

TBC v TBD
[2015] SGHC 130

Case Number : District Court Appeal No 48 of 2013
Decision Date : 13 May 2015
Tribunal/Court : High Court
Coram : Kan Ting Chiu SJ
Counsel Name(s) : Koh Tien Hua (Harry Elias Partnership LLP) for the Appellant; Ang Sin Teck and Ms Leong Pek Gan (Ching Ching, Pek Gan & Partners) for the Respondent.
Parties : TBC — TBD

Family Law – Legitimacy – Effects of illegitimacy

Family Law – Child – Maintenance of child

13 May 2015

Kan Ting Chiu SJ:

Background

1 This is an appeal from the decision of a District Judge on an application by the Complainant that the Respondent pays maintenance for the maintenance of their son (“the child”) who was born out of wedlock. The District Judge allowed the application, and the Respondent appealed against her ruling that he was liable to maintain the child, as well as the amount of maintenance he was ordered to pay. (To avoid confusion, the parties will be referred to in their capacities before the District Judge). I upheld the District Judge’s decision that the Respondent is under a duty to support the child, but reduced the amount of maintenance that he is to pay, and hereby explain my decision.

2 The two issues, namely liability to maintain and the amount of maintenance the Respondent should pay, will be dealt with separately.

Liability to maintain

3 This is a question of law. The issue is whether the father of an illegitimate child has a duty under s 68 of the Women’s Charter (Cap 353, 2009 Rev Ed) (“the Women’s Charter”) to maintain the child. Section 68 reads:

Duty of parents to maintain children

68. Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody of the custody of any other person, and whether they are legitimate or illegitimate, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

4 The District Judge found that:

The words are clear and unambiguous. There was no need for the Respondent to resort to other statutes of common law to purposively interpret Section 68 of the Women's Charter, when the literal meaning of its words clearly informs us of Parliament's intention. [\[note: 1\]](#)

The Respondent did not share that view, and put up the case that he is not the child's parent because "the parent of an illegitimate child is the mother and not the putative father" [\[note: 2\]](#) and "the position in common law is that a parent of an illegitimate child is the mother as the putative father has no rights or say over the child" [\[note: 3\]](#) he is therefore free of any duty to maintain him (but he contradicted that during the appeal when he submitted that the District Judge's decision should be overturned and a nominal maintenance be awarded instead [\[note: 4\]](#)). Judicial support was produced in the form of Denning J's pronouncement in *Re M, An Infant* [1955] 2 QB 479 that "in my opinion the word 'parent' in an Act of Parliament does not include the father of an illegitimate child unless the context otherwise requires".

5 Reference was also made to the following statutory provisions:

- (a) part 11 of the Second Schedule of the Women's Charter which provides that where consents are required to the marriage of an illegitimate minor, the consent is required from the mother, if she is alive, or from the guardian if she is dead;
- (b) paragraph 15 of the 3rd Schedule of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) which relates to citizenship which states that references to an illegitimate person's parent shall be construed to refer to his mother;
- (c) section 3 of the Adoption of Children Act (Cap 4, 2012 Rev Ed) states that a parent of an illegitimate infant does not include the natural father; and
- (d) section 10 of the Legitimacy Act (Cap 162, 1985 Rev Ed) which provides for an illegitimate child and the mother of an illegitimate child to succeed on the intestacy of the other.

6 The process by which the submission was developed was flawed. The starting point for deciding whether s 68 imposes a duty on a father to support his illegitimate child must be the provision itself. To paraphrase the provision, a parent has a duty to maintain *his or her* children, whether they are *legitimate or illegitimate*. On a clear and fair reading of the provision, that duty is imposed on male and female parents of legitimate and illegitimate children. The provision clearly contemplates a man being regarded as a parent of an illegitimate child. When the Respondent draws support from Denning J for the proposition that a "parent" in a statute does not include the father of an illegitimate child, he should also take heed of the caveat that the proposition stands unless the context otherwise requires.

7 We can obtain confirmation that illegitimate children are intended under our laws to be entitled to maintenance from their fathers by looking into the statutory history of our law relating to the maintenance of illegitimate children. The duty was first embodied in s 45(II) of the Straits Settlements Summary Jurisdiction Ordinance (SS Ord No XIII of 1872) which provides:

If any person neglects or refuses to maintain his illegitimate child unable to maintain itself, it shall be lawful for the Court of Quarter Sessions, or for a Magistrate, on due proof thereof, to order such person to make such monthly allowance not exceeding ten dollars, as to the Court or Magistrate may seem reasonable.

8 When the Women's Charter was enacted in 1961 that duty was preserved in s 62(2):

If any person neglects or refuses to maintain his legitimate or illegitimate child unable to maintain itself, a District Court or Magistrate's Court on due proof thereof may order such person to make a monthly allowance for the maintenance of such child in proportion to his means as to the court seems reasonable.

9 It is clear from a reading of these two provisions that a person who is the father of an illegitimate child has a duty to maintain it. That duty is now laid down in s 68. While "person" has been changed to "parent", the duty remains; the parent of an illegitimate child has the duty to maintain it. The Court of Appeal has affirmed in *AAG v Estate of AAH, deceased* [2010] 1 SLR 769 at [28] that a legal duty to maintain an illegitimate child is imposed on the natural parents by s 68.

10 The Respondent is correct in his submission that the legitimacy or illegitimacy of a child can lead to different legal consequences, as the law takes legitimacy/illegitimacy into account when it deals with the consent for a minor to marry, acquisition of citizenship and intestate inheritance. That is reasonable and unexceptional because these are quite different matters in which different policy considerations come into play. Section 68 must be read in its context and construed on its own, and the Respondent has failed to do that.

The amount of maintenance the Respondent should pay

11 As we have established, section 68 imposes a duty on a man to maintain his illegitimate children. The quantification of the maintenance to be paid is dealt with by s 69(4) which reads:

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.

[emphasis added]

The parties

12 The Complainant was born in 1974, and was about 39 years old at the time of the application. She is a divorcee with a five-year old daughter. She is an active businesswoman. She had incorporated two companies and served as a director in them before she joined the Respondent's company, where she was a sales director. After leaving that company she has started another company where she is currently a sales director. She declared that she is earning a gross salary of \$5,200 and that her take-home pay is \$4,000.

13 The Respondent is 53 years old, married with three sons. He is a director and 50% shareholder of the company which had employed the Complainant from 2009 to 2012. He declared his net income to be \$14,075, and he claimed that his monthly expenses amount to \$19,961.16, which the District Judge viewed with reasonable scepticism.

14 The child was born in 2012, and has been with the Complainant since his birth. The Respondent wants to have as little to do with him as possible. Although he admitted that he had a sexual affair with Complainant, he did not admit his paternity of the child until that was confirmed by a DNA test. Even after that, he refused to maintain the child and said during the hearing before the District Judge that "I have never wanted this child and I didn't even plan for this", and "I have not recognised this child as my son" [\[note: 5\]](#).

The District Judge's decision

15 The District Judge rejected the Respondent's arguments that he was not liable to pay maintenance for his illegitimate son, and went on to determine the quantum of maintenance that the Respondent should pay.

16 On the quantum of maintenance, the Complainant had put the monthly expenses for the son at \$3,271.25, which she wanted the Respondent to pay in full. The District Judge did not accept that figure and reduced it to \$1,440. She also did not order the Respondent to bear the full burden of the maintenance, and ordered him to contribute towards his son's maintenance.

17 She stated in her grounds of decision that:

When determining each party's *ability to pay* for the child's needs, I primarily based it on both parties' *monthly salary*, since they are still working and presumably drawing regular income. [\[note: 6\]](#)

[emphasis added]

She found that the Complainant's take-home income is \$5,200, and she took the Respondent's take-home income to be the \$14,075 that he had declared. Both parties claimed that they had significant outgoings, in the case of the Complainant, maintenance of her parents and her daughter, and for the Respondent, maintenance for his wife and three sons, but the District Judge did not take that into account. She added up their total salaries to \$19,275, and worked out that the Respondent's salary was 73% of the total salaries. On that basis, she worked out that the Respondent is liable to pay \$1,050 (73% of \$1,440) and the Applicant to be responsible for the remaining \$390. In the grounds of decision, the District Judge did not take anything else into consideration, and came to the contributions entirely on the basis of the parties' salaries.

18 In determining the amount of maintenance to be paid, the ability to pay must be a major

consideration. Section 69(4) makes reference to financial capacity. Sub-section (4)(b) refers to the income, earning capacity, property and other financial resources of the recipient of the maintenance and not that of the paying party. Nevertheless, as the financial capacity of the paying party is clearly relevant it can be taken into consideration under the "all the circumstances of the case" limb of the provision. The District Judge was entitled to review the amount that is required for the child's upkeep. Her decision to reduce it from the \$3,271.25 to \$1,440 was accepted by the Complainant and was not taken up by the Respondent in his appeal, and there is no reason to disturb it.

19 There is no reason to use the parties' monthly salaries to determine the contribution they are to make for the child's maintenance. While it is reasonable to take the parties' financial capacity into consideration in determining the ability and amount to pay, financial capacity should not be ascertained by reference to salary or income alone. The constituents are broader, as provided in s 69(4)(b), to include income, earning capacity, property and other financial resources, and should also include liabilities and commitments

My decision

20 Two aspects of the District Judge's decision require a closer look. The first is her taking the parties' salaries as their financial capacity, which I have referred to in the previous paragraph, and the second is her setting the parties contributions to the child's support in accordance to the proportion of their respective salaries. The District Judge did not explain why the relative incomes of the parents are used to determine their contributions to the child's maintenance.

21 The apportionment of contributions between parents has been dealt with in several cases. In *BNH v BNI* [2013] SGHC 283 ("*BNH v BNI*") where the parents were a married couple where the husband earned more than the wife, George Wei JC held at [37]:

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

22 The statement in *BNH v BNI* was brought to the attention of Choo Han Teck J in *AKC v AKD* [2014] 3 SLR 1374 ("*AKC v AKD*") who stated at [10]:

... I am of the view that the statement should be read in context ... 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.

In this case, Choo J noted that the husband earned significantly less than the wife, and ordered him to make a lump sum payment of \$300,000 or \$3,500 monthly maintenance for the two children of the marriage. There were no indications as to the portion these figures bore to the total needs of the children.

23 As s 69(4) which Choo J referred to deals with *quantification* of maintenance rather than *apportionment* of maintenance, it can have limited application to apportionment. A provision on the factors to be taken into account for the purpose of apportionment would have been very helpful, but there is no provision which caters for that.

24 There is only one case that I know of which explained the use comparative financial capacities

of the parents in the apportionment of contributions. In *XB v XC* [2008] SGDC 144 ("*XB v XC*") another District Judge stated:

33 It is true that parents have equal responsibility under the law over the children, in that the law does not place responsibility for financial provision solely on the shoulders of the father. In that regard, the law does not also prescribe that childrearing is to lie within the province of the mother, notwithstanding the dictates of certain cultural norms. Furthermore, parental responsibility should be equal in that either party should be willing, able and ready to play any parenting role unless one is incapacitated for whatever reason. If one party were thus incapacitated, the other parent should be willing, able and ready to take on the responsibility hitherto held by the incapacitated parent.

34 But equality in responsibility does not necessarily suggest equality in financial contribution regardless of each parent's financial means.

35 How different parents in different families apportion their parental responsibilities and organise their finances is entirely up to them. But where the court has to make a

determination on this matter on behalf of the parents who cannot agree, regard must again be had to section 68 WC, which applies equally to the father and the mother. It

clearly states that the financial provision must depend on each parent's financial means. *Where there is clear disparity in the financial means of both parents, it is only right that the courts take that into account. From one who has more, more is naturally expected. Before the courts, parents should be required to contribute in proportion to their means.*

[emphasis added]

25 These cases show a diversity of views on how the cost of maintenance of a child is to be apportioned between its parents:

- (a) the cost should be equally borne by both parents – *BNH v BNI*;
- (b) there should not be a rigid rule that the cost of maintenance should be borne equally by the parents – *AKC v AKD*; and
- (c) the cost should be borne by the parents in the proportion to their means – *XB v XC*.

26 When those cases and propositions are examined, it can be observed that:

- (a) the District Judge in *XB v XC* referred to s 68 (which deals with the rights and duties between a parent and a child, and not between parent and parent), and concluded that is only right that the disparity in financial means between the parents be taken into account, and the parent who has more should pay more;
- (b) George Wei JC's statement in *BNH v BNI* that the cost of maintenance should be borne equally by both parties was made with reference to the parties and facts before him, and it is not a rigid rule that the cost of maintenance should be borne equally by both parents; and
- (c) Choo J did not set out the circumstances which are relevant for determining the apportionment of the maintenance between parents.

27 In the absence of any statutory provisions which regulate the apportionment of the maintenance to be paid by parents to their children, it is left to the courts to lay down the proper approach to be followed. The primary concern of s 68 is that parents discharge their duties to maintain their child or children. Each parent stands in the same parent-child relationship with the child or children and each parent has the duty to maintain the child or children. Against that backdrop, the starting point should be that the parents bear the financial burden equally. One parent's burden should not be decreased just because the other parent is wealthier, and one parent's burden should not be increased just because the other parent is less well off. However, this should not be an inflexible rule; if one parent is unable to contribute equally with the other parent, then that parent should contribute what he or she can, and the other parent should make up the shortfall, so that the child will receive the full measure of maintenance. The norm should not be that parents contribute in proportion to their means because that will place unequal burdens on them for no good reason.

28 In the present case, there was no finding on the ability of the Complainant to contribute an equal share to the child's maintenance. We know that she draws a lower salary in comparison to the Respondent, but there is no evidence that she is not be able to pay \$720 (half of \$1,440) for the child's maintenance when she is drawing a monthly salary of \$5,200. The same applies to the Respondent, who should be able to pay \$720 from his monthly income of \$14,075, so there should be equal contribution. (Although the parties' financial capacities ought to be used to determine on their ability to pay, their salaries are used here because that is the information available on their financial capacities.)

Conclusion

29 The Respondent's appeal on his liability to pay maintenance for the child was dismissed, but the amount of maintenance that he is to pay was reduced to \$720 per month. He was ordered to pay to the Complainant costs fixed at \$5,000 and reasonable disbursements.

[\[note: 1\]](#) Grounds of Decision para 10

[\[note: 2\]](#) Appellant's Case para 12

[\[note: 3\]](#) Appellant's Case para 12 (a)

[\[note: 4\]](#) Appellant's Case para 40

[\[note: 5\]](#) Grounds of Decision para 12

[\[note: 6\]](#) Grounds of Decision para 27

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