IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 2

District Court Appeal (Family Division) No 129 of 2020

Between

URN

… *Appellant*

And

URM

… *Respondent*

District Court Appeal (Family Division) No 131 of 2020

Between

URM

… *Appellant*

And

URN

… *Respondent*

In the matter of FC/OSG 168/2017

Between

URM

… *Plaintiff*

And

URN

… *Defendant*

GROUNDS OF DECISION

[Conflict of Laws — Foreign judgments — Recognition]
[Family Law — Child — Maintenance of child]

URN
v
URM and another appeal

[2022] SGHCF 2

General Division of the High Court (Family Division) — District Court Appeal Nos 129 and 131 of 2020
Debbie Ong J
19 July, 15 September 2021

17 January 2022

Debbie Ong J:

Background facts

1 The Father, a Swedish citizen, and the Mother, a Singapore citizen, were married in Singapore in August 2014. Their two daughters were born in 2015 and 2016.

2 On 4 August 2017, the Mother filed FC/OSG 168/2017 under the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) ("GIA") for custody and care and control, with supervised access to the Father and reasonable maintenance for herself and the children ("OSG 168"). On 11 August 2017, the Father commenced divorce proceedings in Sweden. On 25 August 2017, the Father filed FC/OSG 183/2017 in Singapore for, *inter alia*, the parties to be granted joint custody and the Mother to be granted care and control ("OSG

183"). On 28 September 2017, the Mother commenced divorce proceedings in Singapore in FC/D 4545/2017 ("D 4545").

3 On 10 July 2018, in D 4545, the Mother filed FC/SUM 2420/2018 in Singapore for maintenance for herself from the Father ("SUM 2420"). On 31 August 2018, the Mother filed an application for spousal maintenance in the divorce proceedings before the District Court of Stockholm.

4 On 7 September 2018, the District Court of Stockholm granted a "part judgement" of divorce. In its "Grounds for Decision" dated 7 September 2018, it noted that the Father had submitted a request to complete the divorce and for the court to appoint an "estate distribution executor" to distribute the parties' property. The Mother continued to oppose the petition for divorce and maintained that the only court to hear the matter was the court in Singapore as that is where the family resides. However, she was agreeable to the Father's request for the Stockholm court to appoint an estate distribution executor. The Stockholm court said it could hear matters about an estate distribution executor "if the matter is connected with divorce proceedings in Sweden". The court also said that "it remains the matter about custody, residence and visitation regarding the common children as well as maintenance to spouse"; it did not mention maintenance for the children as an outstanding issue in the divorce.

5 On 12 September 2018, by consent, the Mother was granted leave to discontinue D 4545 and SUM 2420 in Singapore, on account of the part judgment of divorce in Sweden and her claim for spousal maintenance in Sweden. On the same day, the District Judge ("DJ") heard OSG 168 and OSG 183. The DJ ordered, *inter alia*, that the Father was to pay $3,750 per month until September 2020 with effect from 1 October 2018, $6,000 per month from October 2020, and $17,000 in arrears of maintenance from February 2018 to

September 2018 (the "Singapore Order"). The Father's appeal in HCF/DCA 102/2018 and the Mother's appeal in HCF/DCA 103/2018 against the Singapore Order were dismissed on 18 March 2019.

6 On 14 January 2019, the District Court of Stockholm "rejected [the Father's] petition (within the framework of the divorce proceedings) that he be granted custody of the children and that they reside with him", thus "only the issue of alimony remained to be resolved in the case". On 20 June 2019, the Father filed an application in the District Court of Stockholm to order that he pay a maximum of S$1,224 per month as maintenance for the two children.

7 On 10 January 2020, the District Court of Stockholm decided that the Father's application for child maintenance would be dealt with in separate proceedings from the divorce. In its judgment on 16 January 2020, the District Court of Stockholm rejected the Mother's request for dismissal of the Swedish lawsuit. After noting that the Singapore court had issued a maintenance order against the Father, the court said: "… the district court has had jurisdiction to examine and rule on the issue of the petition for a dissolution of the marriage between [the Father] and [the Mother]. However, the petitions for child maintenance were not related to the case concerning marriage due to that [the Father] did not submit these petitions and claims until the case was only concerned with [the Mother's] petition and claims for spousal maintenance." The court found that it had jurisdiction under the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, EC Council Regulation 4/2009, Art 6, [2008] OJ L 7/1 ("Maintenance Regulation"), on the basis that the Father and the children were Swedish citizens.

8 On 26 May 2020, the District Court of Stockholm issued a "default judgment" ordering the Father to pay S$1,224 in child maintenance from 1 June 2020 (the "Swedish Order"), as the Mother did not submit a statement of defence within the ordered time. The Mother did not submit an application for re-trial by the deadline of 26 June 2020.

9 Subsequently, on 7 July 2020, the Father filed FC/SUM 1829/2020 to rescind the Singapore Order. On 1 September 2020, Mother filed FC/SUM 2535/2020 to vary the orders on custody and access. The DJ dismissed the Father's application on 14 December 2020 and instead varied the Singapore Order: with effect from 1 January 2019, the monthly maintenance payable by the Father for the children was $2,968, and with effect from 1 October 2020, the monthly maintenance payable by the Father for the children was $5,181, although the DJ retained the previous orders for the Father to pay $17,000 for the arrears of maintenance for February 2018 to September 2018 and $3,750 per month as maintenance for the children from 1 October 2018 to December 2018.

10 The Father appealed on 22 December 2020 in HCF/DCA 129/2020 ("DCA 129"), and the Mother appealed on 28 December 2020 in HCF/DCA 131/2020 ("DCA 131").

District Judge's decision

11 The DJ held that the Swedish court did not consider the making of the Swedish Order an exercise of its matrimonial jurisdiction (Grounds of Decision ("GD") at [21]). The DJ reasoned that: (a) the Swedish court did not list child maintenance as an issue when ordering the divorce; (b) the remaining ancillary issues referred to by the Swedish court in September 2018 were dealt with under the same case docket, which was distinct from the child maintenance

proceedings subsequently commenced by the Father; (c) the Swedish court decided on 10 January 2020 that the Father's application for child maintenance would be heard in separate proceedings from the Swedish divorce; and (d) on 16 January 2020, the Swedish court held that it had jurisdiction to hear the child maintenance application but this was "not related to the case concerning marriage". The DJ took the view that *ATZ v AUA* [2015] SGHC 161 (*"ATZ v AUA"*) did not apply in the present case. While there were competing child maintenance orders in Singapore and Sweden, this was induced by the Father's conduct. The DJ found that the child maintenance application in Sweden was unconnected with the Swedish divorce proceedings and was an attempt to circumvent the Singapore Order (GD at [23]).

12 As for his decision to reduce the maintenance payable by the Father, the DJ noted that at the time the Singapore Order was made on 12 September 2018, he had held that the Mother would have a gross earning capacity of $2,400 per month while the Father would have a gross earning capacity of $10,000 per month, which would increase to $20,000 per month in October 2020 (GD at [29]). However, he noted that the Mother's Notice of Assessment for the Year of Assessment 2020 indicated her gross annual income to be $68,180 for 2019, which was more than twice the gross annual income of $28,800 he had assessed in 2018. He thus assessed her income capacity to be $68,000 (per year) from January 2019 onwards, and this meant that the amount of child maintenance payable by the Father would be reduced as of January 2019 (GD at [30]).

Parties' arguments in DCA 129

Father's submissions

13 The Father sought to have the Singapore Order set aside or rescinded. He argued that the DJ erred in failing to do so because orders made under the

GIA in contemplation of divorce proceedings must be interim in nature (*ATZ v AUA* at [98]), and the interim nature of orders under the GIA remain regardless of the jurisdiction in which the divorce proceedings subsequently unfold. He submitted that the Swedish court was the more appropriate court to make final orders on the children's maintenance because it was the court dealing with the divorce proceedings and had jurisdiction to make orders relating to all other ancillary matters, and did in fact do so. Further, he argued that the Swedish Order was "made under Singaporean law" and the Swedish court knew that the Singapore Order must have been interim in nature pending the divorce proceedings. Thus, he argued that the Swedish Order must have been intended to be the final orders in respect of the children's maintenance.

Mother's submissions

14 The Mother argued that the Singapore Order should not be set aside. First, the Father had submitted to the jurisdiction of the Singapore courts by making an application in OSG 183, and by subsequently filing an appeal in HCF/DCA 102/2018 against the Singapore Order without contending that the more appropriate court to make final orders on the children's maintenance was the Swedish court. Having submitted to the jurisdiction of the Singapore court, he was estopped from claiming that the Swedish court is the more appropriate forum to make final orders on maintenance. Second, she submitted that *ATZ v AUA* did not apply in the present case as it was in the context of orders made under the GIA in relation to the broader statutory discretion conferred on the ancillary court under the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"), taking into account the jurisdiction of the court over the totality of the proceedings. She also submitted that the Swedish Order was not made in the exercise of the Swedish court's matrimonial jurisdiction, and further, the Swedish court granted the orders by way of a procedural default judgment

which failed to take into account all the circumstances between the parties, including the status of the matrimonial assets, spousal maintenance, and matters relating to custody, care and control and access. The Mother explained that she did not participate in the Swedish child maintenance proceedings because the Singapore Order was intended to be the final order by the proper court.

My decision on DCA 129

15 The Father argued that the Singapore Order "must be interim in nature if the orders are made in contemplation of divorce proceedings", citing *ATZ v AUA* at [98]. However, I did not think the reasoning or principles from *ATZ v AUA* applied in the present case.

16 In *ATZ v AUA*, both parties applied for sole custody and care and control under the GIA before the mother filed for divorce in Singapore. In that case, the district judge dismissed the father's application and ordered that the parties be granted joint custody of the child, with the mother having care and control and the father having liberal access. On appeal, the High Court Judge varied the access terms only. In the divorce proceedings, the mother asked that the GIA order be allowed to stand save that the access terms be amended, while the father wanted the court to consider the issue of care and control afresh. Belinda Ang J (as she then was) considered Section 124 of the Women's Charter and held that once the parties were within the matrimonial jurisdiction of the court, the court was entitled to make any order or vary any previous order in relation to the custody, care and control and access of the child. The discretion of that court was not fettered by any previous order made under Section 5 of the GIA (*ATZ v AUA* at [98]).

17 *ATZ v AUA* concerned divorce proceedings that were commenced in Singapore. The order under the GIA was considered "interim" in the sense that

the Singapore court deciding the ancillary matters could depart from the GIA order in exercising its power under Section 124 of the Women's Charter, as the parties were within the "matrimonial jurisdiction" of the Singapore court.

18 However, in the present case, the parties' divorce was granted by a Swedish court which was not exercising the ancillary power under Part X of the Women's Charter. Further, the Swedish court itself did not appear to view its decision on child maintenance as an exercise of its "matrimonial jurisdiction". In its judgment on 7 September 2018, the District Court of Stockholm did not list child maintenance as an outstanding issue in the divorce proceedings. In its subsequent judgment on 16 January 2020, the District Court of Stockholm held that the child maintenance petitions were "not related to the case concerning marriage"; it decided that it had jurisdiction based on Article 6 of the Maintenance Regulation because the Father and children were Swedish citizens. On these facts, the Swedish Order did not supersede the Singapore Order in the same way as an ancillary order made under the matrimonial jurisdiction of a Singapore court.

19 For completeness, while parties neither raised nor submitted on this point, I considered whether there was any basis for the Swedish Order to be recognised or enforced in Singapore. I noted that Sweden is not designated as a "reciprocating country" under the Schedule to the Maintenance Orders (Reciprocal Enforcement) (Designation of Reciprocating Countries) Notification 2016 issued pursuant to the Maintenance Orders (Reciprocal Enforcement) Act (Cap 169, 1985 Rev Ed). As for the common law on the recognition of foreign judgments, I noted that a defence to recognition may arise where there is an inconsistent prior or subsequent local judgment between the same parties (*Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v Merck KGaA (formerly known as E Merck)* [2021] 1 SLR 1102 at [35],

[36(b)] and [37]). In the present case, the earlier Singapore Order was subsisting at the time of the Swedish Order, and the Swedish Order does not supersede the Singapore Order in the same way that a final ancillary order in Singapore supersedes an earlier GIA order. In light of these facts, I was inclined to think that there may be a defence to the recognition of the Swedish Order had the issue of recognition arisen. However, I made no finding on this issue as parties did not argue this point before me.

Parties' arguments in DCA 131 on maintenance

Mother's submissions

20 The Mother submitted that the DJ erred in reducing the maintenance payable by the Father. First, the DJ pointed out that the Father's assertions that he had no work ability from December 2018 to December 2020 contradict his submissions for OSG 168 and OSG 183. She submitted that the Father's financial affairs were "shrouded in mystery". The Father also did not disclose his income from various entities. Second, she argued that the DJ failed to take into account the fact that the Mother's increase in income was because she was forced to work extra hard to look after the children, since the Father had failed to make the child maintenance payments and she was receiving no spousal maintenance. Third, the increase in the Mother's income was only interim and temporary; compelling her to hold down full-time employment while being the sole caregiver of the children was too onerous on her.

Father's submissions

21 The Father submitted that he ended up earning much less than projected because he was significantly impeded by the Mother's own actions. He also submitted that the Mother "does not deny" her employment and "hefty salary".

It was always expected that she would take on employment to foot her fair share of the children's expenses. Finally, he argued that the Mother had provided no evidence that the increase in her income was only interim and temporary.

My decision on DCA 131

22 First, the Mother did not deny that there was an increase in her income in 2019 and that this exceeded the DJ's assessment of her earning capacity in 2018. I thought the DJ was correct to take this into account in varying the Singapore Order. As for the Mother's arguments about the Father's lack of disclosure regarding his financial affairs, I noted that the DJ had already taken this into account in his decision to reduce the maintenance payable by the Father – the DJ did not accept the Father's submission that the Father had no income since 2018, and he found the Father's income/earning capacity to be the same as when he made the Singapore Order in September 2018 (GD at [26], [29]–[30]).

23 Second, as the Mother stated that the increase in her income was only "interim and temporary", she seemed to expect that she need not work full-time. However, whatever the situation was when the parties were married, the reality now is that both the Father and Mother are expected to work to provide for their children. In this regard, I noted that expenses for a domestic helper were already taken into consideration in the DJ's decision on maintenance on 12 September 2018, to enable the Mother to be supported when she works.

24 In summary, I did not think the DJ erred in reducing the maintenance payable by the Father.

Conclusion

25 For the reasons above, I dismissed both DCA 129 and DCA 131 on the issue of child maintenance. I made no order as to costs.

Debbie Ong
Judge of the High Court

Singh Ranjit and Ravleen Kaur Khaira (Francis Khoo & Lim) for the appellant in HCF/DCA 129/2020 and the respondent in HCF/DCA 131/2020;
The respondent in HCF/DCA 129/2020 and the appellant in HCF/DCA 131/2020 in person.