

VQB v VQC
[2021] SGHCF 5

Case Number : Registrar's Appeal No 31 of 2020
Decision Date : 16 March 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Bala Chandran s/o A. Kandiah and Tay Jing En (Mallal & Namazie) for the appellant; Tan Siew Kim and Charmain Kwee (Sterling Law Corporation) for the respondent.
Parties : VQB — VQC

Family Law – Divorce – Decree absolute and decree nisi

Family Law – Grounds for divorce – Living apart

16 March 2021

Judgment reserved.

Choo Han Teck J:

1 The appellant is 39 years old. She was married to the respondent, who is presently aged 45. At the time the writ of divorce was filed, the appellant was a lecturer and the respondent was unemployed. They have two children — a son aged 8 and a daughter aged 6. The marriage was solemnised on 9 October 2011. The marriage failed and the respondent filed for divorce on 20 September 2019 on the ground of having lived separate and apart from the appellant for a continuous period of at least three years immediately preceding 20 September 2019, that is to say, from 20 September 2016. The appellant confirmed that she and the respondent had lived apart for at least three years, and consented to the grant of the Interim Judgment, which was duly granted on 9 October 2019. Various orders were made by consent and are not directly challenged by the appellant before me. Those orders included orders relating to the custody, care and control of the children, the division of matrimonial property, the repayment of a \$10,000 loan by the appellant to the respondent, and costs of \$20,000. The respondent also agreed to destroy all evidence he had against the appellant.

2 The Final Judgment was made on 15 July 2020. On 1 September 2020 the appellant applied to set aside the writ of divorce and all proceedings thereafter, or, alternatively, the Interim Judgment and the Final Judgment. In support of her application in the court below, the appellant filed an affidavit on 1 September 2020 claiming that she signed the Draft Consent Order on 20 September 2019 under duress. She claimed that the respondent and her did not live separate and apart for three years, and finally, that the respondent had agreed to withdraw the divorce proceedings and gave her the impression that they had been withdrawn. Her application was heard on 27 November 2020 and was dismissed. She appealed against the court's decision before me.

3 The District Judge ("DJ") in her brief grounds declined to grant the appellant the orders sought. The DJ, on listening to audio recordings produced before her and reading the affidavits attaching the documentary evidence, transcripts of conversations and emails, concluded that the appellant was not under any duress. The DJ was also of the view that the Interim Judgment in this case was a consent judgment signed by the appellant under the Family Court's simplified track system in which parties

may obtain a divorce faster if there is no dispute as to the grounds or any of the ancillary matters such as custody of children, maintenance, and the division of matrimonial assets.

4 Before I refer to the law, it is helpful and necessary to refer to the evidence to have a sense of the context of this appeal. The incontrovertible fact is that the appellant was having an affair with a married man (the "lover"). She wants this court to find that she and the respondent are still a married couple living together, but the messages produced show otherwise. The divorce proceedings were commenced on 20 September 2019 when the appellant also signed the Draft Consent Order for the Interim Judgment (that she claims she signed under duress), and the messages show that the appellant was still seeing her lover at that time. The appellant also exhibited a text message exchange between her and the respondent on 1 October 2018, but all that exchange shows was an angry respondent telling his wife, the appellant, that he knew that she was alone with her lover in a foreign country.

5 The appellant also showed photographs of herself and the respondent putting on happy faces with friends in 2018, but as the respondent pointed out, it was a show for their friends because two days after one of those photographs was taken, the appellant flew to Paris with her lover. In the light of the abundant evidence, the appellant and the respondent were clearly not the happy family she tries to now portray.

6 The appellant also claims that the respondent had agreed to withdraw the divorce proceedings and she did not write to the court to ask for the divorce to be withdrawn in the honest belief that he had done so. The respondent denies that there was such an agreement. I am inclined to accept his version. From 20 September 2019 up till the time the appellant filed her application on 1 September 2020, nothing had changed between the parties and the appellant continued to see her lover. I therefore agree with the DJ who did not find the appellant's claim plausible.

7 Further, the audio recordings referred to by the DJ showed the appellant to be a calm and cold woman, and not one under duress. The recordings were made on the day the writ was filed. During the conversation, the respondent asked the appellant about her status with regards to her lover. She answered, "It is not even relevant." The respondent asked, "Not relevant?", to which the appellant replied, "With or without him, I don't want to stay with you."

8 The appellant then signed the Draft Consent Order and the respondent duly filed the writ of divorce that day. Why then did the appellant change her mind and decide that she wanted to rescind the divorce? The answer seems clear from the appellant's subsequent email message to her lover. The email message ended with her telling her lover to come clean with his wife, and that that would be the last message between the appellant and her lover. The salient part of that long email message reads as follows:

From your reaction on Friday, I also realized that I had put you through a lot of emotional and mental stress. Perhaps this was because you are still recovering from what happened in July. When I asked you if you would leave [AB] to be with me, your answer (or lack of answer) made me very disappointed. I'm not sure if it's because you were insecure of our future, you still loved her deep inside or was it because you do not bear to hurt her and your family. I did really love you and I thought what we shared was real. But after your reaction on Friday, I am honestly not convinced that you love me enough to give up everything to be with me. Perhaps you were not certain enough about your own future to make any decision to commit, or perhaps you yourself is also not sure if I am worth it (given your argument about we could also break up before we get together etc...) I mean you also shared that you have also thought of leaving the r/s. You also admitted that things between you and her are not bad, and that she treats you very very well.

Hearing that from you in person broke my heart that night. I do not think I can live with this uncertainty. I also realized that if I proceeded with my divorce, I will always need to be the third party, waiting and hoping for you to decide when you are free to meet me. Seriously, I don't think that's the kind of life I want moving forward. I would be crushed if I lost the kids because of you, AND eventually lose you. So that night, I decided that it's best for us both not to be together anymore.

9 That message was written on 23 September 2019. It referred to their meeting on Friday 20 September 2019, the day the divorce papers were filed. The appellant had obviously gone to tell her lover that divorce proceedings were in place, and was taken aback by his apparent lack of joy or enthusiasm. At that point the appellant knew that her lover was not prepared to divorce his wife. On Saturday 21 September 2019, the appellant sent him a message tersely saying "Sorry I need some time alone to think. I'll be fine." The lover wrote with concern on Sunday 22 September 2019, asking if the appellant was safe and sound. The appellant gave another terse reply, the gist of which was that she had decided to end her relationship with him. This set off a series of messages from her lover, with his response being one of shock and hurt. It culminated with the appellant writing the long, broken-hearted and angry email of Monday 23 September 2019.

10 In her own words, she did not want to be the 'third party' in her lover's marriage. She was forcing him to act as she did — get a divorce. Notwithstanding that he did not, the evidence shows that, contrary to her email of 23 September 2019, she had resumed contact with the lover after that date. It was only almost a year later, after the Interim Judgment was made final on 15 July 2020, that the appellant filed her application on 1 September 2020 to set aside the Interim Judgment and the Final Judgment. For that was when the prospect of being kept out of a marriage with a man she does not love, as well as outside one with the man she loves, became a reality.

11 Dean Martin and Frank Sinatra once said, or rather, sang, that love and marriage go together like a horse and carriage — you can't have one without the other. The appellant probably knows otherwise now, that the truth about love and marriage is not with Martin and Sinatra, but in a Venn diagram — there can be love without marriage, just as there can be marriage without love, and of course, there is also the ideal state of love in marriage.

12 For completeness, the respondent's version is that their marriage broke down since 2015 and they had been living together for the sake of the two children. He only found out the identity of the appellant's lover much later, in the few months leading to the divorce. On the preponderance of the evidence that appears to support his case, I am inclined to accept his version of events. Hence, on the merits alone, I would have dismissed this appeal. But something else takes it out of my hands even if I were to find in the appellant's favour on the facts — the law.

13 The DJ, in coming to her decision, made the following remarks: "At the start it was clear that the focus was on the setting aside of the [Interim Judgment] as the [Final Judgment] would be automatically set aside if the [Interim Judgment] were to be set aside. Accordingly, I focused on the setting aside of the [Interim Judgment]." That seems to be a common misunderstanding of the effect and consequences of a Final Judgment in divorce proceedings.

14 In many situations, when a court sets aside an order, it can order the status quo to be reinstated. Usually, the order to reinstate would be made against a person who is a party in the action. But in a divorce case, the Final Judgment dissolves the marriage. The status of the parties as a married couple is brought to a permanent and an unsalvageable end. The only way a divorced couple can be remarried is for them to remarry (as this appellant and this respondent can still do if they wish) in accordance with the requisite legal formalities of registration and solemnisation. A court

cannot pronounce them husband and wife again. Justices of the Peace pronounce marriages; Justices of the courts declare their end.

15 The Interim Judgment is a different matter. It is only an interim order of the court, and the court may therefore refuse to finalise it. Hence, s 136 of the Women's Charter (Cap 353, 2009 Rev Ed) (the 'Women's Charter') provides as follows:

Power to rescind interim judgment in certain cases

136. Where the court on granting a judgment of divorce held that the only fact mentioned in section 95(3) on which the plaintiff was entitled to rely in support of his writ was that mentioned in section 95(3)(d), the court may, on an application made by the defendant at any time before the judgment is made final, rescind the judgment if it is satisfied that the plaintiff misled the defendant (whether intentionally or unintentionally) about any matter which the defendant took into account in deciding to consent to the grant of a judgment.

16 An Interim Judgment may therefore be set aside before the Final Judgment is made, but once the Final Judgment is made, the marriage is at a permanent end. It cannot be reinstated although it may be renewed. The Women's Charter makes no provision for setting aside a Final Judgment. The only conceivable exception is when the Final Judgment was obtained by fraud, for fraud unravels all, but even then, it may have to be a fraud that taints the Final Judgment itself – such as a forgery of the order of court. The appellant's counsel referred to the Court of Appeal decision in *AOO v AON* [2011] 4 SLR 1169, but that case does not assist him because setting aside the Final Judgment was not the issue before the court there. Setting up the Interim Judgment for attack is a futile distraction once the Final Judgment is made. Upon that final order, the status of the parties is fully and permanently changed from a married couple to two single, unmarried persons. Each is entitled to forthwith enter into a new contract of marriage. To hold that a Final Judgment may be rescinded if the Interim Judgment was flawed is to create a legal fiction, as if to say that because an egg was broken without authority, the omelette which was made from that egg did not exist. The reliefs and remedies for obtaining a flawed Interim Judgment lie elsewhere than to pretend that the Final Judgment has no effect because it must follow the Interim Judgment into oblivion.

17 The rationale of having a three-month interval between Interim and Final Judgment is so that parties, including the court, can ensure that all is in order for a Final Judgment to be made. The finality and permanence of the Final Judgment is thus a stark reminder to all that due diligence must be carried out in the interim, if that had not already been done before the filing of the writ itself.

18 For these reasons, the appellant's appeal is dismissed. I will hear the question of costs at a later date.