

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 29

District Court Appeal No 49 of 2022

Between

VEV

... Appellant

And

VEW

... Respondent

JUDGMENT

[Family Law — Maintenance — Child]

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VEV
v
VEW

[2022] SGHCF 29

General Division of the High Court (Family Division) — District Court
Appeal No 49 of 2022
Choo Han Teck J
11 November 2022

16 December 2022

Judgment reserved.

Choo Han Teck J:

1 The parties were married in Italy on 14 July 2011. The Father is a 49 years-old English Barrister who works as mediator, counsel and arbitrator. He has dual citizenship, in the United Kingdom and Australia. He is also a Singapore permanent resident. The Mother is 39 years-old and is a part-time pre-school teacher as well as a director of a handmade-chocolate company. She has a law degree and a Masters degree (in law). The Mother has dual citizenship, in the United Kingdom and Ireland. The parties have two children, aged seven and five respectively. The Father filed for divorce in July 2018 and interim judgment was granted on 5 March 2019.

2 The ancillary matters orders (“AM Orders”) were made on 8 October 2019. The Father appealed against the entirety of the AM Orders and the High Court Family Division made orders on appeal on 11 March 2021. The parties

were awarded joint custody of the two children, with care and control to the Wife and access to the Husband. After the conclusion of the appeal in March 2021, the Mother filed FC/SUM 3151/2021 (“SUM 3151”) in the Family Justice Courts to vary the orders for the children’s maintenance. In particular, the Wife sought an order for the Husband to be solely responsible for the excess or uninsured medical expenses that is not covered by insurance for the children. The District Judge (the “DJ”) allowed the variation in respect of the Wife’s responsibility for the costs of the children’s healthcare and issued her Grounds of Decision (“GD”) on 14 March 2022 as well as further orders on 6 April 2022 (“Further Orders”). The DJ found and decided as follows:

(a) The Husband produced an IRAS notice of assessment in June 2021 as proof that he was earning \$4,300 per month. However, the DJ noted that the Husband’s expenses exceeded his declared income, and inferred that he had undeclared income. As the Husband earned an average of \$10,000 per month (over a period of three years) during the ancillary matters stage, the DJ took the average of his past and present income over a period of four years. His average income was thus determined to be \$8,575 per month. The Wife has an income of \$3,000 per month.

(b) With effect from 1 April 2022, the excess payments for the children’s medical expenses not covered by the insurers, or “deductibles”, shall be shared between the parties in the proportion of 75:25 by the Husband and the Wife, in accordance with their income ratio.

(c) In respect of insurance payments, the Wife is to be solely responsible for \$454.22 being the payment of the children’s medical

insurance premium from 14 March 2022. The Husband is to make direct payment to the children's health insurance provider, and then deduct an agreed sum of \$454.22 from the maintenance he pays to the Wife for the children.

(d) The Husband shall not be retrospectively entitled to any amounts in excess of the monthly sum of \$454.22, from the date of the AM Orders until 14 March 2022. The parties through their conduct had acquiesced to the said monthly sum and it would be inequitable to allow the Husband to claim retrospectively for the agreed monthly sum.

(e) That the Husband be awarded costs of \$1,500, exclusive of disbursements.

3 In HCF/DCA 49/2022 ("DCA 49"), the Husband appeals against the DJ's orders in relation to the costs of the children's healthcare on the grounds that:

(a) The DJ was wrong to have varied the AM Orders to require parties to pay for "deductibles" in the ratio of 75:25, as this issue was already dealt with in the AM proceedings (the "Deductibles Issue").

(b) The DJ was wrong to have made the order that the Husband was not retrospectively entitled to any amounts in excess of the monthly sum of \$454.22 from the date of the AM Orders until 14 March 2022 (the "Past Payments Issue").

(c) The award of costs to the Husband of \$1,500 (exclusive of disbursements) was manifestly low (the "Costs Issue").

4 As to the Deductibles Issue, the Husband says that the issue of deductibles had already dealt with during the AM proceedings and that there had been no material change of circumstances to warrant a variation of the AM Orders. The effect of the DJ's decision would be to compensate the Wife twice in respect of deductibles, with an additional 75% in respect of future costs in addition to her existing allowance. The Husband also said that the Wife only sought a variation in relation to "deductibles" which are not covered by the premiums, being levied by the insurer on claims made on the children's cover, but the court widened this to "out-of-pocket payments made by the parties that are not covered by their policies". The Husband also points out that his income has dropped from \$18,000 to a deemed figure of \$8,575, whereas the Wife's income has increased from \$0 to \$3,000. He also says that this would result in him taking on unquantified financial responsibility even though the Wife is responsible for the children's health expenses.

5 The Wife says that she sought to pay a reasonable sum in respect of the children's insurance coverage and that any sums incurred in respect of medical care above this sum should be borne by the Husband. She says that the AM Orders do not make any specific provision for either party to pay for the increases in the cost of premia payable for the children's health insurance and responsibility for deductibles on insurance and uncovered payments. She also says that there was a change of circumstances as the medical insurance for the children had increased by 30% since the time of the AM proceedings. She further points out that the amounts payable for deductibles and uncovered expenses are not *de minimis*, as the deductibles alone are \$2,400 per year and there are larger costs items such as optical and dental treatments which are not covered by the children's insurance policy. These are significant costs in respect of her income.

6 I will first deal with whether the DJ was right to vary the AM Orders by requiring parties to pay for “deductibles” or “out-of-pocket expenses” in the ratio of 75:25, with the Husband to bear the larger costs. As a preliminary matter, I am of the view that there was a material change in circumstances to warrant a variation of the maintenance order. After the AM Orders were made, the parties had to deal with the issue of deductibles for the first time following from costs arising after the daughter’s visit to a neurologist for a medical examination, and the son’s health screening.

7 To clarify, the DJ appeared to use the terms “deductibles” and “out-of-pocket payments” interchangeably. She was simply referring to costs not covered by the children’s healthcare insurance. The Husband’s main contention seems to be that the issue of “deductibles” was already considered by the DJ in making the maintenance order that the children were to have \$20 per month to cover “[m]edical/dental” expenses. However, the DJ was addressing the “deductibles” as presented to her during the proceedings for SUM 3151, which amounted to about \$175 for both children. In particular, she was of the view that these amounts were “significant enough” and were not expressly considered below. I agree. Although there were provisions made for “[m]edical/dental” expenses at the AM hearing, there was no indication that these sums were intended to cover all uninsured medical payments. In any case, the fact that there were significant uninsured medical payments that arose since the AM Orders were made would constitute a material change in circumstances that would allow for a variation of the AM Orders.

8 I next consider whether the DJ was right to have ordered that parties should pay for the deductibles in accordance with their income ratio of 75:25. In determining the ratio for which uninsured medical payments were to be divided between the parties, the Husband says that it was wrong for the DJ to

consider his earning capacity of \$8,575, as opposed to his present income of \$4,300. The DJ did not have sight of three years of the Husband's income tax documents as the Husband did not submit them, but she did take into account his past records showing that he had an income earning capacity in excess of \$4,300 per month. Given that she was not presented with the complete documentation of the Husband's earnings, the DJ was not wrong to have made a general estimate in relation to the Husband's earnings. The DJ took into account the fact that the Husband was a successful commercial barrister with several streams of income, including those from his investment and rental property. The Wife's earning capacity and present income was quite the opposite. She was a stay home mother for several years, and presently, has only a part-time job. Relative to each other, it would be difficult for the Wife to fully bear the uninsured expenses not covered by the policies at this point in life. In the circumstances, I think it is fair that the parties bear the uninsured expenses in the proportion of their relative incomes. As the DJ held (GD at [23(b)]), the parties can apply to court for a further variation if the Wife's income improves.

9 I now turn to the Past Payments Issue. In the AM Orders dated 20 January 2020, the DJ determined that the monthly sum for each child's health insurance was \$248, based on figures that the Wife provided. This amounted to a total of \$496 per month. However, in her decision for SUM 3151, the DJ stated that the monthly health insurance should be \$454.22 for both children as the parties had "acquiesced to [this] said monthly sum" and that the Husband was not entitled to any amount in excess of this sum from the date of the AM Orders to 14 March 2022. The Husband says that the practical consequence of this is that the Wife would "benefit from a windfall" of \$42 x 29 months, that is, \$1,218 that she could allocate elsewhere.

10 I am also not able to find any evidence that the parties had expressly acquiesced to the sum of \$454.22. It seems to me that the parties' practice was to have the Husband pay the insurance directly, and then deduct it from the maintenance which he pays to the Wife in respect of the children. Since the Husband consistently deducted \$454.22 from November 2019 to March 2022, this could be said to be the Husband's acquiescence to the insurance sum being \$454.22 instead of \$496 as ordered by the court. The Wife has also explained that she had chosen a cheaper policy to better manage her expenses for the children and to also allocate funds for uncovered medical expenses as there was no specific provision in the AM Orders for this. An order for the maintenance of children is determined by the court, but the specific breakdown of how the maintenance sum should be spent should not be rigidly regulated by the court. As the parent with care and control, the Wife is entitled to adjust how she spends the monthly maintenance sum based on what she determines to be in the welfare of the children, having regard to their day-to-day needs. In the circumstances, I am of the view that there is no need for the Wife to repay the Husband for the sum of \$1,218. In any case, I do not think this amount to be a "windfall".

11 Lastly, I deal with the Husband's appeal against the DJ's cost orders. The DJ awarded costs of \$1,500 plus disbursements to the Husband for SUM 3151, in which he partially succeeded and another FC/SUM 4041/2021 (application for leave to file a further affidavit) which was allowed. The Wife had partially succeeded in SUM 3151 and the DJ was also well aware of the long history of litigation between the parties. I am of the view that the DJ was not wrong to award the Husband the sum of \$1,500 plus disbursements.

12 The parties sought leave to make further submissions in view of a private settlement in respect of their proceedings in England. A private settlement in respect of proceedings commenced elsewhere is insufficient grounds for either

party to make further submissions. The private settlement should have included a set-off against any order of court here. I therefore disallowed the request for further submissions.

13 I therefore dismiss DCA 49. I make no orders as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

The appellant-husband in person;
The respondent-wife in person.
