

VRJ v VRK
[2021] SGHCF 9

Case Number : Registrar's Appeal from the Family Justice Courts No 6 of 2021
Decision Date : 14 May 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Raphael Louis and Shen Yanling Berverlin (Ray Louis Law Corporation) for the appellant; Jayamani Jose Charles (Jose Charles & Co) for the respondent.
Parties : VRJ — VRK

Family Law – Maintenance

14 May 2021

Judgment reserved.

Choo Han Teck J:

1 The appellant wife (the “wife”) appeals against the decision of the District Judge (the “DJ”), who dismissed the wife’s application for interim maintenance from the respondent husband (the “husband”).

2 The parties were married on 15 September 2007 and have two children, a son born on 21 December 2008 and a daughter born on 3 September 2011. The husband is 51 this year and is a Vice President at [B] Bank. According to his affidavit dated 28 September 2020 filed in the proceedings below, his current basic salary is \$13,365.00. The wife is 45 this year and has been unemployed since June 2019.

3 According to the wife, she had quit her job in June 2019 to pursue her postgraduate education, having previously received her husband’s reassurance that he would support her and also provide \$100,000 from their joint account to offset her contribution towards maintaining the family. She now claims that the husband reneged on his promise, and, instead, criticised the wife for leaving her job.

4 The husband, however, says that the wife had assured him that she had enough savings to pay for the family’s expenses for the duration of her course, and that he would not have agreed to their arrangement had he known that the wife was going to make the decision to end their marriage in August 2019. He also says that the wife’s decision not to seek employment as soon as she had decided to end the marriage in August or September 2019 is unreasonable and she must not be allowed to profit from it.

5 The parties’ relationship subsequently deteriorated, and the wife eventually moved out on 5 September 2019. About this time, she withdrew a sum of \$558,741.33 from the parties’ joint CIMB FastSaver Account (the “CIMB Account Monies”).

6 In October 2019, the wife says that the husband admitted to committing adultery while the parties were at a counselling session. This convinced her that the marriage could not be salvaged, and the parties thus began discussing the divorce settlement. The husband says he did not admit to committing any adultery and that it was the wife had already decided to end the marriage in August 2019. He says even up till December 2019 he was still trying to save the marriage.

7 Parties’ negotiations on the divorce settlement failed and the wife then filed this contested

divorce on 22 January 2020 on the basis of the husband's adultery and, in the alternative, on his unreasonable behaviour. However, she did not name the co-defendant as a party to the above action until 3 August 2020, when she amended her writ for divorce to include the co-defendant as a party to the action. Before me, counsel said that the divorce trial was still ongoing, and the next tranche of the trial was fixed for 2 days in June 2021.

8 The wife says that in the settlement negotiations the husband agreed to pay a sum of \$4,060.00 per month as maintenance for the children, and that he had made the first payment in January 2020 after she reminded him to do so, but he stopped after making the first payment.

9 On 13 February 2020, the wife then withdrew a sum of \$130,510.00 from the parties' joint DBS Savings Account (the "DBS Account Monies"), for both hers and the children's expenses between February to October 2020. The husband says he withdrew the remaining sums in the parties' joint DBS and CIMB accounts thereafter. The husband says that the wife had deliberately omitted to disclose to the court below that she also had about \$862,494.23 in 7 bank accounts, 4 of which were in her sole name and 3 jointly with her parents. In total, therefore, the wife would have at least \$1,551,745.56. Separately, she also has a sum of \$260,000.00 that she had moved into her mother's sole account. By contrast, the husband says he currently has \$291,685.06, significantly less than what the wife has.

10 The wife claims that she did not use any money from those withdrawals as she wanted to preserve these for division as part of the matrimonial pool at the eventual ancillary matters hearing. She thus drew on her own personal savings to maintain the children and herself, but eventually, she applied for interim maintenance on 1 September 2020 for the husband to pay her \$8,854.00 per month for both children, and \$3,467.00 for herself, with effect from 1 February 2020 and 1 July 2019 respectively. This amounts to a total of \$12,321.00 per month from 1 February 2020.

11 The wife's application was dismissed on 16 February 2021. In his decision, the DJ applied the High Court case of *TCT v TCU* [2015] 4 SLR 227 ("*TCT v TCU*"). The power of the court to order maintenance for children "during the pendency of any matrimonial proceedings" is set out in Section 127 of the Women's Charter (Cap 353, 2009 Rev Ed) (the "Women's Charter"). Section 127(2) provides that Part VIII applies. Under Section 69(2), which falls under Part VIII, the court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his child who is unable to maintain himself, order that parent to pay for the child's maintenance. The same applies in an application for interim spousal maintenance under Section 113 of the Women's Charter. Except for expedient or urgent reasons, a court will not interfere before the case is heard, and an interim maintenance order would not normally be made unless there is a clear need for it.

12 In this case, the DJ was of the view that, while it was not disputed that the husband had not made monthly payments to the wife, the wife had sole access to substantial sums of money in the hundreds of thousands which belonged to the parties as husband and wife. Her reason for not wanting to use this money for maintenance in order to preserve it for division later on, noble as it may be, is an insufficient reason to grant an interim maintenance order. The wife has to show that the husband had neglected or refused to provide her and the children with reasonable maintenance and show that she and the children stand in need for such an order. In this case, the wife and the children were amply provided for given the amounts that the wife had at her sole disposal, and there was no need to order the husband to provide any monthly payments to meet the need for reasonable maintenance.

13 In his submissions dated 22 March 2021, the wife's counsel argued that the DJ wrongly assumed the wife has access to substantial sums of monies from the parties' joint accounts and that she would

use these monies in the interim. The wife says that she did not, and will not, be using the CIMB Account Monies and DBS Account Monies pending the contested divorce hearing and ancillary proceedings, for fear that the husband may claim back such amounts by asserting that she was dissipating the matrimonial assets by excessive or wasteful expenditure. She claims that she wishes to leave this money aside for the purposes of division of the matrimonial assets. The husband's counsel submitted that the law does not forbid the wife from accessing that money for the maintenance of herself and the children, nor has the husband forbidden her from using the money for that purpose.

14 Second, the wife's counsel submitted that the DJ had failed to apply his mind to the fact that the husband also has a considerable sum of the parties' joint account monies in his possession. And, despite being gainfully employed, receiving bonuses, and income from other avenues such as rental proceeds from the parties' jointly owned properties, the husband has only provided a "meagre" monthly sum of \$510.00 for the domestic helper and a yearly estimated sum of \$5,460.00 for a part of the children's insurance. The husband's counsel submitted that the wife does not dispute that she has sole access to substantial sums in cash, and that she had therefore not proven that the husband had failed or refused to provide reasonable maintenance, nor had she proved that she was in need of an order for interim maintenance.

15 Lastly, the wife's counsel submitted that the DJ had failed to appreciate the husband agreed to pay interim monthly maintenance of \$4,060.00 around the end of 2019, but subsequently reneged on this in February 2020. The husband does not dispute that he paid this sum in January 2020, but he says he refused to pay from February 2020 because he believed the wife had more than sufficient funds, and he had also received a letter from the wife's solicitors which claimed he had agreed to give her 75% of all the matrimonial assets. Further, he says the agreement was on the additional condition that the divorce and settlement would be resolved quickly; as that did not come to pass, they should not be held to this agreement.

16 The wife's estimate of the children's monthly expenses is at least \$3,577.46 for the son and \$3,947.20 for the daughter. This amounts to a total of \$7,542.66. The husband estimates the children's monthly expenses to be \$2,417.46 for the son and \$3,947.20 for the daughter. The wife's counsel said at the hearing that, as of March 2021, the wife has \$106,000.00 of her own savings left, and that that will only last her and the children another 8.6 months.

17 The objective of an interim maintenance order is to provide modest maintenance to help the parties meet their immediate financial needs (*Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [22]). At the 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 ancillaries stage, and thus the court will usually err on the side of conservatism (*Lee Bee Kim Jennifer v Lim Yew Khang Cecil* [2005] SGHC 209 at [7]).

18 Under these inadequate circumstances, I first consider the wife's current financial position. At present, the wife has access to funds of at least \$689,251.33, which is the total sum of the CIMB Account Monies and DBS Account Monies. Even if the monthly expenses that she and the children require indeed amount to \$12,321.00 per month, on her estimate, the next tranche of the divorce is only about a month away (in June 2021), and she certainly has enough to meet their immediate financial needs till then, and well beyond.

19 Further, while the husband is currently working and may receive income from other avenues, this does not mean an interim maintenance order is justified. The wife still needs to show that the husband has neglected or refused to provide reasonable maintenance, under both Section 69(2) and

Section 113(1)(a) of the Women's Charter (*TCT v TCU* at [2], [31]). On the wife's account, the husband is still making some contribution towards the wife's and children's lives by paying for the domestic helper's expenses and for part of the children's insurance. In the light of the wife's substantial funds, I consider this to be a reasonable contribution by the husband. The evidence does not show that the husband has paid "such a minimal proportion as to be neglectful" (*TCT v TCU* at [38]). I thus agree with the DJ's reasoning that the wife and children are amply provided for and an order for interim maintenance is not required.

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. As the DJ said, 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. As the husband's counsel submits, the law does not proscribe the wife from using that money for the maintenance of herself and the children. Her reasons for using this money, and the various surrounding circumstances, can all be taken into account by the judge later on at the ancillary matters hearing.

21 The wife has expressed her concern that the husband may later accuse her of wrongfully dissipating the matrimonial assets should she use the CIMB Account Monies and DBS Account Monies. However, this is an unfounded fear that can be addressed by prudent expenditure and proper accounting on her part.

22 Lastly, the wife's counsel submitted that the DJ did not consider her prior agreement with the husband concerning the payment of \$4,060.00 monthly interim maintenance. In her affidavit dated 1 September 2020 filed in the proceedings below, the wife adduced her WhatsApp messages with the husband to show that, on 23 October 2019, the husband agreed to pay her \$4,060.00 per month from 1 January 2020 by writing that he was "ok with the transfer to [the wife] on the 1st of every month". Yet, she claims, when the husband omitted to make the payments from February 2020, he responded to the wife's request to pay her by 6.30pm the same day, as follows:

Husband ("H"):	Can you tell me why is there a deadline in the first place? I would like to know who set this deadline.
Wife ("W"):	you agreed to pay by the 1st of every month. are you backtracking again?
W:	?
H:	I agreed because I wanted to help. Not because I am bounded by your demands.
W:	so are you paying or you not?
H:	You are making it sound like I have to [pay] which is not true. [...]

23 When the wife asked him why he was "refusing to pay monthly maintenance for the children", the husband replied:

The court has not settled the kids maintenance to be paid yet. So technically I did not refuse to pay any maintenance. I love the children very much and I will definitely do my part as their father. My lawyer has detailed what I will pay in the parenting plan so we will wait for that to be finalized by the court [...]

24 In my judgment, the messages exchanged by the parties do not in themselves justify an order for interim maintenance. Although these messages show that the husband had refused to pay the wife, they do not show that there is a need to order the husband to provide monthly payments to meet the need for reasonable maintenance, pending the resolution of the parties' contested divorce. All these arguments about the parties' prior agreement can be taken into consideration at the hearing of the ancillary matters.

25 The wife's counsel submitted before me that the wife wanted to name the co-defendant (with whom the husband had an affair) in the divorce proceedings in order to obtain a sense of closure. But I think that proceeding with the divorce on a contested basis will only incur excessive time and money, and worse, may stir up even more acrimony between the parties. The wife is unable to see that an alternative third way is possible because of the full-blooded adversarial stance she had taken. If both parties can resolve the divorce expeditiously and proceed to the ancillary matters, they can canvass all their arguments in this appeal at that hearing. The court can then make final orders on the issue of maintenance, which would include backdating any maintenance if the court thinks that to be fair, even to a date before the writ was filed (*AMW v AMZ* [2011] 3 SLR 955 at [13]). But, at present, I see no reason for the wife to have any interim maintenance from the husband, given the substantial funds that she already has.

26 I therefore dismiss the wife's appeal. I will hear parties on costs at a later date.