IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 68

Civil Appeal No 210 of 2017

Between

(1) BON
(2) BOO
(3) BOP

… *Appellants*

And

BOQ

… *Respondent*

EX TEMPORE JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]

[Family Law] — [Child] — [Maintenance of child]

BON and others
v
BOQ

[2018] SGCA 68

Court of Appeal — Civil Appeal No 210 of 2017
Steven Chong JA, Belinda Ang Saw Ean J, Quentin Loh J
22 October 2018

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

1 This appeal concerns the division of matrimonial assets between the husband and the wife and the wife's responsibility for maintenance for their children's university fees. The husband appeals on the basis that his direct and indirect contributions to the marriage should be higher than that assessed by the Judge. The children appeal the Judge's decision that the wife is not required to contribute to their university expenses in the United States.

2 The husband and wife married in December 1990, when the husband, who was then 27, was studying for his masters degree in the US. The wife, then 34, was a teacher in Singapore. After they married, the wife took no-pay leave to accompany the husband to the US for two years. One of their sons was born during this period. The couple returned to Singapore in January 1993 and the wife returned to work as a schoolteacher. The husband worked in various aerospace companies before starting his own company in 2004. In

early 1994, their second son was born. Around 15 years later, in June 2009, the wife left the matrimonial property. Their sons were 15 and 18. The husband filed divorce proceedings in August 2009 and interim judgment was granted two years later in November 2011. The marriage lasted 21 years.

The Judge's decision

3 At the end of the ancillary hearings, the Judge valued the pool of matrimonial assets at $5,809,359.49. She found that the ratio of the parties' direct contributions was 61.3:38.7 in favour of the husband, and the ratio for their indirect contributions was 60:40 in favour of the wife. Applying an equal weightage to both ratios, she derived a final ratio of 50.65:49.35 and ordered that the pool of matrimonial assets be equally divided between both parties.

4 The children also filed maintenance applications in their own names for the wife to contribute to their university education. The Judge dismissed their application for maintenance on the basis that the wife was not consulted on or informed of their university choices, only finding out about it during the ancillary hearings, and the husband had previously stated that he would maintain his sons. He was also in a stronger financial position to support them.

Division of matrimonial assets

5 The husband does not dispute the value of the matrimonial assets but contends that his direct and indirect contributions ought to be higher.

Direct contributions

6 In terms of his direct financial contributions, the husband contends that various sums provided by his father towards the matrimonial property were incorrectly treated as joint contributions by the husband and wife. He says that

these sums were either from his own money and should be regarded as his own contributions, or were loans or gifts from his father to himself alone and not jointly to the couple.

7 In our judgment, the Judge's finding that these sums should be treated as joint contributions by the couple to the matrimonial property should not be disturbed. First, in relation to the $93,000 used to exercise the option, the husband provided conflicting accounts in his affidavits as to whether the money came from his father or himself. The only documentary evidence of the $93,000 is a letter from the solicitors for the purchase of the property, which suggests that the $93,000 was paid from a numbered bank account. But neither party has been able to adduce any records of this account, even though the husband claims that it is in his name and the wife claims that it is either in their joint names or belonged to the husband's father. Given the lack of clarity in the evidence, the Judge's approach of treating the sum of $93,000 as being contributed in equal shares by both parties was fair and correct.

8 Second, in relation to the husband's father's contribution of $267,158.75 towards the balance purchase price and $96,710 towards the renovation of the matrimonial property, we uphold the Judge's finding that the sum was intended as a gift to the couple and not the husband alone. The husband contends that the sum was a loan or, if it was a gift, was a gift to himself solely. The sum was plainly not a loan. Even though the father described them as loans, it is clear from his affidavit that he did not understand it as imposing a legal obligation on his son to pay him back. The husband himself did not consider his father as a creditor and therefore did not list him as a creditor in his affidavit of assets and means. In the appellants' skeletal arguments, they conceded that "if [the husband] never repaid his father through inability or ungratefulness, the father would not forcibly claim the

money back". Without a fixed repayment date or any intention to create a legal rather than moral obligation to return the money at all, it is inaccurate to describe the sum as a loan as a matter of law.

9 We further find that the husband's father's gift was made to the couple jointly, and not solely to the son. We acknowledge that the father's evidence on affidavit was that the sum was for the benefit of his son alone. On the other hand, the father's intention can only be reliably inferred from his objective acts, and he acted to provide the sum for the couple to purchase the property in their *joint names* without taking any additional steps to protect the sum from the wife, through a trust or otherwise. This indicates an intention for the couple to jointly benefit from the money.

10 The husband also relies on a conversation between his father and the wife before the matrimonial property was bought. The husband's father had asked the wife whether the wife's parents would be willing to contribute to the property but the wife rejected this proposal. According to the husband, this showed that the father never had any intention to contribute to both parties and wanted the wife's parents to contribute. In our view, it is difficult to draw any conclusions about the father's intention from this conversation. It does not follow that just because the wife's parents did not wish to contribute to the purchase that the father must therefore have intended only to benefit his son, the husband. It is equally reasonable to infer that the father had decided to help them with the purchase of the property for the benefit of both husband and wife which is consistent with their joint registration of the property. On balance, therefore, we uphold the Judge's finding that the sums were intended as gifts to the couple on the basis that it was not against the weight of the evidence.

Indirect contributions

11 The husband contends that his indirect contributions to the family should be greater than 40%. This is because he participated actively in domestic life. He helped to take care of his first son while the couple was in the US, and with groceries and household chores when they were back in Singapore. The sons were taken care of by the husband's parents, grandmother and domestic help. The husband also paid the bulk of the household expenses and the wife did not contribute to the parties' joint account despite being in the workforce. Further, the husband contends that the court should consider applying two different ratios for the first and second half of the marriage, since the second half of the marriage is when the wife started working full time and became more distant and inattentive towards the household.

12 In our view, the Judge had already taken the factors raised by the husband into account, as well as other factors such as the length of the marriage. Indirect contributions are difficult to quantity and broad-stroke assessments are inevitable. The Judge acknowledged that the wife had full time domestic help since the mid-1990s but credited the wife for managing the household expenses and other administrative matters. The wife was also able to adduce documentary evidence of her assistance in her husband's company. On that basis, we see no reason to disturb the Judge's assessment of the parties' indirect contributions. We further decline to divide the marriage up into two periods with different ratios, as was done in *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52, because we do not see two significantly different periods. The wife could only be said to be physically absent from the family when she left in 2009, and the husband filed for divorce a month later and was granted interim judgment in 2011. There is therefore no value in dividing up the two periods of the parties' marriage.

13 The husband also contends that the wife misappropriated money from the husband's bank account by transferring it to the joint account, and then dissipating it by purchasing items such as her sports car. The Judge considered this but concluded that the husband had given the wife a free rein to manage the monies in his accounts over the course of the marriage. We agree with the Judge that the husband is therefore not entitled to claim that the wife has to account for all the allegedly misappropriated sums in the early years of the marriage. In the later years, what is of particular note is the $12,000 the wife had transferred from the husband's personal account to the joint account to pay for a new car in 2009. The wife contends that the car was a purchase that the husband wanted to make. Regardless, this sum has been accounted for by making the BMW part of the matrimonial assets. Given this, and the various explanations provided by the wife for the cash withdrawals made in end 2008–2009, which appear to be reasonable, we uphold the Judge's assessment of the ratio of indirect contributions as 60:40 in the wife's favour.

Equal division of matrimonial assets

14 We therefore uphold the ratios assessed by the Judge, and her order for the equal division of the matrimonial assets between the parties.

Children's maintenance

15 For the children's maintenance for their university studies, we find that the wife should be partially responsible for the children's university expenses. Parents have a duty to maintain their children and this includes children above 21 that are receiving instruction at an educational establishment: ss 68 and 69(5)(*c*) of the Woman's Charter (Cap 353, 2009 Rev Ed).

16 The wife contends that she should not pay any maintenance because this is her sons' second tertiary education and there should not be a statutory duty on parents to pay for this. This is because her sons had already attended polytechnic. She relies on *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416 to contend that although maintenance may be necessary for the child's education, "this does not mean… that the child may prolong his education and take degree after degree and insist on being maintained" (at [100]). This emphasises the point that although parents have a duty to maintain their children, the court has a discretion in determining where this duty ends. Whether to grant maintenance for children seeking education depends on the circumstances, such as whether the child was genuinely pursuing a course of studies to prepare themselves for university. The wife contends that her sons, having completed polytechnic, should be able to find a job and support themselves. However, we are not concerned with a case involving the pursuit of multiple university degrees. Both sons have given evidence that they believe that a university degree would improve their prospects and give them a higher earning capacity. Besides, they are both pursuing courses to improve their employability in the work force and not merely some self-improvement courses. In our view, this is a reasonable position and does not display a cavalier attitude towards the pursuit of their further studies.

17 Given that the sons' positions are reasonable, both the husband and wife are therefore *prima facie* responsible for financing their education. The Judge dismissed the children's application on the basis that the husband had previously agreed to pay for the children's university studies, and was in a financially stronger position, but in our judgment, these two reasons cannot excuse the wife's responsibility for the maintenance of her children. Even if their relationship is strained, it is her responsibility as a parent to facilitate the completion of the last leg of their education. Further, we note that the wife,

having worked as a schoolteacher for many years in the marriage and having largely relied on the husband to provide for the family, is likely to have the financial capability to contribute to her children's studies. In any event, her contributions could always be deducted against her share of the matrimonial assets.

18 However, we agree with the Judge that the wife should not be responsible for the sons' university expenses to the extent that this includes an *overseas* university education. The sons do not dispute that the wife was not informed or consulted on their decision to study in the US, as well as the course of study. She has been estranged from her sons since 2009 and only found out about their further studies during the ancillary hearings. Although it may have been their understanding in happier times that the sons would pursue their university studies in the US, given the change in their family circumstances, the husband and the children quite fairly now accept that it would be more reasonable to assess the wife's contribution based on the cost of a local university education for a foreign student.

19 The wife should therefore contribute to the sons' university expenses which we assess based on the figures produced in the wife's affidavits for the costs of a local university which the husband and the children are prepared to accept. For the first son, who is pursuing an accountancy degree, the average cost of such a degree is $47,765. For the second son, who is pursuing a science degree, the average cost of such a degree is $34,530. Assuming an average of $550 a month for personal expenses for a three-year accountancy degree and four-year science degree, the wife's half-share would be $33,783 for the first son and $30,465 for the second son respectively.

Conclusion

20 We therefore dismiss the appeal in relation to the division of matrimonial assets. In view of this, we vary the Judge's orders to the extent that the timeframe of six weeks for the husband to inform the wife if he wishes to take over the wife's interest in the property will be updated to run from the date of this judgment.

21 We allow the appeal in relation to the children's maintenance. The wife is to contribute a lump sum of $64,248 for the children's university expenses and this sum is to be paid by the wife either directly to the children or deducted from her share of the matrimonial assets. Such election is to be made no later than six weeks from the date hereof. If the wife elects for the sum to be deducted from her share of the matrimonial assets, the husband shall account to the children for the same.

22 The Judge's orders in all other respects stand.

23 Each party is to bear their respective costs for the appeals. The usual consequential orders are to apply.

Steven Chong	Belinda Ang Saw Ean	Quentin Loh
Judge of Appeal	Judge	Judge

Wong Hur Yuin and Vera Koh Li Juen (Wee Swee Teow LLP) for the appellants;
Koh Tien Hua, Yoon Min Joo and Sim Shi Hui Phoebe (Eversheds Harry Elias LLP) for the respondent.