

Yip Mei Ling Agnes v Tan Thiam Chye
[2007] SGHC 214

Case Number : D 603689/2002, RAS 720004/2007
Decision Date : 10 December 2007
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Appellant in person; Respondent in person
Parties : Yip Mei Ling Agnes — Tan Thiam Chye

10 December 2007

Tay Yong Kwang J:

1 For convenience, I shall refer to the parties as the husband and the wife. The matter before me concerned an appeal by the husband against certain orders made by a district judge (“the DJ”) of the Family Court. Both parties were not represented by solicitors. They spoke in English.

The proceedings in the Family Court

2 Both parties also appeared in person before the DJ. The parties married in December 1978. They have three children. The eldest is a daughter aged 26, the second is another daughter (“the daughter”) who is 18 and the youngest is a son (“the son”) aged 16. In October 2002, the wife filed this Petition for divorce on the ground of unreasonable behaviour. In May 2003, the husband filed his Answer and Cross-Petition, also alleging unreasonable behaviour. In September 2003, a decree nisi was granted on the Petition and the Cross-Petition. It was made absolute in May 2006.

3 On 27 April 2005, a district judge heard the parties on the ancillary matters and made the following orders (“the 27 April 2005 orders”):

- (a) the wife was given sole custody of the daughter and the son with reasonable access granted to the husband;
- (b) for maintenance, the husband was to pay the wife \$1 per month, the daughter \$650 per month and the son \$750 per month;
- (c) the husband was to pay the daughter and the son each an allowance of \$50 per week and to bear their educational expenses;
- (d) the Housing and Development Board (“HDB”) three-room flat at Jalan Bukit Merah, together with four other properties, were ordered to be sold and the net sales proceeds of each were to be divided between the parties according to various percentages. The husband was also given the first option of buying over the wife’s share (90%) of the HDB flat;
- (e) various other directions pertaining to shares, insurance policies, membership in the Singapore Swimming Club and a property in Malaysia.

The four properties mentioned at (d) above were two adjoining commercial units in the Realty Centre

at 15 Enggor Street #10-01/02, a unit on the 23rd level of The Plaza at 7500A Beach Road and a unit in Sturdee View at 60 Sturdee Road North #11-01 (which used to be the matrimonial home). The husband bought over the wife's share of the HDB flat and of the Realty Centre and Sturdee View properties. He is presently residing in the HDB flat.

4 The husband appealed against the 27 April 2005 orders in respect of custody and division of matrimonial assets. In March 2006, his appeal to the High Court was dismissed.

5 The husband defaulted on his maintenance obligations. In October 2006, the wife applied by way of MSS 5902 of 2006 ("MSS 5902") to enforce the orders on maintenance. At the same time, she applied for a Personal Protection Order by way of SS 2362 of 2006 ("the PPO application") for herself and the two younger offspring, to stop the husband from harassing them with his communication by SMS. In November 2006, the husband applied by way of SUM 650645 of 2006 ("SUM 650645") to seek, among other things, rescission of the orders on maintenance with effect from 22 September 2006 (the date he became unemployed) and an order for the wife to disclose her true financial position and for her to find a meaningful job.

6 With the consent of the parties, the three applications mentioned in [5] above were heard together by the DJ. The hearing was held over three sessions in open court, during which the parties, the daughter and the son testified and were cross-examined. The DJ dismissed the PPO application and in respect of the other two applications relating to maintenance, he varied the 27 April 2005 orders in the following manner:

- (a) the husband was to pay \$1 per month as maintenance for the wife on the first day of the month with effect from 1 October 2006 until the husband secured employment;
- (b) the husband was to pay \$400 per month to the wife as maintenance for the daughter (\$150) and the son (\$250) with effect from 1 October 2006 until the husband secured employment;
- (c) the husband was to continue paying the polytechnic fees for the daughter and the school fees for the son;
- (d) the husband was to pay the children's educational expenses capped at \$100 per month for the daughter and \$50 per month for the son;
- (e) all payments were to be made into the wife's account with DBS bank;
- (f) all other prayers in SUM 650645 were dismissed;
- (g) the arrears of \$2,406 owed by the husband to the wife would be deferred until the husband secured employment.

The appeal

7 The wife did not appeal against the DJ's orders. The husband appealed to the High Court by way of RAS No. 720004 of 2007 seeking various modifications to the orders set out in [6] above in the following terms:

- (1) orders (e) and (g) remains unchanged;

(2) orders (a), (b), (c), (d) and (g) be rescinded as applied for in SIC SUM 650645/2006;

(3) order (f) remains unchanged, except suspend all maintenance payment until the outcome of hearing;

(4) no written order was made to dismiss the Summons SS: 2362/2006 heard although verbally notified so at the end of the hearing. For proper closure, an appeal is also made for a written order of dismissal to this summons.

8 The husband is now 53 years old while the wife is 58 years old. Before the DJ, the husband raised the following main reasons in support of his application:

(a) his loss of employment;

(b) his physical state and medical condition;

(c) the unequal financial position of the parties; and

(d) the wife's employment.

9 The husband used to be the chief financial officer of Webvisions Pte Ltd, earning a salary of \$9,630 per month. For economic reasons and as a result of his poor performance brought about by his ill health, which was in turn the result of the divorce proceedings, his previous employers offered him the option of resigning or having his services terminated. The husband decided to resign on 21 September 2006. Since that date, the husband alleged, he made some 50 unsuccessful attempts to secure employment as a chief financial officer but "employers ask a lot of questions" and his health was not good.

10 The husband has, from birth, a deformed left hand which has no fingers and is shorter than his normal right hand. He has been suffering from obstructive sleep apnoea since 1994 and was prescribed a Nasal Continuous Positive Airway Pressure machine which he has to strap over his head when he sleeps. He has also been suffering from gout since 2001. He also suffers from hypertension, depression and failing eyesight. He is also being monitored for the possibility of liver disease.

11 The husband alleged that the wife was enriched by some \$967,000 after the division of the matrimonial assets while he received only \$243,000. In addition, he suffered financial loss as a result of having to obtain loans from banks and his family amounting to about \$1.3m to buy over the wife's shares in four of the matrimonial properties. Although the commercial units in the Realty Centre and the private residential unit in Sturdee View were and are still being rented out, he is suffering net losses every month as a result of the bank loans taken out for the said properties. These properties, he argued before me, were investments for the long term and he would only sell them as a last resort. As the property market had not stabilized, he did not want to suffer a loss from any sale. After all, he said, his properties were not prime ones like those in the Orchard Road area.

12 The husband contended that the wife always had a career during the subsistence of their marriage and that she has now found a job as a real estate agent and was also working part-time at the Tan Tock Seng Hospital.

13 The wife said that she had invested part of the money given to her by the Family Court's orders and used some of it to purchase a 4-room HDB flat for the family. The husband bought the commercial units and the private apartment at forced-sale prices because the mortgagees thereof had taken

possession as a result of his default in paying the instalments due. She suggested that the husband should consider selling one or more of them especially with the property market being so buoyant lately. Despite the husband's physical handicap and medical situation, he was able to drive a car and even pilot a pleasure craft.

14 The DJ considered whether the husband had made out a case of material change in circumstances, as provided in s 118 of the Women's Charter (Cap 353), to justify a variation of the 27 April 2005 orders. He was satisfied that the husband's loss of employment, coupled with the wife's present employment as a real estate agent, amounted to such a material change in circumstances. The DJ was, however, unimpressed by the arguments concerning the husband's physical disability and health issues. He was of the view that practically all of the listed problems were already in existence at the time of the making of the 27 April 2005 orders and could have been raised as issues at the hearing of the ancillary matters then. As far as the deterioration in eyesight after 2005 was concerned, the DJ felt that there was no evidence to show that it affected the husband's applications for employment.

15 Where the relative financial position of the parties was concerned, the DJ held that the predicament that the husband found himself in was a result of his decision to take out loans to buy over the properties in question. The properties were bringing in rental income for the husband. Alternatively, he could sell one or two of them in order to provide maintenance for the children. The DJ therefore did not think that the husband had shown a material change in circumstances on this ground, relying on *See Toh Weng Foong v Chew Cheng Moi* (Div 2181 of 1997) where the court there held that there was no material change in circumstances where a wife deliberately resigned from full-time employment to take up part-time work.

16 The DJ then balanced all the factors raised and decided that the adverse change in the husband's financial situation justified a variation of the 27 April 2005 orders to those stated in [6] above.

17 I agreed with the DJ's views. The husband complained that the court making the 27 April 2005 orders did not even consider his obstructive sleep apnoea in its grounds of decision and he should not be prevented from raising it before the DJ. It must be noted that the parties were represented by solicitors at the hearing in 2005. If the sleep disorder (or any other existing health issue) was not raised then, the district judge hearing that matter could not be faulted. If it was raised and was not considered, the matter could have been raised at the appeal before the High Court. As for the husband's left arm, to his credit, he has coped very well with the congenital defect.

18 The DJ was correct in balancing all the factors and not allowing those amounting to a material change in circumstances to dictate the outcome of the hearing before him. In fact, he appeared rather generous towards the husband in varying the amounts payable by him quite significantly. Of course, the husband would prefer the DJ to erase his liabilities in the 27 April 2005 orders altogether but that would not be justifiable in the circumstances.

19 The husband is a qualified accountant and has a MBA degree. He knows his economics. He was astute in buying over the three private properties at fire-sale prices. Although he incurred a yearly deficit in maintaining the properties, he held on to them. Time has shown the wisdom of his investment decisions and he is now vindicated by the upward trend in the local property market across the board. If he is not able to maintain his children and take care of their educational expenditure, then the time has come for him to liquidate one of these assets which would probably give him more than sufficient funds to meet his responsibility. He cannot insist on keeping the properties as a "nest egg" for himself while ignoring his responsibility to his offspring.

20 The husband's arguments before the DJ and in the High Court showed his dissatisfaction over the distribution made in the 27 April 2005 orders. It appeared to me that he was trying to re-open that issue indirectly by harping on the fact that the wife got almost \$1m as a result. Revisiting that issue is of course not legally possible.

21 The husband's consistent refrain before me was that the \$1 per month maintenance ordered for the wife should be rescinded because it was no longer necessary and could even be used by the wife to keep applying to court in order "to spy on me". He likened that order to a door wedge to punish husbands or to a sentence of life imprisonment on him. It was, he argued, "a thorn in the relationship". He again betrayed his dissatisfaction over the 27 April 2005 orders when he submitted that the \$1 per month order should not have been made in the first place. He said that there was no reason to allow the wife to claim more from him because of this particular order. He offered to pay a lump sum maintenance of \$100 "to close this matter".

22 In my view, what the husband was truly apprehensive about is probably the fact that the properties he owns have increased significantly in value and he is, in all likelihood, contemplating the sale of one or more of them and does not want the wife to have an indirect share in that event by applying for more maintenance. This view is buttressed by his submission that the \$1 per month order allowed the wife "a second bite at the properties she has sold to me". The husband's fears are misplaced. For the wife to succeed in any application to increase the amount of monthly maintenance, she would have to persuade the court about her needs. She would not be able to apply on the ground that the husband has sold his properties because that would tantamount to giving her a second distribution of property.

23 The wife would like the \$1 per month order to be retained as she is 58 years old, 5 years older than the husband, and would not know whether she will require maintenance in the future. I agreed with her. However, as she confirmed that she had made no application to increase the said \$1 per month order, I was of the view that there was no reason to insert the words "until Respondent secures employment" in that order because those words would imply that the husband has to pay more once he finds employment. I therefore ordered those words to be deleted.

24 Insofar as the husband's prayer in sub-paragraph (4) of [7] above is concerned, I saw no need to make any order because the DJ has clearly stated in the notes of evidence (at page 43 thereof) and at [10] of his grounds of decision that the PPO application was dismissed by him.

25 Accordingly, I dismissed the husband's appeal but ordered the words "until Respondent secures employment" for the \$1 per month order deleted. As the wife did not wish to ask for costs of the appeal, I made no order as to costs.

26 The husband has appealed to the Court of Appeal against my decision.