

ASM v ASN
[2012] SGHC 23

Case Number : Divorce No 2262 of 2010/K (RAS 117 of 2011/W)
Decision Date : 01 February 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Wong Chai Kin (Wong Chai Kin) for the appellant; N Kanagavijayan (Kana & Co) for the respondent.
Parties : ASM — ASN

Family Law

1 February 2012

Judgment reserved.

Choo Han Teck J:

1 The appellant (hereinafter “the wife”) brought this appeal against six of the twelve orders which the learned district judge below made on 28 June 2011. The six orders under appeal concerned issues ancillary to the divorce between the wife and the respondent (hereinafter “the husband”). They included the division of the matrimonial home, maintenance of the wife as well as the maintenance of the children of the marriage. After hearing counsel’s submissions, I made an order for the wife and the husband to have joint custody with care and control given to the wife and reserved judgment for all other issues under contest in the appeal. I now render my judgment on the said outstanding issues and give the grounds for my order in respect of custody, care and control of the children.

2 The parties were married on 10 June 1992. The marriage lasted about fifteen years before the parties’ relationship with each other broke down in 2007, resulting in separation which lasted a further three years until the parties obtained a consent interim judgment of divorce on 28 September 2010. The wife and husband are presently fifty nine and fifty years old respectively. The husband’s current occupation is an aircraft maintenance engineer for Singapore International Airlines Engineering Company Ltd commanding a gross monthly salary of \$12,511.80 while the wife, who was a full-time housewife in the first three years of the marriage, is presently working as a freelance tour guide (on an ad hoc basis) drawing an average gross pay of approximately \$2,700 per month. They have two children, namely a daughter aged sixteen years old who recently sat for her ‘O’ Level examinations sometime between October and November 2011, and a son aged eleven years old who is dyslexic. The matrimonial home, originally purchased at a price of \$790,000 in 1996, is a private condominium along Yishun Street 81 which at the time of the said learned district judge’s orders had a market value of \$830,000.

3 In the proceedings below, the learned district judge awarded the husband an 80% share in the open market value of the matrimonial home less the outstanding mortgage loan of about \$27,000 (calculated as at 30 October 2010), leaving the wife with the remainder 20% share as full and final settlement of all issues pertaining to division of the matrimonial home, division of other matrimonial assets (valued at around \$64,000) as well as maintenance of the wife. The main reason for the award below was that the wife (by her own admission) had not made any financial contribution towards the matrimonial home while the husband, on the other hand, was recognised by the learned district judge

to have been the one paying for (a) the acquisition, improvement and maintenance of the matrimonial home, (b) household expenses such as the maid's salary up to August 2010 and the foreign worker's levy for the maid, and (c) the children's expenses most of which were related to their education. The learned district judge also formed the view that the wife's expenses as set out in her affidavit of assets and means were exaggerated. As regards the parties' non-financial contributions in the marriage, the learned district judge held that although the wife spent the early years of the marriage as a full-time housewife, the husband "also performed his role as a father on top of being the sole financial contributor to the acquisition of the matrimonial home" by constantly attending to and supervising the children's school work in his free time. In coming to this conclusion, the learned district judge noted that the wife regularly returned home late at about 9pm – sometimes even 11pm – when she was working as a tour guide. Counsel for the wife argued before me that she ought to receive a 50% share in the open market value of the matrimonial home less the outstanding mortgage loan. The wife also asked that she should be entitled to monthly maintenance of \$1,000 from the husband, such maintenance to be backdated to the date of the filing of the writ for divorce, 7 May 2010.

4 I am of the view that a division of the matrimonial home in the proportion of 60:40 in favour of the husband (and in full and final settlement of all financial ancillary matters between the husband and the wife) would be a just and equitable outcome in the present case considering that the marriage was not a short one. I would give more weight to the wife's contribution in a marriage which lasted for a reasonably long period of time (*ie*, fifteen years). Further, I think that the husband's monthly income in the course of the marriage was not completely earned without the assistance of the wife performing her wifely duties in the household over the years. That the law views both parties to a marriage to have cooperated and contributed to the acquisition of property and accumulation of wealth during their marriage is supported by the definition of "matrimonial asset" in s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) which includes "any other asset of any nature acquired during the marriage by one party or both parties to the marriage".

5 I am also unable to see why the wife's non-financial contributions in the marriage should be diluted just because the husband had also made non-financial contributions in the marriage. This is especially so where there has been no clear allegation that the wife in the present case had been derelict in her duties to the family. In my view, treating non-financial contributions as if they are financial contributions ignores the fact that non-financial contributions are intangible and qualitative considerations incapable of ever receiving any mathematical calculation in any case. I therefore find that a division in the proportion of 60:40 in favour of the husband more accurately reflects the credit that should have been given to the wife for her non-financial contributions, and rule accordingly. However, I see no reason to disturb the learned district judge's holding that the division of the matrimonial home was to be in full and final settlement of all financial ancillary matters including the wife's claim for her own maintenance.

6 In the proceedings below, the parties consented to having joint custody of the two children, thus leaving the issue of care and control to be determined. The learned district judge effectively ordered care and control to be given to the husband (with liberal access given to the wife) for the period commencing after their daughter has finished sitting for her 'O' Level examinations. In this appeal, the wife sought care and control of the two children as well as monthly maintenance of \$3,500 for the children. I would allow the appeal in these particular respects. In the interview I held with the children in chambers on 17 November 2011, the children have demonstrated that they share a closer and more intimate relationship with their mother than with their father, and that they would prefer to live with their mother. I was convinced that the wife would continue to provide her children with the care and dedication necessary for their development. I was also convinced that the wife would be able to adequately provide for her son's special needs under her care and control. Lastly, I

was satisfied that the wife's love for her children would see her providing the children with a comfortable life in their new home, be it rented or otherwise. I shall also add that the children stated during the interview some shortcomings in their father. For example, the daughter said that the husband's efforts in picking her up from school daily prior to the hearing before the learned district judge below had ceased shortly after the learned district judge's orders were made on 28 June 2011. The daughter added that as soon as the husband stopped his routine of picking her up from school, he has been travelling alone without the children. The daughter also revealed that the husband does little in helping both her and her brother's with their school work, and is a hot tempered person who abuses her verbally and her younger brother physically. The daughter added that, on the contrary, it was her mother who had engaged them good tutors for their studies. I will hear the question of access for the husband if the parties are unable to agree on reasonable access.

7 As to the issue of child maintenance, I am satisfied that the wife would be able to adequately provide for the children's financial needs with the help of child maintenance from the husband who in the proceedings below had consented to continue maintaining the children. I find that the monthly sum of \$3,500 asked for by the wife is fair, reasonable and in no way exaggerated. I therefore order the husband to pay a monthly sum of \$3,500 for maintenance of both children starting from 1 January 2012.

8 Save for the wife's claim for her own maintenance in the sum of \$1,000 per month, and the wife's claim for a 50:50 division of the matrimonial home less the outstanding mortgage loan, the appeal is allowed in the manner described above with costs. For the avoidance of doubt, the parties are at liberty to agree on the open market value of the matrimonial home, failing which the parties shall jointly obtain a valuation report for the matrimonial home within one month from the date hereof, with the parties bearing the costs of valuation as to 60% by the husband and 40% by the wife. The wife is to immediately transfer her title and interest in the matrimonial home to the husband upon the husband paying to her a sum equivalent to her 40% share in the open market value of the matrimonial home less the outstanding mortgage loan within three months from the date hereof.

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