

USD v USC
[2021] SGHCF 4

Case Number : District Court Appeal No 13 of 2020 and Summons No 347 of 2020
Decision Date : 01 March 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Liew Tuck Yin David (David Liew Law Practice) for the appellant in HCF/DCA 13 of 2020 and the applicant in HCF/SUM 347/2020; Lie Chin-Chin and Lee Swee Loong Johnston (Li Ruilong) (Characterist LLC) for the respondent in HCF/DCA 13 of 2020 and HCF/SUM 347/2020.
Parties : USD — USC

Family Law – Matrimonial proceedings – Procedure

Family Law – Women’s Charter

1 March 2021

Choo Han Teck J:

1 This is an appeal by the appellant husband (the “husband”) against the ancillary orders made by District Judge Azmin Jailani (the “DJ”) concerning the division of the matrimonial assets, spousal and child maintenance, and the care and control of and access to the children of the marriage. The background facts are set out in the DJ’s Grounds of Decision in *USC v USD* [2020] SGFC 76 (the “GD”). The husband also sought to adduce additional evidence on appeal in Summons 347 of 2020 (“SUM 347”). The respondent wife (the “wife”) objects to both the appeal and SUM 347. On 18 February 2021, I dismissed both the appeal and SUM 347. I now give my reasons.

2 As regards the husband’s appeal against the ancillary orders, I did not see a sufficient basis to disturb the DJ’s decision below. The DJ had identified and assessed the matrimonial assets correctly and decided the manner and proportion of division and subsequent adjustment (GD at [110] and [124]) fairly and reasonably. As for maintenance, I did not think that the DJ’s orders were against the weight of the evidence (GD at [134] and [146]). In respect of care and control and access, since the parties had agreed to be bound by the previous “Appeal Orders”, the DJ was justified in ordering that they continue to apply (GD at [148]).

3 I also dismissed SUM 347, as the husband’s application for further evidence is not justified. Briefly, the husband sought to adduce documents relating to his investments, stocks, insurance policies, bank accounts and vehicle, as well as receipts for marital counselling sessions and his lawyer’s letter concerning the payment of legal costs. The husband also sought to adduce other documents, such as his correspondence with the wife and their son, various police reports that the husband had lodged, and the letter from the Inland Revenue Authority of Singapore titled “Revised Personal Tax Reliefs for Year of Assessment 2020”, dated 30 October 2020 (the “Revised Personal Tax Reliefs Letter”). However, most of that evidence could have been adduced at the ancillary proceedings, and, in any event, would not have any influence on the ancillary matters. I am also of the view that it does not seem credible. Further, I note that the husband had previously been granted leave in November 2020 to refer to the Revised Personal Tax Reliefs Letter for the hearing of

his application to vary the maintenance orders in FC/SUM 2465/2020. It was therefore unnecessary for him to apply to adduce this further evidence on appeal.

4 I now turn to the issue of pleadings. According to the GD, the parties were *ad idem* insofar as there be a division of the matrimonial home, but the wife was seeking a division of matrimonial assets other than the matrimonial home and the husband was seeking for each party to keep their own assets acquired before or during the marriage in their own names (GD at [18]–[19]). The wife prayed for the following reliefs in her Statement of Claim (“SOC”):

7 Relief Claimed

...

(d) Division of the matrimonial home

That there be a just and equitable division of the matrimonial flat situated at and known as [Property P] (the “Matrimonial Flat”) and the matrimonial assets.

(e) Division of the matrimonial assets (aside from the matrimonial home)

Parties are to retain all other assets in their own names...

5 This, in the DJ’s view, suggested that the wife had prayed for the same relief as the husband in her own pleadings; however, the wife’s counsel sought to persuade the DJ to depart from the terms of the wife’s pleadings (GD at [21]). The DJ held that he was allowed to assess the matrimonial pool of assets in its entirety for the purposes of division, because the court’s power of division under Section 112 of the Women’s Charter was not *prima facie* limited by the state of parties’ pleadings (GD at [22], [34]). The DJ allowed the wife to ‘depart’ from her SOC as he was satisfied that the conduct of the proceedings allowed the husband to have had the opportunity to meet this ‘revised’ case (GD at [42(d)]). On appeal, counsel for the husband argued that the DJ was not entitled to ignore the rules regarding the wife’s pleadings setting out her claims for reliefs, and that the DJ had erred in not taking into consideration the fact that the wife did not seek any application to amend her claims as pleaded.

6 I do not think that the “wide powers of division” conferred by Section 112 of the Women’s Charter should be invoked to let parties depart from their pleadings (GD at [34]). The Family Justice Rules 2014 (S 813/2014) (“FJR”) stipulate that the SOC must state specifically the relief or remedy the plaintiff claims (Rule 401(1) FJR). Whatever parties plead in their SOC is binding on them. Parties may subsequently amend their pleadings, once without leave before pleadings are deemed to be closed (Rule 420(1) FJR), or at any stage of the proceedings with the court’s leave, on such terms as may be just (Rule 422(1) FJR). If parties do not plead their cases clearly and correctly, they cannot rely on Section 112 to assist them.

7 Pleadings perform the important function of delimiting the litigation before the court. The court is not a free for all, no holds barred, combat zone. Fairness and discipline require parties to state clearly what cause it is that they wish to pursue before the court, and the opposing party to state what his defence is. This important function is also a straightforward and simple one. It does not require the parties to set out evidence nor the law. But they must state the facts upon which the cause they choose can be founded. They must set out what reliefs they hope the court would grant. That is all, but if that simple procedure is not followed, the only remedy, so long as there is still time, is to pray for the court to allow an amendment to rectify the error or omission. Otherwise, the party

must stand or fall by the claim they plead.

8 In any event, it was unnecessary for the DJ to have held that the wife could 'depart' from the pleadings in her SOC. The wife prayed for a "just and equitable division" of "the matrimonial assets" and for "parties [...] to retain all other assets in their own names". By the former, the wife was pleading for a fair division of all matrimonial assets. By the latter, the wife was pleading to retain all non-matrimonial assets in each party's own name. This is not inconsistent with the wife's position before the DJ for a division of the matrimonial assets other than the matrimonial home (GD at [19]). The DJ was therefore not precluded from considering whether the assets in the parties' own names should be part of the matrimonial pool in the first place, or from assessing the composition of the matrimonial pool of assets in its entirety. There was, in effect, no departure from the pleaded SOC in this case.

9 I made no order as to costs in this case. Courts tend to decline costs applications in matrimonial proceedings so as not to increase emotional pain and anger, especially when the hurt of a failed marriage is still raw. However, as more and more cases are being appealed to the Family Division of the High Court (appeals often accompanied by applications for further evidence), many of which are ostensibly and manifestly unmeritorious, cost orders may be made in future cases to deter indiscriminate appeals.