most troubling being the Court's lack of reliable and current information about how Eve was faring in the F's care.

59 No independent person appeared to have had recent direct contact with Eve. Although RC referred to an MSF visit in October 2025, there was no report or update before the Court and approximately six months had passed since that visit.

60 There might have been less cause for concern had the Aunt not alleged that the F vaped and had even supplied vaping products to the M after the divorce. At the hearing, AC also claimed that her client had shown her WhatsApp exchanges concerning vaping devices or products. RC understandably objected strenuously to such evidence from the Bar.

61 While the Aunt was satisfied with the photographs exhibited – and I note these were across various settings with Eve looking happy – these photographs were undated and mostly of Eve alone.

62 Further, there was the issue of Eve's depression and learning needs though she was in a mainstream primary school. It was unclear how her needs were being managed and met.

63 The haste with which the Aunt was prepared to discontinue the proceedings was at odds with the vociferousness of her allegations against the F. When I inquired whether the discontinuance was influenced by the impending decision on the PPO, AC assured the Court that it was not and that the Aunt simply wanted the proceedings to end. She explained that the Aunt was prepared to be less involved given the current relationship between her and Eve. Besides, the Aunt had her hands full caring for her three young sons with special needs. The Aunt was satisfied that Eve was fine living with the F.

64 Applying Victory and EC-Council, discontinuance would not have caused the F any injustice or prejudice beyond the costs he had incurred, nor was there a public interest of the kind identified in EC-Council that required adjudication of the parties' dispute.

65 There remained, however, the distinct question of Eve's welfare, which transcended the parties' private interests. Although discontinuance would have relieved the Aunt of the burden of continuing the proceedings, the circumstances she had placed before the Court, coupled with the absence of reliable and current information about Eve, merited further inquiry.

66 I was therefore not prepared immediately to grant permission for discontinuance. The proceedings were preserved only to the extent necessary to obtain reliable and current information concerning Eve's circumstances, after which the discontinuance application could be determined having regard to Eve's welfare. I thus directed that a social worker conduct a home visit, subject to the F's consent, which he readily gave.

67 In making this limited case-management direction, I relied on P.1 r. 5(2) and (4) of the FJ(G)R, which provide that:

- (2) Where there is no express provision in these Rules or any other written law on any matter, the Court may do whatever it considers necessary on the facts of the case before it to ensure that justice is done or to prevent an abuse of the process of the Court, so long as it is not prohibited by law and is consistent with the Objectives.
- (4) Unless otherwise provided in these Rules, the Court may exercise the powers under these Rules either on its own initiative or upon application.

68 The social worker subsequently informed the Court that Eve had settled well in the F's care. This was based on the social worker's interactions with Eve, observations of the home environment, and interviews with the F and the paternal grandmother, with whom Eve lived.

69 The social worker also noted that the F had arranged Mandarin tuition for Eve and that both the F and the paternal grandmother helped her with her other subjects. Overall, her academic functioning was reported to have improved. I also noted the F's affidavit exhibiting school assignments which Eve's teachers had commended.

70 As for access to the Aunt, the F told the social worker that he had not prevented access, but that the Aunt herself interacted little with Eve.

71 No concerns were raised by the school either. The social worker also pointed out that PSV had previously made its own assessment as to the F and paternal family's suitability to care for Eve when the PPO allegations erupted, before placing Eve with the F.

72 Hence, while the Court initially had concerns about the F's suitability to care for Eve in light of the Aunt's allegations—including his alleged indebtedness—the social worker's update substantially allayed those concerns. There was no evidence of any red flag suggesting that the F had designs on the M's estate, something alluded to by the Aunt. To the contrary, the F stated that he could maintain Eve without assistance and opposed the Aunt's proposed sale of the M's flat, as he wished Eve to retain a home of her own for the future.

73 Given the social worker's update, the affidavit evidence and the Aunt's own wish to discontinue the proceedings as she believed Eve was well cared for, I found that it was in Eve's best interests to preserve the status quo: Eve would continue living with the F, with the Aunt having access by agreement.

74 I therefore granted the Aunt permission to discontinue the Application in its entirety.

Costs

75 As for costs, I found it difficult to ignore the procedural history of the Application, which itself comprised a series of unfortunate events.

76 The Application in its previous incarnation was commenced as an originating application under section 5 of the GIA in September 2025 vide OAG 135/xxx. At a case conference, the learned assistant registrar (“AR”) was informed by AC that the Aunt was seeking to be a guardian to which the AR replied that since the father was alive, the Aunt ought to be filing a wardship application.

77 At no point during the said case conference did either counsel disclose that the Aunt was a testamentary guardian. Very rightly, the learned AR directed AC to carry out her own research on the applicable statutes. As he put it pithily, he was not going to “spoon-feed” counsel. The matter was then directed for mediation which eventually proved futile.

78 Upon returning to the case conference stage, another AR was bewildered when AC informed that she wished to withdraw OAG 135/xxx as she was given to understand that the application should be filed as a wardship application under the SCJA. By this time, OAG 26/2026 had already been filed and both applications were before the AR for case directions.

79 The learned AR, being alive to the fact that the Aunt was already a testamentary guardian, questioned both counsel closely on the jurisdictional basis for proceeding under the SCJA. The AR reiterated that the Court could not advise counsel or the parties on jurisdiction.

80 Suffice to say, both counsel agreed for OAG 135/xxx to be withdrawn, labouring under the belief that a wardship application would be appropriate, notwithstanding the learned AR’s determined efforts to urge a rethink of the legal position. OAG 135/xxx was thus withdrawn.

81 In closing, the AR emphasised her observations on the jurisdictional point and impressed upon counsel to be ready to address this issue – as well as the matters covered under the will – at the hearing.

82 Before me, in seeking costs of \$3,500, RC submitted that the application was unmeritorious. The Aunt had ample opportunity to observe that Eve was well cared for by the F. From September 2025 when OAG 135/xxx was filed till February 2026 when OAG 26/2026 was filed, she should have been satisfied as to the level of care given that MSF had also been involved in assessing safety risks. Further, the Aunt’s allegations were wholly unsubstantiated. Had the matter proceeded to a hearing, the Aunt would have been unable to prove her case. Costs had been thrown away in terms of affidavit preparation and two prior case conferences; submissions had also been prepared though not filed.

83 AC maintained that the Aunt had acted only out of concern for Eve's welfare and had probably been wrongly advised by a social worker to apply for guardianship. AC submitted that it would be unfair to order costs against the Aunt given the effort and expense she had devoted to the M and Eve, including the M's hospital bills, which she had yet to claim from the M's estate. AC also emphasised the Aunt's concerns about the F's historical lack of involvement with Eve and repeated the allegation that he had fuelled the M's vaping habit after the divorce.

84 I found that an order for costs against the Aunt was appropriate. Although her concern for Eve was understandable, the Application was misconceived in its juridical basis and featured serious yet bare allegations against the F.

85 I recognise that the first AR had raised wardship as a possible route. That preliminary observation, however, was not legal advice nor a determination of jurisdiction. Indeed, the AR had expressly directed AC to research the applicable statutory provisions. I nevertheless took that circumstance, together with the Aunt's genuine concern for Eve, into account in moderating the costs awarded.

86 Ultimately, the Aunt had legal representation, and the jurisdictional difficulties with the Application had been raised repeatedly during the case conferences. Notwithstanding these, the wardship application was commenced and maintained, requiring the F to respond by affidavit, attend case conferences and prepare for the substantive hearing.

87 Costs are compensatory rather than punitive. The F should not be left to bear the reasonable costs incurred in responding to an application which the Aunt ultimately chose not to pursue and which had proceeded on an erroneous legal basis. At the same time, the costs order in these proceedings should not operate as a means of recovering costs incurred in OAG 135/xxx, which had been withdrawn with no order as to costs.

88 Considering the circumstances, I ordered the Aunt to pay the F costs of \$1,200 inclusive of disbursements, for OAG 26/2026.

Postscript

89 It was not lost on this Court that the direction for an independent assessment by a social worker inevitably prolonged the proceedings. Finality is important in family proceedings—protracted litigation often harms the family and distracts its members from healing and moving forward. But finality cannot displace the paramount consideration of the child's welfare.

90 In *Geisler & Geisler* [2018] FCCA 3959 at [34], the Federal Circuit Court of Australia, in considering whether final parenting orders should be deferred to allow the children's relationship to be assessed further, referred to Lord Atkin's observation in *Ras Behari Lal v King-Emperor* (1933) LR 60 Ind App 354 at 361. The court noted that the same observation was cited with approval in *Smith v Western Australia* [2014] HCA 3 at [43]:

Finality is good, but justice is better.

91 Therapeutic justice should not be understood as requiring the Court to unthinkingly endorse every withdrawal, discontinuance or settlement. Its “lens of care” requires the Court to consider carefully whether the proposed course promotes the family’s long-term welfare and, where a child is directly affected, to place that child’s welfare first.

92 The limited time and resources expended in obtaining an independent assessment were necessary and proportionate to ensure that the Court did not permit discontinuance without sufficient assurance that Eve was safe and well in the F’s care. Once the Court received that assurance, then consistent with the principles in Victory and EC-Council , there was no remaining reason to preserve proceedings which neither party wished to continue.

93 Eve has experienced considerable change and loss at a young age. It is hoped that the stability she has now found with her father and her paternal grandmother will continue, and that she will grow up safe, healthy and happy.

94 To this end, both Eve’s father and aunt are important links to Eve’s identity. Whatever their differences, they should endeavour, where circumstances permit and in line with Eve’s wishes and welfare, to preserve those familial connections and support her as she grows. Litigation should be the last resort.

Kathryn Thong

District Judge

Tan Yu Poh Susan (Chen Youbao) and Tan-Goh Song Gek Alice (A C Fergusson Law Corporation)
for the Applicant

Chong Xin-Yi (Gloria James-Civetta & Co) for the Respondent

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