Teo Hoon Ping v Tan Lay Ying Angeline
[2009] SGHC 244

Case Number : DA 27/2008

Decision Date : 28 October 2009

Tribunal/Court : High Court

Coram : Chao Hick Tin JA

Counsel Name(s) : Koh Tien Hua (Harry Elias & Partners) for the appellant; Randolph Khoo and Chew Ching Li (Drew & Napier LLC) for the respondent

Parties : Teo Hoon Ping — Tan Lay Ying Angeline

Family Law – Women's charter – divorce – unreasonable behaviour

28 October 2009

Chao Hick Tin JA:

Introduction and overview of legal issues

Introduction

1 This was an appeal from the decision of District Judge Tan Peck Cheng ("the District Judge") in Divorce Suit No 5424 of 2006 allowing the respondent's ("the Wife") writ for divorce. The divorce was granted on the ground that the marriage had irretrievably broken down because the appellant ("the Husband") had acted in such a way that the Wife could not reasonably be expected to live with him – s 95(3)(*b*) of the Women's Charter (Cap 353, 1997 Rev Ed). For the reasons given below, I dismissed the appeal.

Facts

2 The parties met in 1989 while they were both studying in the same junior college in Singapore. After junior college, the Wife studied pharmacy in the National University of Singapore from 1990 to 1993. The Wife worked in Singapore after graduation for Quintiles Inc and Eli Lilly Inc.

3 The Husband went on an Economic Development Board ("EDB") scholarship to study engineering and finance at the University of Pennsylvania in Philadelphia from 1993 to 1997. After failing to complete his final year, the Husband broke his EDB bond and went to work for McKinsey & Company in New York from 1997 to 1999. In 1999, the Husband quit his job as he was burnt out and returned to Singapore. He has been unemployed ever since.

4 The parties married on 18 April 2000 in Singapore. In 2001, the Wife relocated to Eli Lilly in Indiana, USA. The Husband remained in Singapore to treat his medical problems. In May 2000, the Husband joined the Wife in Indiana. Later the couple moved to New Jersey. In December 2003, he returned to Singapore as he had signs of depression and agoraphobia.

5 The bulk of the Wife's complaints about the Husband arose in the period between December 2003 and May 2006. These complaints include the Husband not being loving and caring towards her, the Husband not treating her with respect, the Husband's unstable behaviour and violent outbursts, the Husband's refusal to communicate with her and the Husband's refusal to seek gainful employment, *etc*. A detailed list of the Wife's complaints as well as the Husband's replies is set out in the Grounds of Decision of the District Judge in *Tan Lay Ying Angeline v Teo Hoon Ping* [2009] SGDC 149 ("GD").

6 The Wife returned to Singapore for vacation in December 2004 and December 2005. In April 2006, she returned to Singapore for good. On 29 May 2006, she informed the Husband that she wanted a separation.

The District Judge's decision

7 The District Judge allowed the Wife's divorce suit under s 95(3)(*b*) of the Women's Charter after finding that the Husband had treated the Wife with disrespect and that the Wife could not reasonably be expected to continue living with him. This finding was largely based on a series of emails ("the emails") produced by the Wife that showed that the Husband had a habit of verbally abusing her, as well as the testimony from a Dr Tri Vi Tat ("Dr Tat"), a witness for the Wife.

8 I have reproduced below some of these emails in light of the great weight which the District Judge had placed on them, as well as their overall importance in leading the District Judge to her decision.

Email relating to the Gmail user ID

On 24 August 2005, the Husband had sent the Wife an invitation from Google to sign up for a free email account. She selected a user ID, "angelyew". Three days later, on 28 August, the Husband asked her why she had chosen such a user ID. On 29 August, the Wife explained to him that "Angeline" had already been taken, and that "Yew" was a botanical word that was also the nickname of her best childhood friend. The Husband berated her in the following terms:

> I can't believe you actually have the nerve to tell me that "yew" is a kind of plant. I never knew you were interested in botany. This straightaway violates rule 6, 7 and 8. if I were interviewing you, I will definitely make some botany joke about you. When someone can joke about you, you become a joke. How can anyone give a professional job to a joke? Moreover, what does your childhood friend have anything to do with your email address? I guess I need to remind you that this is YOUR email address, not your childhood friend's email address. When I read the reasons for the choice you gave me, the word MORON immediately pops into my mind.

Emails enclosing link to pornographic sites

The Wife had given evidence that the Husband had made her watch pornography and sent her links to pornographic websites despite knowing her aversion to them. She exhibited one email sent to her on 1 October 2005 where he enclosed a link to a pornographic website and told her:

> You look much better even though you are older. But your prudish attitude towards sex and experiment makes you a lousy lay.

Parties' emails on 10 December 2005

The Wife had emailed the Husband to tell him about how she had caused yellow streaks on the toilet seat by mistakenly using Clorox toilet bowl cleanser bleach on it. The Husband replied:

> You should be … concerned about your constant failure of common sense.

Husband's emails of 22 February 2006

The Wife often helped the Husband ship items that he ordered from USA to Singapore. Instead of showing gratitude, the Husband would lash out at her for any error she made. For example, once she shipped the manuals that came with the items he ordered to him at her own expense of US$4. She apologised to him for sending him everything but was scolded by the Husband instead.

> What a waste of money. The paper manuals are useless and heavy. I could have downloaded them here over the net. Why do you have to keep making mistakes and then have to apologise for them? This particular case does not involve anything technical, I have written to you in emails about what is required in list form even. How about doing something right for once? If you keep going on like this, how do you expect me to have a shred of respect for you?

MSN conversations

On or about 20 February 2006, the Husband said to the Wife:

> Mutual respect is prerequisite for love you know. There cannot be love without an iota of respect … I have no respect for anyone full of excuses … you are the one person with the most excuses I have ever come across.

In another conversation on or about 5 March 2006, the Husband told her:

> i figured if smart rich guys can put up with bimbo trophy wives I can too

Disrespect to the Wife's friends

The Wife said that the Husband also had no respect for her friends. She gave evidence that the Husband had accessed her email account and read an email from her friend describing how he had met someone in his life. The friend had written:

> Hi Ange,
>
> Of course I treasure her. Amidst all this mess, she has brough hope and happiness to me and I genuinely want to make her happy for that.

The Husband sent her an email on 11 October 2004 expressing his opinion on her friend's email. He wrote:

> What kind of bullshit is this? Let me paraphrase the real meaning. Of course I understand the value she brings. Amidst a period when I get no free sex, she has provided me for sex without charge and I genuinely want to continue to con her into pouring more free sex.

On 28 May 2006, the Husband emailed a pornographic website link to the Wife and said:

> Remember I told you those westerners in Singapore are filthy bastards. And your friends who date these people are nothing but unpaid prostitutes. You should read the link above. It will tell you what these westerners in Singapore do while not dating your friends.

Issues presented on appeal

9 The Husband challenged the District Judge's decision on four primary grounds:

(a) The District Judge should not have accepted the emails as evidence of the Husband having acted intolerably because the Husband was not cross-examined on those emails.

(b) The District Judge erred by accepting the emails as evidence of the Husband having acted intolerably because the Wife continued to visit him and to live with him after those incidents.

(c) The District Judge placed too much weight on the evidence given by Dr Tat.

(d) The District Judge failed to consider and take into account the Husband's depression and its effect on him.

Analysis

Lack of cross-examination over the emails

10 The Husband contended that the District Judge should have given less weight to certain emails adduced by the Wife as evidence of the Husband having acted intolerably because the Husband was not cross-examined on those emails.

11 These emails include:

(a) the emails dealing with the Gmail user ID;

(b) emails enclosing links to pornographic websites;

(c) emails of 10 December 2005;

(d) email on Voice Over Internet Protocol (VOIP) to Public Switched Telephone Network (PSTN).

12 Counsel for the Husband cited the cases of *Re Estate Duty Ordinance, 1929, s 36 The Estate Of TMRM Vengadasalam Chettiar Deceased* [1940] MLJ 155 ("*Vengadasalam*") and *Lim Ah Neu v Tan Tiow Jin* [2007] SGHC 135 as supporting the proposition that the Wife's evidence should be given less weight because the Husband was not cross-examined on them.

13 It seemed to me that counsel for the Husband had misinterpreted the case law regarding the drawing of inferences from a failure to cross-examine. In both the cases cited by counsel, evidence given by a party was given more weight by the court due to the opposing party's failure to cross-examine him on that evidence. The rationale for this was that since counsel had neglected to conduct the cross-examination, "the only inference that the Court [could] properly draw [was] that learned counsel had no hope of being able to destroy any part of such witness' evidence": *Vengadasalam* at 160.

14 While it is true that one party's failure to cross-examine evidence adduced by the other party may sometimes merit an inference that the evidence is correct, that is a wholly different situation from the situation in this case. Here, the only evidence given in respect of the emails mentioned above were adduced by the Wife, and it was for the Husband to cross-examine the Wife if he wished

to challenge this evidence. Indeed, by not challenging or explaining himself in relation to what he had stated in those emails, the court was entitled to take it that he had no explanation for his conduct. The Husband's claim that the Wife's evidence should be give less weight because she did not cross-examine the Husband on them reflected an entirely erroneous view of the law of evidence as well as the rules of court.

Significance of the Wife continuing to stay with the Husband after the emails

15 The Husband claimed that the District Judge should not have accepted the emails as evidence of him having acted intolerably because the Wife continued to visit him and to live with him after those emails.

16 Below is a chronology of the emails as well as the periods of time when the Wife returned to Singapore to stay with the Husband.

Event	Date of Occurence
Email relating to the Gmail user ID	29 August 2005
Emails enclosing links to pornographic websites	1 October 2005
Emails on 10 December 2005	10 December 2005
The Wife returned to live with the Husband in December 2005 to January 2006.	
Email on VOIP to PSTN	14 February 2006
MSN conversations	20 February and 5 March 2006
Email of 22 February 2006	22 February 2006
The Wife returned to live with the Husband in April 2006. In addition, she had sexual relations with him.	

17 The Husband submitted that the District Judge should not have accepted the emails as evidence of him having acted intolerably because the Wife voluntarily returned to live with him even after those emails. It seemed to me that in making this submission, his counsel had completely overlooked s 95(6) of the Women's Charter, which provides that:

> Where the plaintiff alleges that the defendant has behaved in such a way that the plaintiff cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the plaintiff and held by the court to support his allegation, that fact shall be disregarded in determining for the purposes of subsection (3)(*b*) whether the plaintiff cannot reasonably be expected to live with the defendant if the length of that period or of those periods together was 6 months or less.

18 It is quite clear that the object behind this section is to encourage estranged parties to attempt reconciliation. Thus, Party A who is considering divorce because of Party B's intolerable behaviour can go back and try to live with Party B for another six months to see if things improve. If the attempt fails, Party A can still seek divorce on the ground of intolerable behaviour. Party B cannot rely on the fact that the Party A had gone back to live with him even after the incidents of intolerable behaviour as evidence that his behaviour was not intolerable.

19 On the facts of the case, the Wife returned to Singapore twice after the Gmail incident. The duration of each return, either singly or cumulatively, did not exceed six months. Hence, not only was the District judge correct to regard these emails as evidence of the Husband's intolerable behaviour, she was *required to disregard the fact* that the Wife had actually returned to the Husband in January 2006 and April 2006 for the purpose of determining if the Husband had acted in an intolerable manner.

The District Judge's finding that Dr Tat was a credible witness

20 Dr Tat was the Wife's friend and former colleague in Quintiles Inc who now resides in London. Dr Tat had visited the Wife and the Husband, and had stayed with them at their house in Indiana for a few days in May 2002 when he was *en route* from a conference in Atlanta. That was the first time Dr Tat met the Husband.

21 Dr Tat gave evidence that the Husband had ridiculed the Wife in his presence during dinner for not eating beef. When the Wife reiterated that she chose not to do so because of her Buddhist beliefs, the Husband continued to mock her. Although the Husband tried to portray the incident as a mere intellectual discussion, Dr Tat gave evidence that he did not feel that the incident was as innocuous as claimed by the Husband.

22 Dr Tat also gave evidence about a pen incident which had occurred during his visit. He stated that the Husband had thrown a tantrum when he could not find his pen and the Wife and Dr Tat had ended up looking for the pen past midnight while the Husband did not do anything to help in that regard.

23 Finally, Dr Tat said that he thought that the Husband was disrespectful and unloving to the Wife in front of a stranger and that, even though he was a visitor, he could not help but feel uncomfortable at the Husband's behaviour.

24 The District Judge found Dr Tat to be a credible witness and gave substantial weight to his evidence. The Husband argued that the District Judge was wrong in placing too much weight on the evidence given by Dr Tat and he raised three points to support his assertion.

25 First, he claimed that Dr Tat did not intend to continue a friendship with the Husband but had a special interest in helping the Wife because he expected to maintain his friendship with her, that Dr Tat had no incentive to be balanced in his testimony and that the District Judge should not have found him to be a credible witness.

26 Second, the Husband asserted that Dr Tat claimed to be able to remember things and yet could not remember the exact dates of certain events and that this showed that Dr Tat's evidence was "obviously coloured by his biased and jaundiced perception of the Husband caused by his dislike of the person[note: 1]".

27 Third, the Husband claimed that the incident which Dr Tat witnessed and narrated to the court took place much earlier in May 2002 and must be disregarded because the "Court itself had opined

that events from May 2002 to December 2003 cannot be used as reasons for the divorce".

28 The principles that govern the appellate review of a trial judge's assessment of a witness's credibility were laid down in the case of *PP v Wang Ziyi Able* [2008] 2 SLR 61. They can be summarised as such:

(a) An appellate court should be slow to overturn the trial judge's findings of fact, especially where they hinge on the trial judge's assessment of credibility and veracity of witnesses, unless they can be shown to be plainly wrong or against the weight of the evidence.

(b) However, such restraint need not be show if the trial judge's assessment of a witness's credibility is not based on his demeanour, but is instead based on inferences drawn from the internal consistency in the contents of the witness's testimony or the external consistency between the contents of the witness's evidence and the extrinsic evidence. In such a circumstance, the supposed advantage of the trial judge in having observed the witness testifying is not critical because the appellate court would have access to the same material as the trial judge.

29 Here, the District Judge did not explain whether her finding that Dr Tat was a credible witness was based on her observation of Dr Tat's demeanour or the contents of his testimony. Nonetheless, even if I were to assume that the District Judge's conclusion was based on the contents of his testimony rather than on his demeanour as such, I could not find anything in the evidence which would indicate that the District Judge was wrong in finding that Dr Tat was a credible witness.

30 With regards to the Husband's first claim of bias, although Dr Tat did admit during cross-examination that he would do things to help the plaintiff, he also emphasised that he would not lie to help anyone. There was nothing in the evidence to suggest that Dr Tat was biased. The Husband's contention amounted to saying that just because Dr Tat testified in favour of the Wife, the party who called him as a witness, Dr Tat must necessarily be biased.

31 Neither could I agree with the Husband's second contention that Dr Tat was not a credible witness because he could not remember the exact dates of certain events, and that he had in fact made up those events he narrated. These alleged incidents refer to the beef incident and the pen incident that were mentioned by the District Judge at [5.3] of the GD. Taking into consideration the fact that these events took place nearly six years ago in 2002, I was not at all surprised that Dr Tat was not able to remember exactly when they occurred. What was more material was that Dr Tat was able to describe the nature of those incidents. It was within the purview of the District Judge to determine if those events had in fact occurred.

32 Admittedly, the evidence given by Dr Tat did not paint a favourable picture of the Husband, but this alone could not be indicative of prejudice. In addition, many of the questions that were put forth to Dr Tat by the Husband's counsel during cross-examination were of an impressionistic nature. For example, Dr Tat was asked whether the Husband was rude to him, whether he felt that the Husband could not control himself and whether he felt that the Husband did not know what he was doing. The only way that Dr Tat could have answered these questions was by giving his frank, albeit subjective, opinion on how he felt about the Husband. Having asked these questions, to which negative answers were given, the Husband could not now turn around and claim that the answers showed that Dr Tat was prejudiced against him. There was nothing in the transcript to indicate that the District Judge should have given less weight to Dr Tat's evidence because he was prejudiced against the Husband.

33 Finally, I did not think that counsel for the Husband was correct to claim that the District Judge

had decided that events from May 2002 to December 2003 could not be relied upon as grounds for the divorce. Rather, my reading of the District Judge's GD (at [12]) indicated that the District Judge was merely expressing her opinion that certain events that took place in May 2002 to December 2003, even if true, would have been insufficient to justify a finding that the Husband had acted in such a way that the Wife could not reasonably be expected to live with him. This did not mean that the District Judge had ruled that the events mentioned by Dr Tat could not be relied upon, together with other events, to show that the Husband had acted unreasonably.

34 Hence, in my opinion, the District Judge was entitled to find that Dr Tat was a credible witness.

Significance of the Husband's depression

35 The Husband claimed that the District judge erred in law when she failed to consider and take into account, the fact that the Husband was suffering from depression and that this affected his actions towards the Wife. The gist of the Husband's argument was that his behaviour should not be regarded as unreasonable such that the Wife could not be expected to continue living with him because it was caused by his depression. Furthermore, the Husband also contended that he had been acting like this even at the start of the marriage, and there was no reason why the Wife could not put up with him when she was able to do so in the past.

36 The test for determining whether a spouse has behaved in such way that the other spouse cannot reasonably be expected to live with him or her was laid down in the case of *Wong Siew Boey v Lee Boon Fatt* [1994] 2 SLR 115 ("*Wong Siew Boey*"). This test requires the court to ask if the plaintiff, with his or her characteristics and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, can reasonably be expected to live with the defendant.

37 The test as stated is an objective one that requires the court to take into account the subjective qualities of the plaintiff. There appears to be no local case that has directly addressed the issue of whether the reasons for the defendant having acted as he did should be a factor in determining the reasonableness of his behaviour.

38 Both a literal reading of s 95(3)(*b*) of the Women's Charter as well as the test in *Wong Siew Boey* suggest that the focus of the analysis should be on whether the defendant's behaviour was so unreasonable that the union has become impossible, rather than on any consideration of blameworthiness. Although it is common to describe s 95(3)(*b*) as allowing for the dissolution of marriage due to unreasonable behaviour, this is a misnomer. Section 95(3)(*b*) deals only with behaviour that is sufficiently grave for the court to conclude that one party cannot reasonably be expected to live with the other. Hence, the reasons for a defendant's behaviour are secondary to the question of whether it is reasonable to expect a plaintiff to continue living with him or her.

39 Although the focus of s 95(3)(*b*) of the Women's Charter is on whether the plaintiff can reasonably be expected to put up with the defendant's behaviour, it may sometimes be necessary to take into account the reasons for the defendant's behaviour. In *Thurlow v Thurlow* [1976] Fam 32 ("*Thurlow*"), the husband petitioner had petitioned for a divorce from the defendant wife on the grounds that she was acting in a way that it was unreasonable to expect him to continue living with her. It was not disputed that the wife was suffering from epilepsy and a severe physical neurological disorder, and that this was the main reason why she had been acting aggressively towards the husband. One of the issues the court had to address was whether involuntary behaviour caused by a disease of the mind could constitute behaviour that made it unreasonable for the petitioner to continue living with her. The court answered this question in the affirmative and went on further to

state at 44 that:

> … the facts of each case must be considered and a decision made, having regard to all the circumstances, as to whether the particular petitioner can or cannot reasonably be expected to live with the particular respondent. If the behaviour stems from misfortune such as the onset of mental illness or from disease of the body, or from accidental physical injury, the court will take full account of all the obligations of the married state. These will include the normal duty to accept and to share the burdens imposed upon the family as a result of the mental or physical ill-health of one member. It will also consider the capacity of the petitioner to withstand the stresses imposed by the behaviour, the steps taken to cope with it, the length of time during which the petitioner has been called upon to bear it and the actual or potential effect upon his or her health. The court will then be required to make a judgment as to whether the petitioner can fairly be required to live with the respondent. The granting of the decree to the petitioner does not necessarily involve any blameworthiness on the part of the respondent, and, no doubt, in cases of misfortune the judge will make this clear in his judgment.

40 This approach appears to receive the endorsement of Prof Leong Wai Kum, in her book *Elements of Family Law in Singapore* (LexisNexis, 2007), where she writes at p 167 that:

> In principle, where the defendant has behaved in a certain way but is adjudged not to be responsible for the behaviour … . A reasonable man may think that it can be expected of the plaintiff to continue to cohabit with the defendant. The High Court in England in *Thurlow v Thurlow* has, however, decided that exceptionally the lack of moral culpability of the defendant will not hinder the finding that it is unreasonable to expect the plaintiff to continue cohabitation. It may be that the question to ask at this juncture is: how much misfortune is it reasonable to expect the plaintiff to continue to accept? A point will come when a reasonable man will allow the unfortunate plaintiff relief from an equally unfortunate defendant.

41 Interestingly too, in *Williams v Williams* [1964] AC 698 ("*Williams*"), the House of Lords held that it might be unreasonable to expect a plaintiff to continue living with a defendant even when the defendant's actions stemmed from severe mental illness and were wholly involuntary. While *Williams* was a case on cruelty where the plaintiff wife sought to divorce the defendant husband on that ground, it seems to me that there is no reason why the principles enunciated therein to establish cruelty should not equally apply to determining whether one spouse has behaved in such a way that the other cannot reasonably be expected to continue to live with him or her. In *Williams*, there was no doubt that the husband was insane within the meaning of the McNaughten Rules and that he had no awareness of what he was doing. The House of Lords nevertheless held that the question of whether there had been any cruelty had to be determined from the nature of the treatment which the wife was receiving, and not from asking whether the husband had acted in a blameworthy manner. The wife was granted a *decree nisi* on the ground that the treatment she had received was objectively cruel.

42 Lord Pearce explained in *Williams* at 761 why an objective test had to be adopted:

> The argument for holding that a man should not be held to have treated his wife with cruelty if he did not know what he was doing has an attractive simplicity. But so to hold would create a dividing line which in practice is not easy to apply (even with medical help), which will at times make the courts powerless to help when help is most needed; and which will cause more hardship than it alleviates.

43 Lord Reid, in the same case at 723, clarified that the rule must be applied with allowances for the disabilities and temperaments of both spouses:

> In my judgment, decree should be pronounced against such an abnormal person, not because his conduct was aimed at his wife, or because a reasonable man would have realised the position, or because he must be deemed to have foreseen or intended the harm he did, but simply because the facts are such that, after making all allowances for his disabilities and for the temperaments of both parties, it must be held that the character and gravity of his acts were such as to amount to cruelty.

44 This same qualification was reiterated by Lord Evershed, at 731, when he said:

> The mental derangement of the person charged cannot, as I think, be wholly disregarded—certainly where the sufferer is himself or herself aware of the disorder. But the test will be still objective—in all the circumstances of the case should it fairly be said that the spouse charged has treated the other with cruelty? As I have said, since the matter will be judged objectively, prima facie the insanity of the person charged will not disable an affirmative answer being given to the question.

45 Thus, the weight of authority seems to favour the view that the reasons for a defendant's behaviour ought to be taken into account by the court in determining if it is reasonable to expect the plaintiff to continue living with him or her. However, this does not mean that the plaintiff is required to put up with any kind of behaviour on the part of the defendant as long as such behaviour had extraneous causes. Indeed, Rees J in *Thurlow* had expressly stated that the emphasis should be on whether it was reasonable to expect the plaintiff to carry on living with the defendant, rather than whether the defendant had acted in a blameworthy manner. As I see it, the need to take into account the reasons for the defendant's behaviour merely reflects the commonsensical notion that a reasonable man is more likely to think that it is reasonable for a plaintiff to live with a defendant whose behaviour is objectively unreasonable but not voluntary, than if that behaviour was entirely voluntary.

46 I agree with the English decisions that the reason behind a defendant's behaviour is a relevant factor which a judge ought to consider in determining whether the defendant has acted in such a way that the plaintiff cannot reasonably be expected to live with the defendant. But the fact that the defendant cannot be blamed for his behaviour should not be a bar to a finding that is in favour of a plaintiff under s 95(3)(*b*) of the Women's Charter. Moreover, the weight which should be placed on this factor depends on many other circumstances, such as the nature and severity of the defendant's mental illness, the kind of treatment which the plaintiff has suffered, and the strength of the causative link between the defendant's illness and the behaviour which he or she has inflicted on the plaintiff. In particular, the strength of the causative link between the defendant's illness and the kind of behaviour which he has engaged in is likely to be determinative of the weight that should be placed on the factor. Where the causative link is weak or non-existent, the judge is entitled not to place any weight on it at all.

47 The English case of *Katz v Katz* [1972] 1 WLR 955 ("*Katz*") is instructive as to how much weight should be given to a defendant who claims that his actions were caused by mental illness. The facts of that case bear a striking similarity to those of the present case. There, the defendant husband had constantly insulted the plaintiff wife by calling her a slut, and also accusing her of neglecting the children. There was evidence that he was suffering from maniac depression accompanied by paranoid features. At trial, the husband did not deny that he had insulted and belittled the wife throughout the marriage. However, he claimed that it could not have been his behaviour that was unreasonable because he had been acting that way since the start of the marriage. The court stated at 961:

> The husband's case is really a very simple one; Mr. Medawar puts it thus: The wife had long since decided that she would get rid of him in any way she could, not simply because of his behaviour. She wanted a divorce, she said so herself. She could manage him and live with him when he was "cabbage-like" (that is a phrase which has been used to describe his coming home from work, slumping sightlessly in front of the television and staying there speaking to no one) as he was to the end of 1970 but in early 1971 when he was beginning to recover and the wife could not do exactly what she wanted, she began to take action to be rid of him, culminating in this divorce.

48 After reviewing the evidence, the court in *Katz* found that the husband had indeed acted in a manner that made it unreasonable to expect the wife to carry on living with him. Although the judge did not expressly state so in his judgment, it seems clear to me that he did not give much weight to the fact of the defendant's depression. Neither did he give weight to the fact that the husband had always been acting in such a manner since the start of the marriage.

49 In the present case, it is true that the District Judge did not take into account the alleged depression of the Husband in considering if it was reasonable for the Wife to continue living with him. But I would point out that the reason for this was because the Husband "never claimed that his behaviour was due to depression" ([16] of the GD). The Husband had not made any claim that his behaviour was caused by his depression. Although the Husband made numerous references to his depression throughout his AEIC, there was little or no evidence that this depression was responsible for his behaviour towards the plaintiff. In his closing submissions before the District Judge, counsel for the Defendant claimed that the Defendant "being afflicted with depression was a matter beyond his control". This appeared to be a submission made without any real foundation as the Husband did not so allege. Counsel's submission alone could not constitute a defence. Accordingly, I could not agree with counsel's conclusion that this meant that the Defendant's behaviour was involuntary.

Conclusion

50 When one reads the District Judge's GD, it is clear that the learned judge's finding that the Husband had acted unreasonably was based on the disrespectful manner in which he had treated the Wife throughout the marriage. This consisted of emails where he called the Wife, among other things, "a moron", "a lousy lay", "a liar" and "a bimbo". While I accepted from the medical reports tendered by the Husband that his depression caused him to become easily anxious and socially withdrawn, I did not think that there was much causative link between the Husband's depression and the malicious comments he had made towards the Wife over such an extended period of time. The medical reports did not allude to or suggest such a causative link.

51 Given the Husband's inability to establish a causative link between his depression and his various acts of disrespect towards the Wife, the District Judge was well within her discretion in finding that there was no such link between the Husband's depression and his disrespectful behaviour

towards the Wife. Accordingly, the District Judge was entitled to place little or no weight on the Husband's depression when considering if he had acted in such a way that the Wife could no longer reasonably be expected to continue living with him.

52 Finally, I would add that I could not accept the Husband's argument that it was not unreasonable to expect the Wife to continue to live with him because she had been able to do so ever since the start of the marriage. To my mind, that fact spoke more of the Wife's patience rather than any redeeming feature on the Husband's part. While I was unable to pinpoint the straw that finally broke the camel's back, it was obvious that the Wife's patience had been exhausted by the cumulative effect of his taunts and abuses over the years and the realisation that there was hardly any prospects of the Husband mending his ways. Hence, I found that the Husband had acted in a way that made it unreasonable for the Wife to continue living with him.

53 For the foregoing reasons, I dismissed the appeal with costs.

[note: 1] Appellant's Submissions, paragraph 36.