VXM *v* VXN

[2021] SGHCF 37

Case Number	: Registrar's Appeal from the Family Justice Courts No 15 of 2021
Decision Date	: 10 November 2021
Tribunal/Court	: General Division of the High Court (Family Division)
Coram	: Debbie Ong J
Counsel Name(s)	: Kee Lay Lian, Shawn Teo Kai Jie (Rajah & Tann Singapore LLP) for the appellant; Loo Ming Nee Bernice, Yam Hoe Soon Lester and Lim Wan Jen Melissa (Allen & Gledhill LLP) for the respondent.
Parties	: VXM — VXN

Family Law – Maintenance – Child

Family Law – Maintenance – Wife

10 November 2021

Debbie Ong J:

Introduction

1 The appellant (the "Husband") and the respondent (the "Wife") were married on 4 June 2011. On 24 July 2020, the Wife left the matrimonial home with the parties' two children (who are 6 and 5 years old this year). A few days later, the Wife's solicitors sent a letter to the Husband's solicitors dated 27 July 2020, informing the Husband that the Wife had withdrawn a sum of $282,000 from the parties' joint account and that she undertook not to dissipate this sum pending the parties' "further discussion on how to move things forward". On 4 August 2020, the Wife filed FC/OSG 115/2021 for, *inter alia*, interim maintenance from the Husband for their two children.

2 On 4 September 2020, the Husband filed for divorce. On the same day, the Wife's solicitors sent a letter to the Husband's solicitors stating that the Husband had not paid any maintenance for the Wife and children since 24 July 2020, and that the sum of $282,000 should be retained as a matrimonial asset to be divided in the imminent divorce proceedings. The Husband's solicitors replied on 10 September 2020, stating that the Husband was agreeable to the Wife using the sum of $282,000 for the reasonable expenses of her and the children, and to account for the sums withdrawn at the relevant stage of the proceedings; however, such reasonable expenses were not to "include expenses, such as rent, which [were] incurred by [the Wife] as a result of her unilateral moving out". On 23 December 2020, the Wife filed FC/SUM 4062/2021 for interim maintenance for herself from the Husband. The Interim Judgment of Divorce ("IJ") was granted on 19 March 2021.

3 The District Judge ("DJ") heard the interim maintenance applications on 14 June 2021. On 26 July 2021, the DJ ordered the Husband to, *inter alia*, pay $20,000 per month as interim maintenance for the children (being $10,000 for each child), $11,000 per month as interim maintenance for the Wife, and for the commencement date of the interim maintenance for the children and the Wife to be backdated to December 2020 and August 2020 respectively. The Husband filed a Notice of Appeal against the DJ's decision on 2 August 2021.

4 The Husband appealed in respect of the following main points:

(a) The learned DJ erred in her determination that the Husband failed or neglected to pay the

children and the Wife reasonable interim maintenance, by failing to "take into [account] relevant considerations" as set out in the Women's Charter ("the Charter") (Cap 353, 2009 Rev Ed), beyond the parties' standard of living and affordability.

(b) The learned DJ erred in failing to consider in detail the "reasonableness" of the Wife's interim maintenance claims, without due or sufficient regard to the Husband's arguments.

(c) The learned DJ erred in her determination that backdated maintenance should be paid in this case, given that the Wife had financial resources which would "tide her over" in the course of the proceedings.

Did the Husband neglect or refuse to maintain the Wife and children?

5 The Wife submitted that it was not necessary for the court to find that the Husband has neglected or failed to maintain the Wife, relying on *Prasenjit K Basu v Viniti Vaish (m.w.)* [2003] SGDC 303 ("*Prasenjit*"). I note that the Family Court in *Prasenjit* did not hold that the court will make orders for interim maintenance "even if there has been no failure or neglect on the husband's part to maintain the wife and child", as the Wife claims. In fact, the court in *Prasenjit* said (at [11]) that a party who applies for maintenance pending divorce "must be able to show a failure on the part of the husband/father to provide reasonable maintenance". While the court added (at [12]) that the court would be "*more prepared* to make a finding that the husband/father has failed to pay reasonable maintenance in a Section 113[1](a)/Section 127(1) application, as opposed to a Section 69 application" [emphasis in original], this appeared to be a reference to the court making *final* ancillary matters ("AM") orders on maintenance when the divorce proceedings concluded. The High Court in *TCT v TCU* [2015] 4 SLR 227 ("*TCT v TCU*") had considered *Prasenjit* and held that the principles applicable to s 69 applications (*ie* that the husband has neglected or refused to maintain the wife and children) also apply to interim maintenance applications in the context of s 113(1)(*a*) of the Charter (*TCT v TCU* at [31]).

6 In my view, the Wife in this case must show neglect or refusal in her application for *interim maintenance*, even if the rationale of *Prasenjit* referred to above is accepted for *final* AM orders on maintenance.

7 The Husband submitted that the DJ erred in failing to consider the framework in *UHA v UHB and another appeal* [2020] 3 SLR 666 ("*UHA v UHB*") in assessing whether he had provided reasonable maintenance. The Husband argued that the Wife had access to at least $282,000 she had taken from the parties' joint account and hence, there is no neglect or refusal to provide maintenance. The Husband also submitted that there was no reasonable communication on the needs and expenses such that he is aware of them and can provide for them.

Access to $282,000

8 In the present case, the IJ was granted on 19 March 2021. The sum of $282,000 was withdrawn and kept by the wife in end July 2020, at a time when divorce proceedings were imminent but prior to the IJ date. During this time, parties may use what would be matrimonial assets for reasonable, daily, run-of-the-mill family expenses, but they may not spend substantial sums without the consent of the other spouse. The Court of Appeal has said in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 (at [24]):

> …[D]uring the period … in which divorce proceedings are imminent; or … after interim judgment but before the ancillaries are concluded … if, … and whether by way of gift or otherwise, one

> spouse expends a substantial sum, this sum must be returned to the asset pool if the other spouse is considered to have at least a putative interest in it and has not agreed, either expressly or impliedly, to the expenditure either before it was incurred or at any subsequent time. … What constitutes a substantial sum is, of course, a question of fact and we do not propose to lay down a hard and fast rule in this regard, except to emphasise that it is not intended to include daily, run-of-the-mill expenses.

9 Thus, the Wife may use the $282,000 for ordinary, daily expenses for herself and the children. She was not entitled to refuse to use the funds she has access to and then claim that the Husband entirely neglected to provide reasonable maintenance, especially when the Husband had agreed to the use of those funds. As the High Court said in *VRJ v VRK* [2021] SGHCF 9 ("*VRJ v VRK*") at [5]–[7], [20]):

> The wife says that her access to the sum of $689,251.33 is a "red herring" because she made it clear to the court and the husband that she will not be spending this money in the interim. …her intentions may certainly be honourable. But she cannot rely on her own refusal to use that money to show that the husband has neglected or refused to provide reasonable maintenance. …the law does not proscribe the wife from using that money for the maintenance of herself and the children. …

10 Given these circumstances, the Husband, having clearly asked the Wife to use the $282,000 for reasonable expenses, could not be said to have wholly refused to provide maintenance, as the size of the sum was a reasonable one for expenses for at least some months. I note that the Wife submitted that the Husband had not agreed that she may use the monies for rent and as such, he had refused to provide maintenance. I will address this point below.

11 The Wife also submitted that, based on the award made by the DJ of about $31,000, the sum of $282,000 will run out before the AM is heard and concluded. In my view, the Husband was not obliged, as of end-July 2020, to provide immediately a lump sum that covers the entire period from then until the conclusion of the AM proceedings. At that time, the divorce was not even filed yet.

12 The reasonable path is for the Wife to use what is reasonably needed from the fund of $282,000 and communicate with the Husband on the needs and expenses. The Wife should utilise the $282,000 sum only for reasonable daily expenses, for she will have to return to the pool substantial sums which are determined not to be reasonable run-of-the-mill expenses. The Wife appeared to submit that she needs to know how much she is entitled to spend, for if there is no approval of a particular sum, she will have to bear the expenses subsequently adjudged not to be reasonable out of her share of the assets, and thus it will be unfair to her if the court does not adjudicate now on what sums may be spent. I cannot see how this is unfair to her, when she is permitted to use the monies for reasonable expenses. In the vast majority of divorce cases, funds which would fall into the pool of matrimonial assets at the date of IJ may be used for reasonable family expenses. The party expending these sums will account for the withdrawals made towards these expenses at the AM hearing. The AM court assesses whether proper accounting has been made, and if the monies have been used for reasonable family expenses, these sums are not required to be added back to the pool (such that that party bears them out of his or her share of the divided assets). As the court in *VRJ v VRK* said (at [21]):

> The wife has expressed her concern that the husband may later accuse her of wrongfully dissipating the matrimonial assets … However, this is an unfounded fear that can be addressed by prudent expenditure and proper accounting on her part.

13 I add that at this interim stage, the court does not have the full means to make a thorough investigation of the parties' financial matters or their lifestyles, which it will have to examine thoroughly at the AM stage (*Lee Bee Kim Jennifer v Lim Yew Khang Cecil* [2005] SGHC 209 at [7]). Thus, even if the court were to now decide what constitutes reasonable expenses for the Wife, it would still have to revisit this question at the AM hearing in the light of the parties' AM affidavits and submissions. I also note that, in making final AM orders on maintenance, the court has a wide power to order maintenance to commence from a date it considers fair, and even to a date before the writ was filed, which the High Court has noted may be a date when the applicant left the matrimonial home and was paying for all her expenses on her own (*AMW v AMZ* [2011] 3 SLR 955 at [13]).

14 Indeed the approach towards resolution set out above in [12]–[13] is consistent not only with the law, but also with the adoption of therapeutic justice; it avoids unnecessary litigation and the intervention of the court by adjudication at every turn of the divorce journey. The approach demands that both parties conduct themselves reasonably – the wife in how she spends the funds, and the husband in how he provides for the family (see the exhortation in s 46(1) of the Charter).

15 Before the DJ, the Wife sought $137,853 per month, comprising $84,713 for the two children (being $71,459 for their share of the household expenses and $13,253 for their personal expenses), and $53,138 for herself (being $35,729 for her share of the household expenses and 17,409 for her personal expenses). The DJ held that a reasonable sum for the children was $10,372 (for the 6-year-old child) and $9,968 (for the 5-year-old child), while a reasonable sum for the Wife was $10,982 (including their shares of the household expenses). The Husband also expressed what he thought were reasonable expenses. I do not make any comments on the DJ's assessment nor the Husband's submissions in this respect; the Wife should consider both these estimates of reasonable expenses. The Wife should bear in mind that while she and the children may have been accustomed to a certain standard of living prior to the breakdown of the marriage, not everything will remain the same post-divorce.

Expenses for Rent

16 The Husband was agreeable to the Wife using the $282,000 for reasonable expenses, but he added that these reasonable expenses "shall not include expenses, such as rent, which are incurred by [the Wife] as a result of her unilateral moving out". The Wife pointed out that the Husband's refusal to provide for rent goes towards his refusal to provide maintenance.

17 In the present circumstances, while the Husband could not be said to have entirely failed to provide maintenance as he had agreed that the sum of $282,000 may be used for reasonable expenses, he had expressly stated that the monies should not be used for rent. The law is clear that the provision of maintenance includes provision for accommodation. The issue on the present facts was *whether reasonable accommodation had been provided.*

18 The Husband's position was that the Wife's rental expense of $9,500 per month is not reasonable. He said that he asked the Wife to return with the children to the "[family home] master bedroom", which the Wife refused. The Husband also submitted that the Wife never informed him she rented a four-bedroom condominium with a private plunge pool and this expense should not be unilaterally imposed on the Husband; that the Wife could stay with her parents (who stay in another unit in the same development) to save money; and that there are reasonable alternatives to this apartment. The Wife submitted that it is reasonable for her to incur this expense of $9,500. Her parents and elder brother, who share a close relationship with the children, live in the same condominium, and the apartment is close by, opposite the children's school. It is also near the Husband's home, and is commensurate with the standard of living the children were used to during the

marriage.

19 In my view, in the circumstances of this case, the Wife was not unreasonable in moving out of the matrimonial house when the marriage broke down; she also does not necessarily need to stay with her parents in order to save money. I found that it was reasonable enough for the Wife to live separately from the Husband now that the marriage has broken down and to live with the children in their own apartment. As the Wife submitted, the apartment is close to the children's school and this is convenient for the children. It is also in the same condominium as her parents and brother, who are the children and the Wife's support network.

Conclusion

20 The appeal in HCF/RAS 15/2021 was partially allowed. As the Husband had not entirely refused to provide maintenance, it was not appropriate to make a full monthly maintenance order as sought by the Wife. The Wife may use the $282,000 for reasonable family expenses, for which she should make proper accounting. As the parties disputed specifically on whether rent should be provided, I adjudicated on that issue and ordered that the Husband provide $9,500 for the accommodation expenses of the Wife and children. The Wife may use this sum from the fund of $282,000 that she has access to.

21 The matter of costs shall be agreed between the parties, and if not agreed, they are at liberty to write to the court for directions in respect of costs.