

DAU v DAV
[2010] SGHC 214

Case Number : Divorce Petition No 925 of 2006 (Registrar's Appeal from the Subordinate Courts No 17 of 2010)

Decision Date : 30 July 2010

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Daljit Kaur d/o Harbans Singh (N S Kang) for the appellant;
Respondent in person.

Parties : DAU v DAV

Family Law

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 93 of 2010 was heard by the Court of Appeal on 29 November 2011 and orders were made with no written grounds of decision rendered.]

30 July 2010

Lai Siu Chiu J:

Introduction

1 This was a Registrar's Appeal ("the appeal") that arose out of the ancillary orders made in divorce proceedings between the parties. The appellant DAU ("the husband") was appealing against the decision of the district judge who had ordered, *inter alia*, that 40% of the net sale proceeds of the matrimonial flat, after refund of the husband's CPF, be given to the respondent DAV ("the wife"), and that the husband pay a lump sum maintenance of \$42,000 to the wife.

2 After hearing the parties' submissions, I allowed the appeal and made the following orders:

- (a) After payment of the outstanding mortgage loan, refund of the husband's CPF contributions used in the purchase of the flat plus accrued interest and payment of all costs and expenses relating to the same, the wife was to have 15% of the net sale proceeds of the matrimonial flat.
- (b) In the alternative, if the husband opted to retain the flat, he was to pay the wife 15% of the net value, based on the sum of \$210,000.00.
- (c) In lieu of monthly maintenance of \$500.00 per month, which shall cease by August 2010, the husband was to give a lump sum maintenance of \$5,000 to the wife; and
- (d) There be no orders for costs of the appeal.

3 As the wife has filed Notice of Appeal (in Civil Appeal No 93 of 2010) against the orders I made, I shall now set out the reasons for my decision.

Background

4 The husband is 53 years old and the wife is 52 years old. The parties were married on 22 March 1997 at the Singapore Registry of Marriages when they were about 40 and 39 years old respectively. There are no children from the marriage.

5 Divorce proceedings were commenced by the husband on 7 March 2006 on the ground that the marriage had broken down irretrievably due to the wife's unreasonable behaviour. Initially the proceedings were contested. Subsequently, the parties agreed to amend the ground of divorce to state that the marriage had broken down irretrievably in that the parties had lived separately for four years. The decree *nisi* was granted on 23 October 2007.

6 The husband is a construction safety officer and is drawing a monthly salary of \$2,000. The wife is currently unemployed. Prior to the marriage, the wife was working as a property agent and had an income of about \$50,000 a year. The wife claimed that she had stopped work to look after the household. The husband disputed that contending that she continued to work periodically.

The Parties' Assets

7 The husband has the following assets:

- (a) A 4-room Housing Development Board (“HDB”) executive apartment located at Choa Chu Kang Avenue 4 valued at \$450,000 (“the Choa Chu Kang flat”);
- (b) Five insurance policies with a total surrender value of \$81,563.26 (as at October 2009);
- (c) Shares in five different companies with a total estimated value of about \$49,055 (as at October 2009);
- (d) Personal bank account balance of \$1,002.41 and one fixed deposit bank account balance of \$1,205.79 held jointly with his deceased mother (as at October 2009); and
- (e) CPF monies (as at October 2009);
 - (i) Ordinary account: \$75,096.68; and
 - (ii) Special account: \$28,924.07.

8 As for the wife, the following were/are her assets:

- (a) An insurance policy with surrender value of approximately \$2,000 (as at October 2009);
- (b) Personal bank account balance of about \$500 (as at October 2009); and
- (c) CPF monies (as at 26 October 2009);
 - (i) Ordinary account: \$126,172.28; and
 - (ii) Special account: \$23,229.26.

9 The husband has no known creditors. As for the wife, she owes \$21,000 to Great Eastern Life Insurance. It was noted that the wife used to own a HDB flat at Rivervale Street (near Sengkang) with her mother (“Rivervale”). She bought Rivervale in 1996, one year before the marriage. She sold the flat on 27 May 2003.

Ascertaining the Matrimonial Assets

10 Section 112 of the Women’s Charter (Cap 353, 2009 Rev Ed) (“the Women’s Charter”) gives the court the power to order the division between the parties of any

matrimonial asset. Unless the property is a matrimonial asset, it is not subject to the court's power of division. Section 112(10) of the Women's Charter defines "matrimonial asset" as follows:

(10) In this section, "matrimonial asset" means —

- (a) any asset acquired before the marriage by one party or both parties to the marriage —
 - (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or
 - (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
- (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage, but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

11 The Choa Chu Kang flat was purchased by the husband in March 1992, five years before the marriage, in his and his late mother's name. However, the wife moved into the flat immediately after the parties were married and has lived there since. The wife was listed as an occupier of the matrimonial flat on 23 June 2003. The flat was the matrimonial home and constituted a "matrimonial asset" pursuant to s 112(10)(a)(i) of the Women's Charter.

12 Most of the shares owned by the husband were acquired in 1998, viz, during the subsistence of the marriage. They are therefore subject to division pursuant to s 112(10)(b) of the Women's Charter. Similarly, two of the husband's insurance policies (with the total surrender value of about \$19,000 as at October 2009) were acquired during the subsistence of the marriage and were also subject to division. As the husband was working throughout the duration of the marriage, naturally a portion of the CPF account monies would also have been acquired during the marriage and be the subject of division. All in all, the value of the husband's shares, the two insurance policies and his CPF account monies amounted to about \$172,000. Taking a broad-brush approach, I factored in the value of the shares, insurance policies and CPF monies when I determined the apportionment of the matrimonial flat.

Division of the Matrimonial Flat

13 Under s 112(2) of the Women's Charter, in deciding the manner of division of matrimonial assets, the court is to have regard to all the circumstances of the case, including, *inter alia*:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party; and
- (c) the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business.

14 The matrimonial flat was purchased by the husband and is currently in the husband's sole name. The husband was also the sole financial contributor to the outgoings of the matrimonial flat; he was the one who paid for utilities, the conservancy charges and the property tax. It was clear that the wife had not made any direct contribution towards the acquisition or the maintenance of the matrimonial flat, and that she would need to show that she had made indirect financial contribution to the improvement or maintenance of the same, or had made non-financial contribution to the marriage for the court to give her credit.

15 It was apparent to me that the wife had not made any exceptional non-financial contribution towards the marriage. In the first place, the effective duration of the marriage was not as long as it appeared. While the parties may have officially been married for some 13 years, it was evident that the marital relationship had broken down drastically since before or around 28 December 2001 when the wife obtained a Personal Protection Order against the husband. From then on, it was not disputed that the parties had been sleeping in separate bedrooms. A Domestic Exclusion Order was granted on 26 March 2002 under which ordered the husband was not to enter the wife's room and the common toilet. The parties effectively led separate lives after that.

16 Both parties' affidavits revealed that the relationship was strained from December 2001 onwards as there were frequent clashes; the police were called on a few occasions by the parties themselves to intervene in the quarrels. Counsel for the husband also pointed out that the husband had commenced divorce proceedings on 7 March 2006. However, the proceedings were delayed by the wife when she changed her solicitors and sought leave twice to file cross-petitions when the divorce was

initially agreed between parties to proceed as an uncontested based on four years' separation. Looking at the circumstances, I was satisfied that the marriage had broken down as early as 2000. The effective length of marriage was only about five years and not 10 years as calculated by the district judge.

17 During the period where the parties were still living in harmony, I noted that both parties did their share of the housework but there were no children to care for. The wife however suffered a miscarriage earlier on in the marriage and she underwent In Vitro Fertilisation ("IVF"), albeit just at the initial stage, to try to conceive. I also noted that it was undisputed that the wife was the one who paid for the medical expenses of the miscarriage and the first stage of IVF.

18 There was some evidence that the wife had helped to take care of her late mother-in-law when the latter started staying permanently at the matrimonial flat between January 1999 and December 1999 until she passed away. The mother-in-law was suffering from diabetes, mental illness and dementia among other things. The extent of the caretaking was disputed between the parties. The wife claimed that she had brought her mother-in-law to visit the doctor every month and paid for her medical expenses. The husband, in response, claimed that it was his sister who would take his mother to the doctor and his sister or he had paid her medical bills. Also, he had employed a domestic helper to look after his mother for most of the time that she was staying at the matrimonial flat; she stayed in the matrimonial flat for about a year and there was domestic help for five months (from April 1999 to September 1999).

19 Bearing all the factors in mind, I felt that the wife's contribution in taking care of her mother-in-law was not as substantial as she had made it out to be. While it must not have been easy to take care of her sickly mother-in-law, the wife was not the main caretaker; the husband's sister and the domestic helper were the main sources of help.

20 There was also some dispute over who paid for the renovation, furniture and fittings of the matrimonial flat. In particular, the wife claimed that she had made payments for several items totalling \$16,403.30. The husband also claimed that he had paid for some of the items and produced receipts issued in his name. The wife did not/could not produce objective evidence to support her claim that she paid for all the items she had listed. Further, she made this claim only at the ancillary hearing itself and not at the outset as the husband had done in his first affidavit. I was therefore unable to give credence to her bare assertion that she paid for all the items.

21 It was also the wife's case that she had made substantial contribution towards the advancement of the husband's career by running errands for her husband, typing minutes of meetings, *etc.* The husband disputed that.

22 On balance, I did not accept that the wife's contribution, if any, was significant. Contrary to what she claimed, that her contribution had helped the husband to obtain the many certifications and accreditation he needed to advance his career, I noted that all the documents were obtained by the husband either *before* the marriage, or when they were living separately, *viz, after* December 1999.

23 Ultimately, there was no dispute that the husband was the party who had contributed fully to the purchase price of the matrimonial flat, and the wife had not made any financial contributions thereto. As for indirect financial contributions, apart from the disputed sum of \$16,403.30, the wife had not made any financial contribution towards the improvement and/or maintenance of the matrimonial flat. There were also no strong reasons to give substantial weight to the non-financial contributions by the wife, bearing in mind that there were no children of the marriage and that her late mother-in-law only stayed with the parties for about a year with domestic help for the better part of the time. On the same note, I was also satisfied that the husband had made his acquisition of his shares, insurance policies and CPF monies largely out of his own efforts.

24 Taking all the above factors into consideration, I felt that the district judge's order awarding the wife 40% share of the matrimonial flat was excessive. A fairer proportion would be 15% of the net proceeds of the matrimonial flat. This would better reflect the parties' financial contributions to the acquisition of the matrimonial assets with minimal adjustment for the wife's non-financial contribution.

25 If the matrimonial flat was sold, after the refund of \$240,000 to the husband's CPF account, the remaining amount would be \$210,000, of which 15% which I awarded to the wife would be about \$31,500. In the alternative, if the husband opted to retain the matrimonial flat, he was to pay the wife 15% of the net value, based on \$210,000.

Maintenance

26 Under s 114 of the Women's Charter, in determining the amount of any maintenance to be paid by a man to his wife or former wife, the court shall have regard to all the circumstances of the case including, *inter alia*:

- (a) the income, earning capacity, property and other financial resources of the parties at the time of the divorce and in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage; and

(d) the contributions made by each of the parties to the marriage to the welfare of the family.

27 The wife used to work as a property agent before the marriage. In her affidavits, she claimed that she had earned about \$3,500 a month and at the hearing before me, she said she had earned about \$5,000 a month. I appreciated the fact that the income of a property agent is not regular but from the wife's own testimony, it was fair to say that she had an earning capacity of about \$3,500 per month. The wife claimed that she had stopped work after the marriage to look after the household and had not gone back to work since, save for a short stint as a customer service officer earning about \$500 to \$600 per month. While I was sympathetic to the fact that in the early years of the marriage it would have been inconvenient for the wife to work as she was pregnant and then undergoing IVF, I noted however, that by 1998 to 1999, the wife should have been able to work to contribute financially to the family.

28 The wife claimed that with her age, she would not be able to resume being a property agent as she lacked the energy and stamina. However, to be fair to the husband, the husband was also not young and would face similar challenges in his construction line. Moreover, I noted that the wife had been faithfully renewing the certificate of a company dealing in property agents, of which she was the sole-proprietor. This showed that she had always harboured the intention of returning to the business of being a property agent and I believed she had the capability to do so. Indeed, age was no barrier to being a property agent.

29 The wife had demonstrated she was a very capable and resourceful woman when she represented herself in these proceedings before me and in the court below. With some diligence, she should be able to find some gainful employment.

30 I noted that the wife had been less than candid about the sale of Rivervale. She had repeatedly refused to disclose the details relating to the sale and only did so after the husband applied for discovery, which revealed that she had sold the flat on 27 May 2003 and made a profit of \$68,998.45 therefrom, after the refund of her CPF savings of \$118,821.60. The wife sought to explain her failure to disclose by claiming that she only sold the Rivervale flat as a "sacrifice" to allow the husband to retain the matrimonial flat after his mother passed away as HDB would not have allowed the husband to retain the flat in his sole capacity. This turned out to be misconceived as the husband was perfectly entitled to retain the matrimonial flat in his own capacity after his mother's death.

31 The husband's eligibility to retain the flat was never an issue and hence I did not believe that the wife truly made the "sacrifice" in selling Rivervale. This was especially so since at that point in time, the parties were already on poor terms. On the same note, I did not accept the wife's assertion that she had since spent all the proceeds of the sale. There was no reason for the wife to spend \$68,998.45 in a few years. Although the wife mentioned at the hearing before me that she had spent the money on rental for her mother's accommodation, I noted that this was not stated in any of the previous affidavits that she had filed nor did she produce evidence by way of rent receipts or a tenancy agreement to substantiate her claim. Once again, as with the wife's contention that she had paid the sum of \$16,403.30 for renovation, this point seemed to be an afterthought.

32 In any event, even if it was true that she had to utilise the Rivervale sale proceeds to rent another place for her family, I did not think that she would have exhausted the monies entirely over a few years. I felt that she would still have some proceeds left from the sale of Rivervale to cover her living expenses after the divorce.

33 Section 114(2) of the Women's Charter states that in exercising its powers in the assessment of maintenance,

the court shall endeavour so to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.[emphasis added]

34 The husband was not well-off. His take-home salary was about \$1,640 a month, and after deduction of the maintenance for the wife, he was left with about \$1,140 for his monthly expenses. In contrast, it was the wife's own testimony that she spends about \$1,600 a month (which was excessive for someone in her position), and that she needed the husband's maintenance of \$500 in order to survive. It was not fair on the husband to have to pay for her inflated expenses. It would be a different matter if the husband could afford the \$500, but \$500 is about one-third of his take home salary. It was simply not *practicable*. The wife should try harder to gain employment to pay for her own expenses.

35 I also accepted the husband's claim that he could not afford to pay the lump sum of \$42,000 as ordered by the district judge. The husband had very little cash and most of his share investments were made using the monies in his CPF Investment account. Hence, even if the shares are sold, the proceeds would have to be returned to his CPF Investment account. In all probability, the husband would need to sell the matrimonial flat to raise the lump sum award.

36 Bearing in mind that the wife is still fit and able to work, it was not fair to burden the husband with maintaining her for another seven years after the parties had parted ways (as ordered by the district judge). The husband had been paying the wife \$500 per month since 18 October 2007, pursuant to a Maintenance Order No M0909/2007 dated 21 September 2007. As of May 2010, he would have already paid the wife \$16,500. The maintenance should only continue for the period of time needed for the wife to pick up the pieces, find a job and become more independent. In my view, about one year would suffice. I therefore ordered that in lieu of monthly maintenance of \$500 per month (which would cease by August 2010), the husband should pay a lump sum maintenance of \$5,000 to the wife to achieve a clean break between the parties.