

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 01

Civil Appeal No 134 of 2019

Between

BZD

... Appellant

And

BZE

... Respondent

Civil Appeal No 135 of 2019

Between

BZD

... Appellant

And

BZE

... Respondent

EX TEMPORE JUDGMENT

[Family law] — [Maintenance] — [Wife] — [Variation]

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BZD

v

BZE

[2020] SGCA 01

Court of Appeal — Civil Appeal Nos 134 and 135 of 2019
Steven Chong JA, Woo Bih Li J and Quentin Loh J
15 January 2020

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Steven Chong JA (delivering the judgment of the court *ex tempore*):

Facts

1 The two present appeals arise from cross-applications by both former husband and wife to vary a maintenance order issued on 30 November 2010 (the “Maintenance Order”) pursuant to s 118 of the Women’s Charter (Cap 353, 2009 Rev Ed) (“Women’s Charter”).

2 The parties were married in 1996. The husband is a British national. He was a banker during the marriage and remains so at present. The wife is a Taiwanese national. She was a homemaker throughout the marriage and has not sought employment since the divorce. The husband filed his writ for divorce on 7 September 2007. Interim judgment was granted on 7 March 2008, which was made final on 10 January 2011. The parties have two children to the marriage and were granted shared care and control of them.

The son is currently 17 years old and is studying at a boarding school in the UK. The daughter is 19 years old and is studying at a university in the UK.

3 On 30 November 2010, Kan Ting Chiu J issued the Maintenance Order. Clause 5 of the order essentially provides that:

- (a) The husband shall pay the wife a sum of \$6,400 per month being her maintenance (\$3,500 for her personal expenses, \$2,500 for rent, and \$400 for maid expenses);
- (b) The husband shall pay the wife a sum of \$600 per month being maintenance contribution for the children for the period they are with her;
- (c) The husband shall pay for the air fare expenses for the two children for two visits to Taiwan per year;
- (d) The husband shall pay the wife holiday expenses in respect of the children at \$1,000 for both children per visit to Taiwan;
- (e) The husband shall pay for all the children's educational and medical expenses;
- (f) All maintenance payment shall commence from 1 March 2011.

4 In SUM 609 of 2019 ("SUM 609"), the husband sought to vary cll 5(a) and (b) of the Maintenance Order, such that first, there shall be no maintenance for the wife; and second, that parties shall be solely responsible for the children's day to day living expenses during their respective periods of

care and control.¹ The basis for the husband's application under s 118 of the Women's Charter was essentially twofold. First, both children have moved to the UK to study and this resulted in a substantial increase in the educational expenses borne by the husband; second, the wife has become very wealthy since the issuance of the Maintenance Order as she now owns two private condominiums. The wife opposed the application on a number of grounds, highlighting *inter alia* that the husband's income has also increased substantially and there is simply no issue of him not being able to afford the increased educational expenses.²

5 In SUM 1722 of 2019 ("SUM 1722"), the wife sought two variations to the Maintenance Order.³ First, that the husband pay the wife an increased sum of \$10,100 per month being her maintenance with effect from 1 August 2019; second, that the husband pay for her international relocation costs from Singapore to the UK as well as her flight tickets for the relocation, and costs of her application. The material change of circumstances relied upon by the wife was the "need for [her] to move to the UK and to reside there in order to stay close to and be with the children who are both going to be there".⁴ In this regard, it was undisputed that the wife would no longer be able to remain in Singapore past 20 February 2020 because her long-term visit pass, which is tagged to the children's terms of study in Singapore, would have expired. In addition, in response to the husband's contentions that she was capable of earning her own upkeep, the wife asserted that she was unable to work due to several medical conditions including depression and anxiety.

¹ Appellant's Core Bundle ("ACB"), Vol 2, p 4–5.

² Defendant's written submissions ("DWS") dated 29 May 2019, para 20.

³ ACB, Vol 2, p 6–7.

⁴ DWS dated 29 May 2019, para 28.

Decision below

6 The trial judge (“the Judge”) allowed the husband’s application in SUM 609 in part. She was satisfied that the increase in educational expenses of the children as a result of them moving to the UK constitutes a material change of circumstances that justifies variation of the Maintenance Order in accordance with s 118 of the Women’s Charter. She also noted that the wife was no longer paying for rental or a maid. The Judge thus held that the Maintenance Order was to be varied in two ways:

- (a) That the rental component of \$2,500 per month and the maid component of \$400 per month shall cease with effect from 1 August 2019; and
- (b) That the husband shall continue to pay to the wife the \$3,500 per month for her personal expenses and the \$600 per month for any period she spends with the children up to 1 February 2020 only.

Notably, the Judge stated that the fact that the husband has had a pay rise since the issuance of the Maintenance Order does not *per se* mean that he should thus increase or continue to pay maintenance to the wife. Furthermore, the Judge also stated that there was no evidence that the wife is unable to support herself and contribute towards her own upkeep after having received maintenance for approximately 11 years.

7 The Judge dismissed the wife’s application in SUM 1722 to increase the maintenance payable on the basis that it was speculative since there was no evidence of the wife having taken any steps to move to the UK. She also found that the wife’s decision to move to the UK was a self-induced change of circumstances that was unreasonable having regard to the circumstances.

8 CA 134 of 2019 is the wife's appeal against the Judge's decision to dismiss the wife's application in SUM 1722 while CA 135 of 2019 is the main appeal by the wife against the Judge's decision to allow the husband's application in SUM 609, effectively terminating maintenance payments to her for her personal expenses as well as the expenses during the time spent with the children. The wife is not appealing against the decision as regards rental and maid expenses.

Decision on the appeals

9 The starting point in determining the appeals is s 118 of the Women's Charter which reads:

Power of court to vary orders for maintenance

118. The court may at any time vary or rescind any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom the order was made, or, in respect of secured maintenance, of the legal personal representatives of the latter, where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

10 The only ground engaged in the present appeals is that of material change in the circumstances. For a variation to be allowed, the *material* change alleged must relate to the circumstances prevailing at the time when the Maintenance Order was made: *ATS v ATT* [2016] SGHC 196 ("*ATS*") at [10]. The court would thus examine whether:

- (a) Such change being alleged is a change from circumstances prevailing during the ancillary matters hearing;
- (b) Such change arose after the ancillary matters hearing; and

- (c) Such change is sufficient enough to satisfy the court that a variation of maintenance is necessitated.

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11 Having considered all the circumstances, we allow the wife's appeal against the removal of the monthly payment for her personal expenses of \$3,500 and \$600 for the time she spends with the children with effect from 1 February 2020. While the increase in educational expenses constitutes a change of the circumstances prevailing during the hearing for the Maintenance Order, we do not consider it to be a *material* change considering *all* the circumstances.

12 There is no doubt there has been a significant increase of \$6,374 per month in the children's educational expenses as a result of the children moving to study in the UK. Equally, it is undisputed that the husband's salary has increased substantially since the Maintenance Order. At the time of the ancillary matters hearing in 2010, the husband's income (inclusive of bonuses) works out to \$65,788 per month approximately. As of 2017, the evidence shows that the husband's income (inclusive of bonuses) is \$90,760 per month.

13 The question then is whether the fact that the husband's income has increased substantially beyond that of the increase in the children's educational expenses, it can still be said that there is a *material* change in the circumstances. In our view, the answer must be in the negative for two reasons.

14 First, in examining the question of material change in circumstances, the inquiry is not simply whether there has been any material change *per se* since the Maintenance Order. The change must be sufficiently *material* such

that it is no longer fair to expect the *status quo* to remain. In this regard, it is relevant to examine whether there has been any change in the husband's earning capacity such that given the increase in his expenses, it is no longer fair to expect the husband to bear the increased expenses without any corresponding adjustment to the maintenance for the wife. Here, there is no dispute that the husband's increase in income significantly outstrips the increase in the children's educational expenses. While the educational expenses borne by the husband have increased by \$6,374 per month, the husband's monthly income has increased by around \$25,000 since the Maintenance Order. The net increase in the husband's monthly income is thus more than \$18,000. No suggestion has been made that the husband is unable to afford the increase in the educational expenses and indeed the evidence militates against it.

15 Second, the increase in the children's educational expenses cannot be said to be unforeseeable. In the first place, the Maintenance Order had stipulated for the husband to pay for all the children's educational expenses. At that point in time, the children were studying in Singapore and the evidence is that the husband's employer had been reimbursing the children's school fees in full. However, now that the son has enrolled in a boarding school in the UK, the employer only subsidises the school fees up to the maximum of \$14,487 per annum; the difference is borne by the husband. As for the daughter's university fees, they are entirely borne by the husband as no subsidy is given by the husband's employer.⁵ There is no suggestion that this reimbursement policy of the husband's employer has changed since the employment contract was signed in July 2001.⁶ The husband must therefore have foreseen that he

⁵ Plaintiff's written submissions dated 29 May 2019, paras 26–27.

⁶ Plaintiff's first affidavit dated 31 January 2019, para 20.

would have to find means of independently financing the increased educational expenses resulting from the children's move. There is also no suggestion that the children moving to the UK to pursue their studies was an unexpected and sudden decision. Accordingly, we do not consider the increased educational expenses to constitute a material change of the circumstances under s 118 of the Women's Charter.

16 We also reject the argument that the wife's wealth has increased materially since the Maintenance Order. Pursuant to an order dated 19 May 2010, 35% of the pool of matrimonial assets, being \$935,742, was paid to the wife as her share of the division of assets. Subsequent to the division of the matrimonial assets, the wife purchased the two following properties, the details of which are summarised as such:⁷

Property	Estimated current value	Mortgage loan outstanding as of 16 March 2019	Monthly mortgage payments including interest
83 Devonshire Road, The Metz, Singapore 239864	\$1,350,000	\$850,196.20	\$3,868.29
6 Martin Place, Singapore 237990	\$1,320,000	\$657,064.56	\$4,271.57
Total	\$2,670,000	\$1,507,260.76	\$8,139.86

The wife lives in the apartment on Devonshire Road and rents out the Martin Place apartment at \$3,800 per month, which she uses to service the mortgage

⁷ Defendant's first affidavit dated 2 April 2019, para 92.

loan on that property. She has approximately \$102,572.40 in cash in her bank accounts.

17 It is clear that the two properties she owns remained heavily mortgaged and that the sum of their net values, should they be liquidated, do not constitute a significant increase from the amount of matrimonial assets she received from the divorce.

18 Finally, we also reject any suggestion that there is a material change in circumstances in respect of the wife's earning capacity or employment. To begin with, we note that the wife was not working at the time when the Maintenance Order was made. In resisting the husband's application for variation, the wife had argued that she is unable to work due to her ailments. In this regard, the Judge found the medical report adduced by the wife to be "thoroughly unhelpful". While, it is apparent that the question of the wife's ability to work was a live issue before the Judge, we find it is unnecessary to deal with it for the following reasons.

19 In the first place, we do not think that the husband raised the issue of the wife's ability to work as a material change of circumstances supporting his application for variation. At best, there is merely a suggestion by the husband that the wife can and should obtain employment when she moves back to Taiwan, where she is guaranteed residency status.

20 In our view, the husband's submission as regards the wife's employment status remains speculative. There is no evidence that the wife has found or is about to find employment in Taiwan. It cannot be overlooked that the wife has not been working since the marriage almost 25 years ago. It is therefore not realistic to expect her to find employment at a level sufficient to

displace the current monthly maintenance which she is receiving from the husband. In short, there is no evidence of any *material* change in circumstances vis-à-vis the wife's employment status to justify any change in the monthly maintenance payable to her.

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21 We turn then to the wife's application to increase the maintenance payable to her because she intends to relocate to the UK as she is concerned for the well-being of the children.

22 We find the wife's appeal to be unmeritorious. We agree with the Judge that the application is entirely speculative. Till today, there is no evidence before this court that the wife has taken any steps, preparatory or otherwise, to move to the UK. Moreover, any such move would be an unreasonable decision bearing in mind *inter alia* the fact that the children are now 17 and 19 years old and are engaged in full-time study on campus. We note that the wife has not visited the children in the UK since they moved over. Having said that, we do not think this has any material bearing on the care and control of the children shared by the parties.

Conclusion

23 Accordingly, we dismiss CA 134 of 2019 and allow CA 135 of 2019. Clauses 5(a) and (b) of the Maintenance Order are hence reinstated to the extent that the husband shall continue to pay the wife the sum of \$3,500 per month specified for her personal expenses and the sum of \$600 per month specified for any period she spends with the children.

24 As for costs, we order each party to bear their own costs here and below. The usual consequential orders will apply.

Steven Chong
Judge of Appeal

Woo Bih Li
Judge

Quentin Loh
Judge

Yap Teong Liang and Tan Hui Qing (T L Yap Law Chambers LLC)
for the appellant in CA 134/2019 and CA 135/2019;
Gill Carrie Kaur and Yap Ying Jie Clement (Eversheds Harry Elias
LLP) for the respondent in CA 134/2019 and CA 135/2019.
