

AJE v AJF
[2011] SGHC 115

Case Number : District Court Appeal No. 29 of 2010/V & District Court Appeal No. 30 of 2010/L
Decision Date : 09 May 2011
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Foo Siew Fong and Cheong Yen Lin Adriene (Harry Elias Partnership LLP) for the Wife; Lim Teong Jin George SC and Tan Ai Ling Jinny (Wee, Tay & Lim LLP) for the Husband.
Parties : AJE — AJF

Family Law

9 May 2011

Judgment reserved.

Kan Ting Chiu J:

1 These matters originated from an application by a wife (“the wife”) against her husband (“the husband”) for maintenance for herself and two children. The application was filed on its own, without any divorce proceedings.

2 The husband and wife were married in 1999. It was the second marriage for both of them. The husband had two sons from a previous marriage, and the wife had one son *B*, from a previous marriage. Out of the current marriage, the couple has one son *C*. *B* was 16 years old and *C* was 9 years old at the time of the hearing before me. The husband was 53 years old and the wife 47 years old.

3 The application was heard in the Family Court. At the end of a 4-day hearing, a District Judge (“DJ”) ordered that the husband:

- (a) pay the wife monthly maintenance of \$6,500 for the maintenance of the wife and *B* and *C*; and
- (b) make further payments for household expenses, expenses for *B* and *C*, car expenses, maid expenses, housing loan, fixed loan and property tax payments totalling \$9,655.55 per month. These additional payments were to be made by the husband directly to the receiving parties, or to the wife on proof of payment by the wife.

4 Both parties appealed against the DJ’s orders. The wife appealed against:

- (a) the amount of maintenance awarded by the DJ;
- (b) the DJ’s decision not to order that the maintenance be backdated to June 2008;

(c) the DJ's order that the husband make some payments directly; and

(d) the DJ's decision not to award costs of the application to the wife.

5 The husband, on the other hand, appealed against:

(a) the award of maintenance for *B*; and

(b) the amount of maintenance awarded to the wife.

6 I shall deal with both appeals together and address the issues in this order:

(a) whether the husband is liable to maintain *B*;

(b) whether the maintenance awarded to the wife should be varied;

(c) whether the maintenance payments should be backdated;

(d) whether the order for direct payments should have been made; and

(e) whether the wife should be awarded the costs of the application.

Whether the husband is liable to maintain *B*

7 This issue was not brought up in the court below where the arguments were centred on the quantum of maintenance. However, in an application for maintenance, it is essential that there be a duty to maintain; if there is no duty to maintain, then the application for maintenance must fail.

8 The claim for maintenance for *B* was founded on s 70(1) of the Women's Charter (Cap 353, 2009 Rev Ed) (all references to sections hereinafter shall be references to the Women's Charter unless otherwise stated). Section 70(1), (2) and (3) state:

70. —(1) Where a person has accepted a child who is not his child as a member of his family, it shall be his duty to maintain that child while he remains a child, so far as the father or the mother of the child fails to do so, and the court may make such orders as may be necessary to ensure the welfare of the child.

(2) The duty imposed by subsection (1) shall cease if the child is taken away by his father or mother.

(3) Any sums expended by a person maintaining that child shall be recoverable as a debt from the

father or mother of the child.

9 The husband argued that s 70 has no application to him because:

- (a) the wife has been receiving maintenance of \$350 per month for *B* from his biological father;
- (b) *B* is no longer living with the husband, and the husband has no legal right of access to him; and
- (c) under s 70(3) the husband is entitled to claim from the wife any maintenance he paid for *B*, and “[i]t would therefore make no sense for the Court to order the Husband to pay the Wife maintenance for *B*, only for the Husband to be able to claim the money back from the Wife”
[\[note: 1\]](#)

10 The wife’s response was that:

- (a) the husband was aware that *B*’s biological father was paying maintenance for *B*;
- (b) the husband has acknowledged that he had been paying for *B*’s tuition fees, school fees, pocket money, meals and expenses, and had affirmed that he had been maintaining *B*; and
- (c) the husband’s interpretation of s 70(3) should not be adopted. [\[note: 2\]](#)

It is to be noted that the husband did not dispute that *B* was accepted by him as a member of his family, and did not say that he had been denied access to *B*.

11 On the point that *B* was receiving maintenance from his own father, the husband’s argument relied on the words “so far as the father or mother of the child fails to [maintain the child]” in s 70(1). The phrase could have been made clearer. As it stands, it could be construed as “failing to maintain *at all*”, or “failing to maintain *adequately*”, and the husband has adopted the former construction.

12 It is useful to read the phrase in the proper context. Section 70(1) provides that a person who accepts a child as a member of his family has a duty to maintain the child so far as the parents fail to maintain the child. The words “so far as” must be understood properly. They have the same meaning as “to the extent that”. In other words, the duty only starts upon the parents’ failure to maintain the child adequately. If the child is already adequately maintained by his or her parents, there is no duty on the non-parent to provide further maintenance for the child. However, if the child receives *some* maintenance from the parents, which is insufficient for his requirements, then the non-parent who has accepted the child as a member of his family has the duty to provide the child with such additional maintenance within his means as is reasonable for the child.

13 As it was not contended or established that the \$350 per month from *B*’s father was sufficient for *B*’s upkeep, *B*’s receipt of maintenance from his father did not release the husband from his duty to

provide maintenance for *B*.

14 On the husband's second ground that *B* is no longer living with him, that was because the husband moved out of the matrimonial home and not that *B* was taken away by his father or mother as contemplated in s 70(2). The husband had not said that he no longer accepted *B* as a member of his family, or that *B* does not want to be accepted as a member of the family.

15 Section 70(1) states that when a person "*has accepted* a child ... as a member of his family, it shall be his duty to maintain" the child. It also states that the person shall have a duty to continue to maintain the child "while he remains a child" and not while the child continues to be accepted as a member of the family. Following from that, once the person *has accepted* the child as a member of his family, the duty arises, and only ceases when the child ceases to be a child. There is one express limitation to the scope of the duty. Section 70(2) provides that the duty shall cease if the child is taken away by his father or mother. The person has no right to opt out of the duty – s 70 does not state that after a person has accepted the child as a member of his family, he can change his mind and stop maintaining the child. Since family acceptance is the basis for the duty, it can be argued that the duty ends only when, by circumstances not of the person's making, the quasi-familial relationship between the person and the child ends, *eg*, when the child renounces the relationship, or he is taken away by his parent.

16 On the husband's third point that any maintenance he pays to *B* is recoverable from the wife as a debt under s 70(3), the provision raises difficult questions:

- (a) as the maintenance is paid in the discharge of duty imposed by law on the non-parent, why is it recoverable as a debt from the father or mother of the child?
- (b) why should the person who had voluntarily accepted a child as a member of his family have recourse against the child's parents for expenditure he incurs on the child?
- (c) as the amount of maintenance to be paid is dependent on the means of the non-parent, why should the father or mother repay to the non-parent the amount he paid based on his means and without regard to their means?
- (d) is the liability of the father or mother to repay a joint or several liability?

17 The husband is relying on s 70(3) because it is there, and he may not be able to, and in any event, he is not the best party to answer the questions. It suffices, however, to note that on any reading of s 70 as a whole, s 70(3) cannot cancel s 70(1).

Whether the maintenance for the wife should be varied

18 The wife is seeking an upward revision, and the husband wants a reduction of the maintenance.

19 The husband is a successful businessman. He is the managing director of a reputable construction services company, and has annual income of \$600,000, or \$50,000 a month. The wife is not working. She holds a diploma from an Australian insurance institute and had worked for 10 years

as an insurance agent before her marriage to the husband, and continues to receive \$10,000 a year from a former employer.

20 The wife claimed \$15,000 for maintenance, excluding payments of housing loans, hospital insurance for herself and the children and expenses incurred on her child. [\[note: 3\]](#) The husband, on the other hand, asserted that he had been paying \$10,976.67 for the maintenance of the wife, *B* and *C* and that sum is greater than their needs. [\[note: 4\]](#) (That included maintenance for *B* as the issues under s 70 were not raised at that stage.) In the event, the DJ ordered maintenance for the wife, *B* and *C* totalling to \$16,155.55, including maintenance for *B*.

21 The husband's appeal raised the legal issue under s 70, which I have dealt with. Besides that issue he did not question the DJ's quantification of the maintenance for *B* and *C*.

22 The DJ made his award after he heard the husband and wife, and he was satisfied that "the husband had cut back the wife's access to some of the funds to which she had almost unrestrained access previously." [\[note: 5\]](#)

23 In arriving at the quantum of the award, the DJ took into account:

- (a) the husband's earnings of \$50,000 a month;
- (b) the wife's failure to disclose her financial resources; and
- (c) the fact that the wife suffered from depression which led to her lavish expenditure. [\[note: 6\]](#)

24 Having reviewed the evidence and arguments of both parties, I find that neither party has presented a case for the DJ's quantification of maintenance to be disturbed.

Whether the maintenance payments should be backdated

25 The maintenance order was made on 20 May 2010 to take effect from 1 June 2010. The wife had applied for maintenance to be backdated to June 2008 on the ground that the husband had neglected or refused to provide reasonable maintenance since that time. [\[note: 7\]](#)

26 When a maintenance order is made, the operative date of the order is provided. It is usually one of the following:

- (a) the date from which the defendant had failed to pay proper maintenance;
- (b) the date of the filing of the maintenance application;
- (c) the date of the order;

(d) the month following the date of the order.

27 The determination of the operative date is governed by the facts of each case. If the applicant had to incur debts or sell possessions to make up for the shortfall in maintenance, that would be a strong ground for backdating the maintenance. On the other hand, if the applicant had been able to manage with the pre-order maintenance, back-payment would be a windfall, and the case for backdating would be weaker.

28 In the present case, the DJ explained in [10] of his grounds of decision that he did not backdate his order because:

The court did not find it necessary to backdate the award as there was no credible evidence before it of the assets of the wife. The husband in his evidence had made the point that he believed the wife had considerable assets and could save up to \$40,000 to \$50,000 a year. The court agreed that this had to be given due weight particularly in the absence of any meaningful disclosure by the wife of her own savings and assets.

29 The DJ found that “[t]he court had no evidence ... of the wife’s own financial resources as they were not disclosed by her” [\[note: 8\]](#) and decided not to backdate the maintenance. As the wife’s financial circumstances is a factor to be taken into consideration in deciding whether to backdate maintenance, it cannot be said that the DJ’s decision was wrong or unreasonable.

Whether the order for direct payments should have been made

30 The wife’s complaint was that [\[note: 9\]](#):

To allow the Respondent to continue to yield such control over the sum due to the Wife (as the Lower Court ordered in this case), accords the Husband unnecessary and undesirable “control” over the Wife and children.

31 The DJ’s order for the husband to make direct payments for some items of the maintenance order, eg, conservancy charges for the matrimonial home, car loan instalments, road tax and insurance, housing loans, fixed loans, property tax, and to pay other items upon production of proof of payment by the wife, is not the normal order.

32 The DJ did not make this order arbitrarily. He had noted in the grounds of decision that the wife had withdrawn \$18,500 from a joint bank account with the husband without his knowledge or consent, and that she was disposed to lavish spending when she was depressed. The DJ had doubts over her ability to manage money responsibly after having seen and heard both parties. In any event, those payment terms were not oppressive or unreasonable, and they should be retained.

Whether the wife should be awarded the costs for the application

33 The DJ did not address the question of costs at all in his grounds of decision. The wife had applied for maintenance and obtained payments which she would not have received otherwise. I am unable to see why she should be deprived of her costs entirely. However, taking into account her excessive claim and her failure to disclose her assets, she should not have full costs. I order that she get half the costs of the application.

Costs for the appeals

Costs for the appeal

34 The wife had succeeded partially in the claim for the costs of the application, but had failed in the other parts of her appeal. Each party is to bear its own costs in her appeal. The husband appealed over the quantum of maintenance for the wife and his liability to maintain *B*, and he had failed on both issues. The wife will have the costs of his appeal.

[\[note: 1\]](#) Appellant's (Husband) Case, DCA 30 of 2010, paras 28–30

[\[note: 2\]](#) Respondent's Case DCA30 of 2010, paras 8, 10, 11 and 17

[\[note: 3\]](#) Grounds of Decision, para 5

[\[note: 4\]](#) Grounds of Decision, para 8

[\[note: 5\]](#) Grounds of Decision, para 10

[\[note: 6\]](#) Grounds of Decision, para 10

[\[note: 7\]](#) Record of Appeal Vol.2, p 37

[\[note: 8\]](#) Grounds of Decision, para 10

[\[note: 9\]](#) Appellant's Case in DCA 29 of 2010, para 33

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