VBS *v* VBR
[2020] SGHCF 10

Case Number : District Court Appeal No 104 of 2019
Decision Date : 03 August 2020
Tribunal/Court : High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Appellant in-person; Respondent in-person.
Parties : VBS — VBR

Family Law – Custody – Access

Family Law – Matrimonial assets – Division

Family Law – Maintenance

3 August 2020

Choo Han Teck J:

1 The wife, a 41-year-old yoga teacher, and the husband, a 43-year-old programme manager, obtained a divorce after 11 years of marriage. The divorce was uncontested but the ancillary matters ("AM") were acrimonious. After the AM hearing below, the District Judge granted the wife sole care and control of their two children, a 9-year-old daughter and an 11-year old son, with liberal access to the husband. The wife was to receive 46% of the total matrimonial pool of approximately $425,000, as well as maintenance from the husband in the lump sum of $7,200. The husband was also ordered to pay monthly maintenance to the daughter and the son in the sum of $470 and $500 respectively, and to bear the cost of their enrichment tuition and medical coverage. The wife appealed against all of the District Judge's orders.

2 The wife, who wanted me to revoke the husband's weekday access, described the husband as a violent and dangerous man who suffered from unpredictable mood swings owing to his addiction to alcohol. She also submitted that the husband had neglected the children's medical needs and had repeatedly failed to make payment for the children's medical expenses.

3 However, the wife did not tender any evidence of the husband's supposed alcoholism. There was also no evidence of the husband's alleged medical neglect. While the husband had insisted that the wife pay for the children's medical expenses upfront before reimbursing her for the same, I did not think that such requests were capable of evincing neglect on his part. As for the husband's violent temperament, the only documentary evidence of this fact was a series of medical reports from 2018 stating that the son had suffered a suspected right ear injury which had apparently been caused by the husband slapping him over his right ear. After this incident, the wife had applied for Personal Protection Orders for the benefit of the children, but her applications were dismissed. The District Judge, who had all of these facts before her, arrived at the conclusion that there was no need to curtail the husband's access. I saw no reason to overturn this order.

4 Nor was there any reason for me to overturn the order of joint custody. The husband seems to be interested in the children's education and long-term welfare. He may not have been as involved in

the children's day-to-day lives as the wife, but I accept that he has made efforts to spend time with the children and was not the "uninvolved father" the wife claims. An order of joint custody is an important reminder to both parents that they should continue to cooperate with each other in their children's upbringing.

5 My findings on this issue were fortified by the husband's and wife's conduct during the Circuit Breaker period. Unsurprisingly, the wife and the husband had taken diametrically opposing stances in relation to the question of how the Circuit Breaker restrictions ought to affect their access arrangements. The wife accused the husband of breaching the Circuit Breaker restrictions. Conversely, the husband alleged that the wife used the Circuit Breaker as an excuse to deny him access to the children. In view of the Registry's clarification to the parties that access arrangements could continue despite the Circuit Breaker restrictions, I find the wife's continued attempts to prevent the husband from meeting the children unreasonable. It appeared that she was adamant on excluding the husband from the children's lives altogether and thus, the District Judge's joint custody order should be upheld.

6 On the division of the matrimonial assets, the wife's main complaint was that the District Judge had incorrectly drawn an adverse inference against her for failing to make full and frank disclosure of three assets, namely, her yoga business and her interest in two Indian housing society properties (*ie*, the "Telecom" and "BNSL" properties). An adverse inference should not be drawn unless (a) there is a substratum of evidence that establishes a *prima facie* case against a party against whom the inference is to be drawn; and (b) the party has had some particular access to the information he or she is said to be hiding (see *BOR v BOS and another appeal* [2018] SGCA 78 at [75]). In relation to the yoga business, I accept that the wife may not have issued receipts or invoices to her participants but this was not a valid reason for her refusal to disclose other supporting documents, such as the handwritten diary which she claimed she had kept to show "who paid when", during the discovery process. In relation to the Telecom and BNSL properties, the wife tendered her e-mail exchanges with the housing societies' representatives to show that the sites of these properties had not yet been allotted in her name. Although she admitted to having some kind of 'booking interest' in these properties, the details of these remain unclear to-date and were in any event not disclosed during discovery. All in all, I was of the view that the wife had not been as cooperative and forthcoming during the discovery process as she should have, and that the adverse inference against her had been justifiably drawn.

7 There is no reason to draw an adverse inference against the husband. The wife's submissions on this point consisted of bare allegations without any form of documentary support. The crux of the wife's contention was that the husband had diverted $235,000 of his savings to his mother without disclosing the same. However, she was unable to adduce any evidence of this fact.

8 I am also of the view that there is no reason to adjust the proportions of direct and indirect matrimonial contributions by the parties. The direct contributions consisted of the parties' contributions to the following matrimonial assets:

(a) the matrimonial flat;

(b) a joint bank account in the joint names of the parties;

(c) monies in bank accounts, CPF monies and insurance policies held in the wife's name; and

(d) monies in bank accounts, CPF monies, insurance policies, shares, unit trusts and an Indian property (*ie*, the "Gomti Greens" property) held in the husband's name.

9 The wife objected to the ratio of contributions to the matrimonial home, the Gomti Greens property, and the shares held in the husband's name.

10 I agree with the District Judge that the evidence suggested that the husband had contributed 51% while the wife had contributed 49% to the matrimonial home. I was unable to accept the wife's position that the parties should be held to have contributed equally to the acquisition of the flat just because they had "mutually consented on owning the flat in joint cooperation" and had "put in each of the resources they had at best". Following the structured approach in *ANJ v ANK* [2015] 4 SLR 1043, the court's role at this stage was to ascertain the extent of the financial contributions which each party had made towards the matrimonial assets in question. The degree of cooperation which the parties had exhibited was not relevant to this particular inquiry.

11 In relation to the Gomti Greens property, the wife claimed that the ratio of her contributions should be increased from 50% to 93.5% because the husband had "deceitfully" taken out a sum of $70,052 from her bank account and used it for the purchase of the property. I agree with the District Judge that the wife's submissions on this point were speculative in nature and that her position had not remained consistent throughout the course of these proceedings. I therefore do not think that the wife has proven, on a balance of probabilities, that she had paid for 93.5% of the Gomti Greens Property.

12 In relation to the shares and unit trusts held in the husband's name, the wife asserted that husband had taken about $12,000 from her account and had used this sum to invest in the shares without her knowledge. Although it appeared that a sum of $2,000 had indeed been transferred from the wife's bank account to the husband's bank account on one occasion, there was no evidence before me or in the decision below to suggest that (a) the money had been transferred without the wife's consent, or that (b) the husband had used these monies to invest in shares for himself. The husband clarified in the proceedings below that the wife's monies had been used to fund the parties' joint investments in India, and adduced bank statements to show that he had subsequently repaid her for the amounts he had transferred. I preferred the husband's account as the wife's contentions on this point were completely unsubstantiated.

13 Accordingly, I saw no reason to disturb the District Judge's finding that the husband had made direct contributions of 64% towards the total matrimonial pool while the wife had made direct contributions of 36%.

14 As for the indirect contributions, the wife sought an uplift in the percentage of her contributions from 60% to 70%. I accept that the wife is responsible mother who attends to her family's needs. However, I am satisfied that the husband has also made substantial financial and non-financial contributions to the marriage. Although the wife claimed to have earned more than the husband from 2010 to 2015, it was unlikely that she could have borne the bulk of the family's expenses without the husband's financial support. There was also no evidence to suggest that the husband had (as the wife claims) abandoned all familial responsibilities during the parties' 11 years of marriage. I thus agree with the District Judge that the ratio of the parties' indirect contributions ought to be 40:60 in favour of the wife, and that the final ratio (taking into consideration the adverse inference, the parties' respective financial and non-financial contributions, and the factors enumerated under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed)) ought to be 54:46 in favour of the husband.

15 I now come to the maintenance of the children. The wife estimated that the children's expenses should add up to a total of $5,048 a month, as opposed to the sum of $2,818 which the District Judge had arrived at in the decision below. She further contended that the husband should

pay for the children's expenses in full as he would have borne these expenses in any event. In my view, the expenses set out by the wife were excessive. For instance, she had estimated the expenses for toiletries and birthdays to be $100 per child. I find this to be unnecessary since birthday expenses are of a non-recurring nature and the District Judge had already allocated a sum of $95 per child for 'household expenses'. Moreover, I disagree that the husband should bear 100% of the children's expenses. Contrary to what the wife had suggested, I do not think that the husband would have solely borne the financial burden of the children's expenses if the marriage had not broken down. Given that the husband was already paying for the children's medical insurance and enrichment classes directly, it was not unreasonable to expect the wife to continue to bear 30% of the children's expenses.

16 I do not accept the wife's contention that she should be entitled to monthly maintenance of not less than $2,500 for the next five years. Although the wife claimed to be earning about $600 to $800 a month as a yoga teacher, I noted that she was teaching yoga by choice and was not incapable of seeking employment in a position with a higher income. Taking into consideration all relevant factors, including the wife's earning capacity, previous standard of living and my decision on the division of matrimonial assets, I see no reason to overturn the District Judge's decision to award the wife maintenance in the lump sum of $7,200.

17 The husband sought to vary Clause 7 of the AM Order, which provided that the parties' matrimonial flat would be sold on the open market if it was not transferred within three months of the date of final judgment, and that the difference between $119,500 and the net sale proceeds of the property ("the Ordered Amount") should thereafter be transferred from the husband's CPF account to the wife's CPF account. The husband inquired if Clause 7 could be amended to allow for the transfer of the Ordered Amount to be made from more than one of his CPF accounts, in the following proportions:

(a) 34% from his Ordinary Account

(b) 33% from his Special Account; and

(c) 33% from his Medisave Account.

18 The wife did not oppose this request and I thus allowed the husband's application, subject to the CPF Board's regulations.

19 To summarise, my orders are as follows:

(a) The wife's appeal in DCA 104/2019 is dismissed.

(b) Clause 7 of the AM Order is varied as follows: "If the matrimonial flat is not transferred within 3 months of the date of final judgement, then the matrimonial flat shall be sold on the open market within nine (9) months of the date of Final Judgement and the net sale proceeds, if any, after repayment of the outstanding mortgage and interest, CPF refunds, costs and expenses relating to the sale including agent's commission, shall be paid to the Defendant. The Defendant shall thereafter be entitled to a total amount of $119,500, and the difference between $119,500 and the net sale proceeds paid to the Defendant as abovestated shall be transferred, in the proportions specified below, from the Plaintiff's CPF accounts to the Defendant's CPF account(s):

(i) 34% from the Plaintiff's Ordinary Account;

(ii) 33% from the Plaintiff's Special Account, and

(iii) 33% from the Plaintiff's Medisave Account.

The parties shall have joint conduct of sale of the matrimonial flat."

(c) There shall be no order as to costs.