

AKC v AKD
[2014] SGHC 144

Case Number : Divorce Transferred No 1727 of 2012
Decision Date : 16 July 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Bernice Loo Ming Nee and Sarah Anne Khoo (Allen & Gledhill LLP) for the plaintiff/wife; Mohan Singh (Legalstandard LLP) for the defendant/husband.
Parties : AKC — AKD

Family Law – Matrimonial assets – Division

Family Law – Maintenance – Children

16 July 2014

Judgment reserved.

Choo Han Teck J:

1 This case concerns issues of maintenance of children and the division of matrimonial assets. The plaintiff/wife is 42 years old. The defendant/husband is 39 years. Both are Singapore Citizens. They married on 17 August 2002. On 10 April 2012, the wife filed for divorce on the ground that the husband committed adultery and that she finds it intolerable to live with him. On 28 May 2012, the interim judgment for divorce was granted by the District Court. The ancillary matters were transferred to the High Court on 7 October 2013 because the matrimonial assets exceed \$1.5m.

2 The parties have two children: a 9 year old son, and a 6 year old daughter. The children have been living with the wife since she moved out of the matrimonial home in April 2012. The parties have agreed on matters relating to the custody of, care and control of and access to the children. The wife has not asked for her maintenance before me. In any case, for reasons that will be explained later, I did not award her maintenance for herself.

3 I deal first with the issue of maintenance of children. On 14 May 2013, the District Court ordered the husband to pay \$2,400 per month as interim maintenance for the children. Before me, the wife argues that the husband should provide lump sum maintenance of \$300,000, or \$4,500 per month if there is no lump sum is provided. In my view, \$300,000 lump sum maintenance for both children is not an unreasonable amount, bearing in mind that both children are still young. In the event that the husband is unable to pay lump sum maintenance, I order monthly maintenance fixed at \$3,500.

4 I am prepared to increase the maintenance for the children because additional expenses have to be incurred for the son. The son has a learning disorder (Pervasive Development Disorder – Not Otherwise Specified). The wife says she intends to employ a “shadow teacher” who will sit in her son’s class to watch the son’s behaviour and to assess how best to teach the son to follow class work. The wife says that her son has difficulty remaining in his seat during class, and is prone to shouting in class due to the learning disorder. The son’s school recommended that the wife employ a “shadow teacher”. The cost of hiring the “shadow teacher”, says the wife, is \$5,000 per month. She relies on a newspaper article as proof of the costs in hiring the “shadow teacher”.

5 The husband disputes these expenses for three reasons:

- (a) First, he says that the wife has grossly inflated the expense for the employment of a "shadow teacher". In this regard, he relies on an online advertisement which he claims is put by the wife. That advertisement puts the salary of the "shadow teacher" at between \$1,200 and \$2,000 per month.
- (b) Second, he says that there is no need for the "shadow teacher" because the son is doing well in school.
- (c) Third, the husband says that if there was a real need for a "shadow teacher", the wife, who has the means, would have employed one in 2011 and would not have waited till now for one.

I do not accept the husband's submission. There is no basis to find that the wife was the one who had placed that online advertisement:

- (a) First, the wife's full name and personal contact details are not provided. The online advertisement merely asked interested persons to contact a "Mrs Lim" at an email address provided. But there was no evidence before me suggesting that the wife used that email. On the contrary, the wife appeared to be using a different email address; and
- (b) Second, the advertisement appeared to be placed for assisting a "mildly autistic child", and not one with Pervasive Development Disorder.

6 I also reject the husband's contention that there is no real need for the "shadow teacher" for two reasons:

- (a) First, the idea of getting a shadow teacher came from the son's school; and
- (b) Second, even if I am prepared to assume that the son is doing well in school, the fact remains that he still has a learning disorder. I am therefore prepared to accept the wife's submission that the expenses incurred for a "shadow teacher" are necessary.

Finally, I find the husband's contention that the wife would have employed a "shadow teacher" in 2011 if there was a real need for one to be equivocal. The wife herself says that the cost of hiring a "shadow teacher" is significant, and she was not prepared to employ one without the husband's help financially.

7 I am prepared to increase the maintenance for the children, but I would not increase it to \$4,500. Under s 69(4) of the Women's Charter (Cap 353, 2009 Rev Ed), the court, when ordering maintenance for a child, shall have regard to all the circumstances of the case. Section 69(4) of the Women's Charter reads:

Court may order maintenance of wife and children

69.—...

...

(4) The court, when ordering maintenance for a wife or child under this section, shall have regard

to all the circumstances of the case including the following matters:

- (a) the financial needs of the wife or child;
- (b) the income, earning capacity (if any), property and other financial resources of the wife or child;
- (c) any physical or mental disability of the wife or child;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (f) the standard of living enjoyed by the wife or child before the husband or parent, as the case may be, neglected or refused to provide reasonable maintenance for the wife or child;
- (g) in the case of a child, the manner in which he was being, and in which the parties to the marriage expected him to be, educated or trained; and
- (h) the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it.

8 Ms Bernice Loo, counsel for the wife, points out that the husband does not dispute that he is able to afford the \$4,500 maintenance. But the husband's ability to pay the maintenance for children, as is apparent from the wording of s 69(4), is only one of the many other factors that the court has to take into account. The child's needs and the payor's ability to pay are the most important factors in determining what amounts to reasonable maintenance. Prof Leong Wai Kum in *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at p 427 wrote:

The Women's Charter does not specify the goal of the court when assessing the reasonable maintenance of a dependent child. The author suggests that maintenance of a child during marriage should be appreciated as the provision of emergency financial help so that the goal in assessing her maintenance must be to ensure that her basic needs are met to the extent which the husband is able to meet them. The same must be true of maintenance of a child by her parent or a person who had accepted the child as member of her family. The relationships, between the wife and her husband during marriage and between the child and her parent or person who accepted him or her as member of the family are continuing. Intervention by the court into such continuing relationships should be as minimally invasive as possible.

The Women's Charter in the pivotal provision of section 68 itself suggests this when it provides that the parent should be expected to provide accommodation, clothing, food and education as may be reasonable having regard to the child's and the person's means and station in life. In this oblique reference, it may be suggested that the child's needs and the payor's ability to meet them are the most important factors of all the circumstances of the case including those listed in section 69(4).

Such reported cases as there are demonstrate that the amounts ordered tend to be fairly modest. The courts use the law of maintenance to order the defendant to meet the child's modest needs to the extent she can. Although a court may consider all facts and circumstances, the most significant are likely:

1. the financial needs of the child, and

2. the ability of the parent or non-parent who is being sued for maintenance to meet these needs.

9 The opinion above may not be applicable in some situations. The present case is one. In my view, \$4,500 is not a reasonable sum, having regard to all the circumstances of the case. In particular, I find that the fact that the husband earns significantly less than the wife, which is a factor listed in s 69(4)(b) of the Women's Charter, to be of importance here. The husband's annual income is \$110,400 (or \$9,200 monthly). The wife earns close to four times that amount. Her annual income is \$416,925 (or an average of \$34,743.75 monthly). If a monthly maintenance of \$4,500 is ordered, the husband would have to fork out close to close to half of his income for maintenance alone.

10 I note *BNH v BNI* [2013] SGHC 283 ("*BNH*"), an authority the wife relies on. She relies on this particular sentence in [37] of that judgment for the proposition that "even if one parent earns less than the other parent, both parents may still have to bear the children's expenses equally":

Although the husband earns more than the Wife, given my comments that marriage is really an equal partnership between the parties, I am of the view that the cost of maintenance [of the children] should be equally borne by both parties

In *BNH*, the husband earned an average monthly income of \$36,214.55. The wife however, earned less. Her monthly income is \$19,162.42. The court ordered maintenance for both children at S\$9,500, to be split equally between the parties. While the statement the wife relies on above (see above: [16]) appears to be a general proposition that the costs of maintenance of children should be borne equally by both parties, I am of the view that the statement should be read in context. On the facts of *BNH*, the maintenance of children makes up only about a quarter of the wife's income, and not half as the present case. In any case, there should not be a rigid rule to the effect that costs of maintenance of children should be equally borne by both parties. This goes against the express wording of s 69(4) of the Women's Charter which mandates that the entirety of the circumstances have to be taken into account in assessing reasonable maintenance.

11 I now deal with the issue of division of matrimonial assets. I start off with determining the total value of the pool of matrimonial assets and the financial contributions made by each of the parties. Unfortunately, the evidence before me on the value, and respective financial contributions made by the parties appears to be outdated. The figures are as at 2012. But these were the most accurate figures.

12 The two most valuable matrimonial assets are: (1) the matrimonial home; and (2) the net sale proceeds from Property B. I deal with them first. The matrimonial home is worth \$2m as at September 2012. As of October 2012, there is an outstanding loan of \$698,791.16. The matrimonial home was purchased on 17 April 2005 for \$988,000. The wife says that the matrimonial property was financed by: (1) a down-payment of \$197,600; and (2) a housing loan from DBS Bank of \$790,000. The housing loan was repaid by CPF contributions and cash repayment by both parties. The wife asserts that she paid half of the down payment amounting to \$98,800. In this regard, she relies on two entries in her cheque record. Those two entries state that two cheques, ending with cheque numbers 476 and 477 were drawn in favour of the developer of Newton Suites.

13 I do not accept her submission that she paid \$98,800 for the down-payment. In the absence of bank statements, I accord the entries in her cheque record no weight: these entries, in and of

themselves cannot be objective evidence of payment. I am, however, prepared to accept that she made payment of \$49,400. The option to purchase of the matrimonial home provides that a cheque numbered "SC C49477" was drawn in favour of the developers of Newton Suite. This matches one of the entries for \$49,400 on her cheque record. The husband has not provided evidence that he paid for the down payment. The parties do not dispute the CPF contributions made by them. I am therefore prepared to accept them. As of 17 August 2012, the plaintiff's CPF contributions (including interest) amount to a total of \$68,337.95. As of 13 August 2012, the defendant's total CPF contributions (including interest) amount to \$172,541.33.

14 The cash repayment made by the wife and husband is \$10,133 and \$16,082 respectively. This can be gleaned from the bank statements submitted. The wife submits that she paid \$80,000 for renovation works, purchasing of furniture and appliances for the matrimonial home. But she does not produce objective evidence of payment to substantiate her claim. I therefore am not prepared to accept that she paid this \$80,000.

15 In light of the above, the known financial contributions of the wife and husband towards the matrimonial home are \$127,870.95 and \$188,623.33. In percentage terms, the husband contributed 59.598% whereas the wife contributed the remaining 40.402%. The net sale proceeds from the Viva property is \$455,865.01. The wife claims the entirety of the sale proceeds on the basis that she paid for the purchase of this property in its entirety. The wife has produced documentary proof that she paid for the entirety of (1) the down payment amounting to \$199,080; (2) the stamp fees amounting to \$54,824 and (3) the CPF repayment towards the housing loan provided by Standard Chartered Bank amounting to \$20,292.62. The housing loan provided by Standard Chartered Bank was also repaid by deductions from a MortgageOne Account in the parties' joint names. The wife says she made all the financial contributions to the MortgageOne Account but has not furnished any proof.

16 The wife owns other property amounting to \$1,624,218.24. The husband does not dispute this. I am therefore prepared to accept this figure. The husband has not disclosed the value of his other property. I therefore draw an adverse inference against him, by adding 10% to the wife's share in the division of matrimonial assets. I thus find that a division of 60:40, in favour of the wife would be just and equitable. Equality of division may be the ideal but it is not the norm (see: *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [55]). I am not awarding the wife maintenance as she did not ask for it nor is there any need to do so here.

Conclusion

17 I therefore order that the husband pay \$300,000 lump sum maintenance, failing which he is to pay the wife maintenance for the two children fixed at \$3,500 a month. I award the wife 60% of the matrimonial assets, and the husband, the other 40%. I will hear the parties on submissions on costs on a later date and the manner of division if they are unable to agree.

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