

QZ v QY
[2007] SGHC 79

Case Number : D 603099/2002
Decision Date : 24 May 2007
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Nicole Loh (Harry Elias Partnership) for the Petitioner; Irving Choh and Felice Png (Rajah & Tann) for the Respondent
Parties : QZ — QY

24 May 2007

Lee Seiu Kin J

1 On 16 March 2006, the District Judge in the Family Court made the following ancillary orders in this divorce pertaining to custody, access, maintenance and division of matrimonial assets:

- (a) Joint custody of the children of the marriage be granted to the Wife and the Husband, with care and control to the Wife.
- (b) Reasonable access to the children be granted to the Husband including:
 - (i) Alternate weekends, Friday, 6pm to Saturday, 9pm;
 - (ii) On weeks without overnight access, either Wednesday, 6pm to 9pm (if children are going away on the weekend with the Wife) or Saturday, 2pm to 7pm (if children are in Singapore for the weekend);
 - (iii) Alternate public holiday, 9am to 9pm;
 - (iv) In even numbered years beginning 2006, Christmas eve, 9am to 9pm. In odd numbered years beginning 2007, Christmas day, 9am to 9pm;
 - (v) In odd numbered years beginning 2007, 3rd day of Chinese New Year;
 - (vi) Two weeks of mid and year-end school holidays, with overnight access; and
 - (vii) Telephone access.
- (c) The Husband is to pay monthly maintenance of \$3,500 for the children, being \$1,750 each, with effect from 20 March 2006, and thereafter on 20th of each month.
- (d) The Husband is to pay nominal maintenance of \$1 for the Wife with effect from 20 March 2006, and thereafter on 20th of each month.
- (e) Payments are to be made into the Wife's POSB bank account.
- (f) The Husband is to pay maintenance of:

- (i) \$245,766 for 15 May 2001 to February 2004, being \$7,300 x 12.5 months, \$7,500 x 7 months, \$7,127 x 8 months, \$7,500 x 5 months;
 - (ii) \$67,500 for March 2004 to November 2004, being \$7,500 x 9 months; and
 - (iii) \$75,000 for December 2004 to February 2006, being \$5,000 x 15 months.
- (g) The interim payments of \$47,500 and any other payments in February and March 2006 made by the husband are to be offset against the amounts stated in (f). The balance amount is to be paid by 12 equal monthly instalments with effect from 20 March 2006, and thereafter on 20th of each month.
- (h) The Husband is to pay the Wife a sum of \$180,000 as her share of the matrimonial assets within one month of this order.
- (i) Parties are to retain other assets in their own names.
 - (j) Liberty to apply.
 - (k) Costs of the ancillary matters fixed at \$2,500 to be paid by the Husband to the Wife.

2 The Husband filed two appeals. The first, RAS No 720020/2006, was an appeal against the above orders of 16 March 2006. The second, RAS No 720033/2006, was an appeal against a refusal by another judge, District Judge Jeffrey Sim, to stay those orders. Both appeals were heard by me on 16 October 2006, at which time I made certain orders. The Wife's solicitors applied for further arguments which I heard on 8 January 2007, at the end of which I modified slightly my orders of 16 October 2006. In the result the following are the final orders made on 8 January 2007:

- (a) On the question of access in Order (b) of the District Judge:
 - (i) paragraph (i) amended to "Alternate weekends from Fridays 6pm to Sunday morning at start of usual church service, at church".
 - (ii) paragraph (ii) amended to "Saturdays 2pm to 9pm, but if the children are not in Singapore, then to be made up by access on Wednesday (before or after) 6pm to 9pm".
 - (iii) paragraph (iii) amended by adding "apart from Chinese New Year and Good Friday".
 - (iv) in paragraph (v) "Petitioner is to have the children on Chinese New Year and Respondent to have children on Good Friday holidays, from Thursday 6pm to Sunday church service hour. If that weekend does not coincide with Respondent's access weekend, this will be swapped for either previous or subsequent weekend".
 - (v) paragraph (vi) amended to include "with liberty to take children abroad".
 - (vi) paragraph (vii) amended to "Daily phone access".
- (b) On Orders (c), (f), (g), (h), (i) of the District Judge, the matter is remitted to the court below for trial of the issue of the Respondent's assets.
- (c) In the interim, the Respondent is to pay \$3,500 for children and \$1 for Petitioner per month.

(d) Any orders for payment of arrears of maintenance and loan are stayed pending determination in Order (2).

(e) Costs of this appeal to be paid by Respondent to Petitioner fixed at \$4,000, inclusive of stay application before DJ Jeffrey Sim.

3 The Wife has appealed against Orders (b), (c) and (d) above and I now give the grounds for my decision.

4 The parties were married on 18 September 1992. They have a daughter and a son, aged 10 and 6 years. On 16 August 2002, the Wife filed a petition for divorce on the grounds of his unreasonable behaviour. The Decree Nisi was made on 17 October 2003 and it was made absolute on 28 June 2004. There have been a number of hearings on the ancillaries leading to the orders made by the District Judge on 16 March 2006. The Petitioner's appeal to the Court of Appeal essentially pertains to my order to remit the matter to the District Court for trial on the issue of the Respondent's assets.

5 Although the judge below considered the Husband's assertions that he did not have much assets nor did he have much income, she did not consider it necessary to order cross-examination of these issues. Instead she concluded that he had the capacity to earn enough to pay the arrears and future maintenance from the fact that he had signed certain documents. However the Husband had also produced evidence that he owed about \$13,000 to the Inland Revenue Authority of Singapore (IRAS). As for assets, the judge below drew an adverse inference from the lack of forthrightness of the Husband and held that he had assets worth \$1.2m.

6 Section 112(1) of the Women's Charter (Cap 353, Rev Ed 1997) gives the court power to order division of matrimonial assets in the course of divorce proceedings. In exercising this power, the court must first determine what those matrimonial assets are and their value. This is usually done by way of affidavits and where there is agreement as to their constituents and value, the court can proceed to consider the division having regard to all the circumstances of the case pursuant to s 112(2). Even where the parties are not in full agreement as to these matters, the court may proceed on the basis of the affidavits if it considers that the areas of disagreement are not substantial or the court is in a position to resolve them from the contents of the affidavits.

7 However it is a very different matter if there are substantial areas of disagreement, in which case any division ordered by the court runs the risk of causing injustice to one or the other party, or worse, rendering the order unenforceable thereby benefiting neither party. If the court undervalues the assets of one party, injustice is done to the other party in that the latter receives less than what he or she would otherwise be awarded. On the other hand if the court overvalues the assets of one party, injustice is done to that party.

8 Worse still if the court severely overvalues the assets of a party because that party could have no means to pay the sum ordered in the division. In the present case, that is exactly the complaint of the Husband, who claimed that he did not have the assets and the income that the Wife claimed he had. He had stated in his affidavits that he had very little assets and attributed this to business failure. He had also deposed that he had very little income as he only worked in odd jobs and depended on his parents to lend him money for the interim maintenance ordered. In my view, where there is a conflict of evidence in relation to crucial issues such as the amount of assets owned by one party or his income, the court ought to have resolved the matter by way of a trial. This is to ensure that any subsequent order for transfer of assets or maintenance would be based on assets or income that actually exist.

9 I accordingly made the Orders (b) and (d) but ordered interim maintenance in Order (c).

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