LV v LW (divorce: ancillary matters)
[2006] SGHC 50

Case Number : D 451/2004, RAS 50/2005, 55/2005

Decision Date : 22 March 2006

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Foo Siew Fong (Harry Elias Partnership) for the petitioner; S Selvaraj (Myintsoe & Selvaraj) for the respondent

Parties : LV — LW (divorce; ancillary matters)

Family Law – Maintenance – Wife – Quantum of maintenance for wife

Family Law – Matrimonial assets – Division – Whether wife entitled to larger share of matrimonial assets – Whether lottery winnings part of matrimonial assets

Family Law – Custody – Care and control – Whether husband should be given joint custody

22 March 2006

Choo Han Teck J:

1 The petitioner (wife), now aged 44, married the respondent (husband) now aged 51, in 1986. She was an economics graduate and taught in a junior college until 1991 when she stopped work to bring up the four children of the marriage. The respondent is a doctor practising as a general practitioner in a clinic in Bukit Batok until last year when he started a new clinic in Choa Chu Kang. They have three daughters aged 12, 14, and 17 respectively, and a son aged 13. All of them are in good schools and have been doing well academically. Three of them are in the "gifted programme", and the fourth is in a Special Assistance Plan (SAP) school. They lived in their matrimonial flat, a 999-year leasehold property at Toh Tuck Road, which they purchased as joint tenants in 1988 for $390,000. The flat was valued at $650,000 in April 2004.

2 On 19 February 2004 the petitioner filed for divorce based on the unreasonable behaviour of the respondent. She was granted a decree *nisi* on 23 March 2004. The ancillary matters were heard before a District Court judge and the following orders were made on 25 July 2005:

(a) that custody, care and control of the four children of the marriage be granted to the petitioner with reasonable access to the respondent;

(b) that the respondent provide maintenance of $4,000 to the four children and $500 to the petitioner with effect from 1 August 2005 and thereafter on the first of every month, and that the respondent pay for the household expenses for the matrimonial flat until the flat is sold;

(c) that the matrimonial flat be sold within three months and the net sales proceeds less Central Provident Fund ("CPF") contributions and the costs of the sale be divided with 70% to the petitioner and 30% to the respondent;

(d) that the petitioner have the first option to purchase the respondent's share of the matrimonial flat at market price and that she refund the respondent's CPF with interest, pay the costs of sale and 30% of the net price (market price less both parties' CPF contribution);

(e) that each party keep his or her assets in his or her own name;

(f) that the respondent pay costs of the divorce petition to the petitioner fixed at $1,500; and

(g) that the respondent pay costs of the ancillary matters to the petitioner fixed at $3,000.

3 The parties cross-appealed against some of the orders. Firstly, the petitioner prayed for a revision of the maintenance for herself and the children from $4,500 to $8,000. Secondly, she prayed for a 25% share of the matrimonial assets other than the matrimonial flat. Thirdly, she prayed for an increase in the award of costs of $3,000 for the ancillary hearing. The respondent appealed against the order granting custody, care and control to the petitioner with reasonable access to the respondent. He wanted an order for joint custody with care and control to the petitioner. Secondly, he prayed for a reduction in the maintenance from $4,500 to $2,500 for the children and $1 for the petitioner. Thirdly, he prayed that the division of the matrimonial flat in the ratio of 70:30 in favour of the petitioner be revised to one of 50:50.

4 Throughout the marriage the petitioner looked after the household, managing it with a budget of about $9,000 a month, which she said was given to her in cash by the respondent. Ms Foo Siew Fong, counsel for the petitioner submitted that the household upkeep as claimed was not challenged in the proceedings below. She rejected the respondent's claim that he could not afford to pay maintenance as ordered because he was only earning $5,000 to $6,000 a month. She gave two reasons. Firstly, the petitioner knew that the respondent tended to under-declare his income to the tax authorities. She helped to keep the accounts of his clinic from November 1987 to May 1988 and had filed the tax returns on behalf of the respondent. Secondly, Ms Foo submitted that the respondent was concealing his income by the arrangements he made with one Jessica Lew. Jessica Lew is a 38-year-old woman who had been working for the respondent as his clinic assistant since 1994. The main reason for the respondent's failed marriage was his intimate relationship with Jessica Lew, who was then earning $5,000 a month as a clinic assistant for the respondent. But on 29 July 2004 (after the decree *nisi*), the respondent signed a partnership agreement with Jessica Lew, making her the senior partner in his clinical practice with a 70% share while he retained 30%. In April 2005 he sold his 30% share to Jessica Lew for $20,000 and became her employee for $5,000 a month. Mr Selvaraj informed me at the hearing of this appeal that the Ministry of Health had directed that he should not relinquish all his shares to a non-doctor so he has since re-purchased the 30% share back from Jessica Lew. However, details of the Ministry's directions and the terms of the re-purchase were not given by way of evidence.

5 The respondent filed two documents just before this appeal was heard. The first was his income tax assessment form for the year of assessment 2004 which showed an assessable income of $72,496.00. Ms Foo objected on the ground that these documents ought to have been produced sooner. Having looked at the documents and the expanded submission of counsel in an exchange of letters after the hearing of the appeal, I would allow the documents to be admitted. On the substantial worth of these documents, Ms Foo pointed out that from July 2004 the respondent was only a 30% shareholder in the clinic. The second document was an accountant's report showing that the clinic made a loss of $49,012.56. Ms Foo pointed that the accountant declared in that report that it was a report made "in accordance with instructions given to us, without carrying an audit". Ms Foo submitted that, furthermore, Jessica Lew was the one who had provided the instructions and information to the accountant. Counsel therefore submitted that the report was unreliable. I am inclined to agree. The arrangements and conduct of the respondent and Jessica Lew were so unusual that unless convincingly explained, I am unable to accept the improbable over the probable. I am of the view that the respondent was only using Jessica Lew to hold his assets and income so that they would be out of the petitioner's reach.

6 Ms Foo submitted that the court below had noted that the interim maintenance of $5,000 a month awarded to the petitioner had not been appealed against. However, the final award made by the judge was $500 lower than the interim award. Counsel submitted that an interim maintenance order is a short-term order and that the parties ought to be able to make submissions on the question of what is reasonable maintenance for the purposes of the final order. I accept that an interim award is made on the basis that the wife would be given some support before the final order. It does not follow that a final order must necessarily be higher than the interim one although judges might err on the low side in the making of an interim award. In the present case, the learned district judge appeared to have taken all the relevant factors into account as could be gleaned from his grounds of decision. I would have done the same. I might have arrived at a final award that differed from the amount awarded by the judge below by $500.00, but in the circumstances of this case, that is not a large enough figure to disturb the discretion exercised by the judge below. I therefore dismissed the petitioner's as well as the respondent's appeals as to maintenance.

7 In respect of the matrimonial flat, the evidence was that the petitioner contributed $63,009.80 from her CPF account and the respondent contributed $63,088.83. A mortgage of $250,000 was taken out on the flat to finance the balance. However, in 1994 the petitioner and the respondent won the first prize in a four-digit lottery. The prize was $400,000. It was not disputed that $250,000 from the $400,000 prize was used to redeem the mortgage on the flat. This prize is not to be confused with the first prize won in a Toto draw in 2003. Given the obvious non-financial contribution of the petitioner, I find no reason to disturb the judge's apportionment of 70:30 in favour of the petitioner. In the latter instance, that is, the Toto prize, the petitioner and respondent were in disagreement as to who really won that prize amounting to $679,140. The petitioner claimed that the prize belonged to the respondent (against which she had a share) because the cheque in payment dated 5 March 2003 was issued by the Toto organiser, Singapore Pools Pte Ltd. This cheque was deposited into the joint account of the petitioner and the respondent the next day. The respondent claimed that it was Jessica Lew who purchased the winning Toto ticket and that the $679,140 was therefore her prize. He further claimed that he had arranged to have the cheque in payment made out in his name and that it was paid into the joint account of the petitioner and himself. This was made pursuant to an agreement he made with Jessica Lew whereby he was to borrow $450,000 from her. He cited four withdrawals from the joint account with the petitioner on the same day, 6 March 2003, as proof of that agreement. Ms Foo argued that on the contrary, the three transactions were evidence that the respondent was lavishing Jessica Lew with money belonging to his matrimonial assets. The four transactions were as follows. Firstly, a sum of $250,000 was withdrawn from the petitioner and respondent's joint account and deposited into a joint account of the respondent and Jessica Lew, which account was opened on 6 March 2003 itself. Secondly, a sum of $3,000 was withdrawn from the petitioner and respondent's joint account to pay for a safe deposit box in the joint names of the respondent and Jessica Lew, which safe deposit account was also opened on 6 March 2003. Thirdly, a sum of $213,000 was withdrawn from the petitioner and respondent's joint account and deposited into Jessica Lew's personal account on 6 March 2003. Fourthly, a sum of $190,000 was withdrawn from the petitioner and respondent's joint account and deposited into the respondent's clinic account, to reduce an overdraft from that account.

8 Mr Selvaraj, counsel for the respondent, pointed out that on 11 March 2003 a sum of $157,977.02 was withdrawn from the joint account of the respondent and Jessica Lew and deposited into a joint account of the respondent and the petitioner. Thereafter the joint account of the respondent and Jessica Lew was closed. Mr Selvaraj argued that that should lend credence to the respondent's evidence. On the whole, I do not think so. The claim that the Toto prize was won by and belonged to Jessica Lew seemed to me to be unlikely. I am not persuaded that Jessica Lew would have agreed to let the respondent claim the $679,140 prize-money and deposit it into a bank account in the joint names of himself and the petitioner (his wife) if the money really belonged to her (Jessica

Lew). There was no substantial evidence of the loan allegedly made by Jessica Lew to the respondent, in which the petitioner was supposed to have guaranteed, other than Jessica Lew's brief assertion in her affidavit of 6 July 2004. The only indication of any documentary evidence came not from the respondent or Jessica Lew but from the petitioner, who had stated in her affidavit that late one night the respondent came home and demanded that she sign a guarantee for a loan. He became abusive and violent when she refused to do so. It was under those circumstances that she reluctantly signed on the paper that the respondent had handed to her, but she had no knowledge of what she had signed. To this day no loan or guarantee document bearing the petitioner's signature has been proved. Based on the accounts deposed in the respective affidavits, I am inclined to think that the petitioner's version was a more probable one. Accordingly, the Toto prize-money must be part of the matrimonial assets. Lottery prizes are just what they are – matters of luck. I do not think that any sensible formula can be made to apportion such assets, and accordingly, the prize-money must be shared equally after deducting the sum used to redeem some of the mortgage liabilities of the marriage.

9 Ms Foo also submitted that the respondent had other assets that formed part of the matrimonial assets that were not taken into account by the court below. These included the value of the respondent's Toyota car, and some insurance policies. The aggregate of these assets, including the Toto prize, would be $739,757.25. The petitioner claimed 25% of that as her share of the assets. That would amount to $184,939.31. Counsel relied on *Ng Hwee Keng v Chia Soon Hin William* [1995] 2 SLR 231 in which the court awarded the wife a 20% share. I agree with counsel that it would be fair to award 25% to the spouse in the present case as some recognition ought to be given to the non-financial contribution of the spouse who swept and kept the home and raised the children. In that case the marriage was a reasonably long one of 19 years in which the wife was a working spouse. The court below in this case merely held that these other assets "were no longer available for division" and thus no order was made in that respect. Having found that these assets, including all, but one, of the insurance policies, had been surrendered, the court below held that the income formed part of the matrimonial assets. The respondent had not given an account as to how the moneys were utilised. If he does not do so, it would be impossible for the petitioner to know where the money went. As it was, all that I could find to be probably still in the respondent's control would be the car and the Toto prize. The respondent had to account for the money from the insurance policies and I did not think that it was an answer for him to state that he did not know or that the petitioner did not ask for them sooner than she did. Since the figures calculated by Ms Foo appeared reasonable in the circumstances, taking into account the values of the policies, I accepted her submission in respect of those other assets. I was also of the view that the net value of the car would probably be about $23,226 after deducting the loan of $40,524. The car was purchased at the end of January 2004 for $85,000. In the circumstances, I allowed the petitioner's appeal in respect of these assets amounting to $184,939.31.

10 I now turn to the respondent's appeal for an order for joint custody. Mr Selvaraj relied on *CX v CY (minor: custody and access)* [2005] 3 SLR 690 in support of his argument that both parents ought to have a part to play in the big issues concerning their children, and that joint custody was the only way in which the respondent father could maintain the role of a parent. In that case, however, a joint custody order was made because the excluded spouse appeared to have been denied every right to the young, four-year-old child. In the present case, the respondent had been given the right of reasonable access, and, more importantly, the children here are much older and all of them appear to be highly intelligent. The judge below had interviewed each of the children individually before he made his decision to give custody, care and control to the petitioner. I was not inclined to vary an order so made and, therefore, dismissed the respondent's appeal on this issue.

11 Finally, the petitioner appealed against the order on costs. She claimed that the sum of

$3,000 was inadequate as disbursements alone amounted to $2,838.35. I would not disturb the order on costs but I would order that the award of $3,000 exclude the disbursements of $2,838.35, which will also have to be paid by the respondent. The respondent is to pay the petitioner costs of this appeal fixed at $1,000.