

YZ v ZA  
[2008] SGDC 191

**Case Number** : D 3914/2006, DA 6/2008

**Decision Date** : 15 July 2008

**Tribunal/Court** : District Court

**Coram** : Khoo Oon Soo

**Counsel Name(s)** : Yap Teong Liang (TL Yap & Associates) for the petitioner/wife; Respondent/husband in person

**Parties** : YZ — ZA

**[EDITORIAL NOTE: The details of this judgment have been changed to comply with the Children and Young Persons Act and/or the Women's Charter]**

15 July 2008

**District Judge Khoo Oon Soo:**

**Background**

1. The parties were lawfully married on 20<sup>th</sup> September 1980 in Singapore. They have 2 sons, aged 25 and 19. The Petitioner, who is the wife, commenced divorce proceedings against her husband, the Respondent, on the ground that the marriage had irretrievably broken down and that they had lived separate and apart for at least 4 years. The husband counter claimed that the marriage has broken down due to the Wife's desertion for at least 2 years.

**The facts**

2. The husband is 57 years old and currently a legal assistant. Prior to his current occupation, he was the vice president of a bank and he decided to switch careers in 1995 after discussing the issue with the wife. He was unemployed between 1995 and 1999, during which time he completed an NUS Diploma in Law, in order to practise law in Singapore.

3. The wife is 53 years old and is currently the assistant vice president of a bank. It is not disputed that she moved out of the matrimonial home in XXX Avenue with both sons on 20<sup>th</sup> July 2002 and stayed at the maternal grandparents' home thereafter up to the time of proceedings.

**The wife's case**

4. The wife's case is that she left the matrimonial home on 20<sup>th</sup> July 2002 with the intention of ending the matrimonial union. Hence, the statutorily required period of separation without consent had been fulfilled by the time the divorce proceedings were filed.

5. Regarding the husband's counterclaim of desertion, she contended that she had good and just cause to leave due to the husband's unreasonable behavior.

6. The first example of his unreasonable behavior was his expectation that she should support him financially. He had never earned more than \$30, 000 per annum after his career switch in 1995. This was about a quarter of his pay of \$ 120, 000 as vice president of a bank. As a result, the wife had to shoulder the family's financial burden, including their sons' education expenses. Furthermore, she also had to make mortgage payments for his share in the XXX property.

7. The second aspect of the husband's unreasonable behavior was his physical threats and abuse during the 22 years of marriage, culminating in 2 incidents; on 9<sup>th</sup> December 2001 and 3<sup>rd</sup> July 2002.

8. The husband had padlocked the matrimonial home in the first incident and refused to allow the wife or the sons to leave. He also beat her up, and later the sons when they tried to intervene. The husband unlocked the door only after the police had arrived.

9. In the second incident, the husband had switched off the power and water supply, leaving the matrimonial home in darkness. As a result, the wife was unable to bathe. The police was called in again and this incident was the final straw for her. She decided to put an end to the marriage.

### **The husband's case**

10. According to the husband, the marriage has broken down irretrievably due to the wife's desertion for a period of at least 2 years by the wife. She had alienated herself and their sons from him and deliberately concealed their whereabouts when she was in fact, staying at the maternal grandparents' home all along after leaving the matrimonial home. He also contended that he had made numerous attempts to contact them, but to no avail as her family members assisted in concealing her whereabouts from him.

11. The wife did not pay for all of the sons' expenses as the husband had indirectly contributed to them by making the mortgage payments of the XXX property.

12. The wife did not have any just or good cause to move out of the matrimonial property and she deserted him by doing so. The reasons she proffered are not just causes. He contended that the reason for her leaving was to renege on her commitment to support him financially, prior to his career switch. He would not have switched careers without her support. Hence, she had deserted him by leaving and causing him much financial hardship ever since.

13. It is the husband's case that the 2 incidents of alleged physical abuse did not form the basis of the wife's decision to apply for divorce. Otherwise, she would have applied for divorce immediately after leaving the matrimonial home on the ground of unreasonable behavior.

### **The Law**

14. Under section 95 of the Women's Charter, the sole ground for divorce is the irretrievable breakdown of marriage. The wife based her application for divorce on section 95(3)(e) of the Women's Charter, which requires that the parties to the marriage have lived separate and apart for a continuous period of at least 4

years immediately preceding the filing of the writ. The husband counterclaimed that the divorce should be granted based on section 95(3)(c) of the Women's Charter, which requires the husband to prove that the wife had deserted him for a continuous period of at least 2 years immediately preceding the filing of the writ.

### **The difference between section 95(3)(e) and 95(3)(c) of the Women's Charter**

15. According to the *Halsbury's Laws of Singapore Volume 11 page 177*, both desertion under section 95(3)(c) and separation under section 95(3)(e) comprise two components. The first element is the *factum*, requiring parties to be physically living apart. The second element required is the intention on the part of parties to either separate or desert respectively and it is this which distinguishes one from the other.

16. Both grounds of divorce require the spouse to form an intention to end the matrimonial union when he or she leaves (*Lang v Lang [1955] AC 402 at 417*) and this intention need not necessarily be communicated (*Leong Kwek Keong v Lee Ying Kuan [1990] SLR 228*). However, desertion could only be proven if 3 further requirements are met.

17. Firstly, the deserted spouse must not have consented to the separation (*Pardy v Pardy [1939] P 288*). This requirement overlaps with separation as separation itself could be non consensual as well.

18. Secondly, the deserting spouse must be capable of forming the intention to desert. For example, a wife, as a result of mental illness, was under the impression that her husband was attempting to murder her and left thereafter is incapable of forming the necessary intention to desert (*Perry v Perry [1963] 3 All E.R 766*).

19. Thirdly, there must be an absence of a reasonable cause for the separation to constitute desertion.

### **Issue**

20. It is not disputed that:-

(a) Both parties have been living apart as the wife had left the matrimonial home on the 4<sup>th</sup> July 2002 and, therefore, the minimum statutory time period required under both section 95(3)(e) and 95(3)(c) of 4 years and 2 years respectively have been fulfilled;

(b) The wife had the requisite intention of ending the matrimonial union as required under both sections 95(3)(e) and 95(3)(c); and

(c) The wife was capable of forming an intention to desert.

21. Therefore, the remaining issue is whether the wife had any reasonable cause to justify her leaving the husband on 4<sup>th</sup> July 2002. The burden of proof is on the husband to prove that the wife did not have any reasonable cause to leave.

22. If it is found that the wife did have a reasonable cause to leave the husband, the counter claim on desertion will fail and the divorce will be granted on the ground of separation alone in section 95(3)(e) of the Women's Charter.

23. If it is found that she did not have a reasonable cause to leave the husband and had hence had deserted him, an issue arises as to whether the court can grant the divorce on both grounds according to section 95(3)(e) and 95(3)(c) of the Women's Charter.

### **Reasonable or good cause**

**What constitutes a reasonable cause?**

24. Tan Cheng Han propounded 2 tests in his article entitled "Matrimonial Law in Singapore and Malaysia". It was suggested that a spouse will have reasonable cause to leave if the other spouse behaves in such a manner in which the deserting spouse cannot be reasonably expected to live with.

25. He also quoted *Young v Young [1964] P 152 at 158*, where Simon P propounded the test to the above question:

'It must amount to such a grave and weighty matter as renders the continuance of the matrimonial cohabitation virtually impossible'

26. Therefore, the husband must show that the reasons given by wife are not grievous enough such that a reasonable person would leave the marriage as matrimonial cohabitation has become impossible. The 'ordinary wear and tear of conjugal life' will not suffice (*Buchler v Buchler [1947] P 25 at 45-46*). It is a question of fact if the actual circumstances gave the wife a reasonable cause to leave.

27. Counsel for the wife submits that it is irrelevant whether the husband thinks the wife had good reason to leave as the test is objective and not subjective. I agree with the Counsel on this point.

**Reasons submitted by the wife****1. Financial Burden**

28. The wife admitted that one of the reasons that drove her to leave was the husband's expectations of her to shoulder majority of the family's expenses. On the other hand, the husband contends that the only reason she left was his inability to generate income as he used to before the career switch.

29. His inability is evident as his income dropped from \$120, 000 in the early 1990's to \$24, 000 in 2000. He was unemployed from 1995 to 1999. She had to support him financially by applying for a supplementary gold credit card for him and giving him a \$500 monthly allowance after making the career switch. Even if he had spent the allowance on the family car, the fact remains that the car was for his personal use. The wife had also been paying for the sons' expenses.

30. The wife contended that she has been making mortgage payments for the XXX property on behalf of both of the husband and herself. She submitted her CPF form (marked as "ETB-1") which shows a current monthly deduction of \$3300 for the mortgage payments. Although the husband contended that the wife has only been paying \$540 and that he serviced the mortgage payments with his own savings, he did not furnish any evidence to support his argument. The bank statements that he had provided (marked as "D4" and the husband's second affidavit marked as "D2" on page 19) are of both parties' joint accounts and do not further his case. Therefore, I am inclined to believe that the wife has been paying for the mortgage payments of XXX.

31. Although the husband claimed that the wife had made a commitment to support him financially, he was not able to prove that there was such a commitment as he did not provide sufficiently specific details of the conversations during which the alleged promise was made. Even if she did make such a commitment, reneging on it does not invariably constitute desertion if she had a reasonable cause to do so.

32. Here, the material change in circumstances with no prospect of improvement or reverting to the status quo gave the wife a reasonable cause to leave. She was expected to provide for the whole family, including the husband and this drastic change is a reasonable cause to leave. It is not material that her income had risen drastically. The fact remains that the reality was a deviation from what both parties had foreseen when the wife had supported the husband's decision to switch careers.

***Financial strain on the husband after the wife left***

33. The husband claimed that his wife caused him financial hardship by leaving. This argument does not have any relevance and does not support his counter claim in desertion. Here, unlike *William Cheng v Chai Mei Leng* [1999] 2 SLR 487 [William Cheng], the husband was not using financial hardship to prove that it is not just and reasonable for the marriage to be dissolved under section 95(2) and 95(4). In that case, the wife had contended that it is not just and reasonable to dissolve the marriage and one of the reasons she proffered was the financial hardship, she will suffer from if the divorce went through.

34. Moreover, based on facts, the husband had not proven that he plunged into financial difficulty after the wife left. His credibility was lacking as he refused to disclose his income statements on request and only provided IR8A forms in the year of 2001 and 2002 (marked as "D3"). The forms are of little weight as they only indicated the amount he received as an employee. Unlike the tax return forms that were requested, these forms do not reveal his total income for those years. Also, the form relating to the year 2001 does not substantiate his argument as the wife had not left at that time.

35. The husband was also contradictory and evasive when asked if he has a business. Under cross examination, he claimed that the words he used in a letter written by him dated 6<sup>th</sup> July 2002 such as 'business' and 'business associates and clients' actually referred to 'networking with friends'.

36. It is also incredulous that he could not recall either the sum of rental or the mortgage of the properties that he own. This includes the xxx Height, xxx Court and xxx property. It is likely that he derives an additional income from the rental of these properties which were not disclosed in court.

37. Therefore, the husband has not proven, on the balance of probabilities, that he suffered financially after the wife left.

**2. Abuse**

38. The wife claimed that on 9<sup>th</sup> December 2002, the husband had padlocked the house and refused to let the wife or the sons leave. She quarreled with him and ended up being beaten by him. The sons tried to intervene and were beaten up by him too. The police had to be called in to resolve the matter.

39. The wife also claimed that on 3<sup>rd</sup> July 2002, the husband had switched off the power and water supply, leaving the house in darkness and the wife unable to bathe. The police had to be called in to resolve the matter again. The husband claimed that it was the nephews who turned the water tap off but failed to explain why the electricity was cut off and the police were called in.

40. The husband contended that the wife was lying about both incidents and he had in fact, been 'mishandled' during the first incident. However, he could not satisfactorily explain what took place. For instance; he insisted that the first incident was not one of the reasons why the wife left and it was the children's attitude that contributed to her leaving instead. However, he failed to explain how the incident had shaped the children's attitude.

41. The husband insisted that he could not have abused the wife or their sons as her family members have been cordial towards him when he visited the maternal grandparents' home. However, it must be kept in mind that he only visited them in October 2006, at least 4 years after the last incident. Therefore, any anger that they might have felt against him could have dissipated over time.

42. Therefore, I find that that the husband had physically abused the Wife such that any reasonable person could not be expected to cohabit with him.

43. The wife also claimed that she had been subject to physical abuse and threats throughout her marriage. However, I am disinclined to accept this as she had supported the husband for such a long time before she left and she was not able to cite any incidents that took place earlier on in the marriage. Both incidents cited by her took place only a year before she left. Therefore, it is likely that the abuse only started towards the end of the marriage.

### **Concealment**

44. The husband contended that the wife had deserted him and deliberately concealed her whereabouts from him. However, concealment is only one of the many factors and is not of itself, determinative of desertion.

45. On the facts, the wife had not concealed her whereabouts from the husband. This is evident from the letters sent by the husband to the wife's workplace and maternal grandparents' address which she had replied to between the months of July and December in 2002 after leaving the matrimonial home. Therefore, it can be shown that the husband had full knowledge of the Wife's whereabouts.

46. The husband claimed that he made many failed attempts to contact the wife and their sons, including visiting the maternal grandparents' home. However, such attempts were made by him only after being served with the notice of divorce.

### **Constructive desertion**

47. Despite the wife not having pleaded constructive desertion in alternative to her claim of separation, the husband filed a defence based on the wife's alleged constructive desertion in his closing submissions. Therefore, this issue will be dealt with briefly as obiter dicta.

48. Constructive desertion occurs when the spouse leaves due to the behavior of the remaining spouse. Therefore, similar to desertion, it requires factual separation. Here, the remaining spouse is said to have constructively deserted the spouse who left (*factum*) and the intention on the part of the remaining spouse to end the matrimonial union (*Lang v Lang at 417*). The intention will be inferred from his actions as a person is presumed to intend the natural consequences of his acts even if he desires otherwise. This presumption could be rebutted by evidence that negates such intention (*Lang v Lang at 428*).

49. However, it must be kept in mind that conduct (on the remaining spouse's part) which justifies separation under section 95(3)(c) of Women's Charter might not suffice to constitute constructive desertion. This is because constructive desertion itself is a matrimonial offence as opposed to a separation premised on 'no fault' of the parties involved. Therefore, the remaining spouse's conduct has to be sufficiently grave and serious for the Court to find that he/she has constructively deserted the spouse who left.

50. The wife had claimed that her reason for leaving was the husband's unreasonable behavior and in expecting the wife to financially support him and abusing the wife on 2 occasions communicated that to him in a letter dated 11<sup>th</sup> July 2002 (P1 pg13). I have accepted this as a reasonable cause to justify separation. However, the husband's unreasonable behavior does not evince an unequivocal intention to end the marriage. Therefore, constructive desertion was not proven on the facts.

### **Conclusion**

51. The wife had reasonable cause to leave the matrimonial home on 4<sup>th</sup> July 2002 due to the husband's unreasonable expectation of her to shoulder the family's financial burden and his unreasonable behavior when he physically abused or threatened the wife and the children on 9<sup>th</sup> December 2001 and 3<sup>rd</sup> July 2002.

52. In the premises, I granted a dissolution of their marriage on the wife's claim and dismissed the husband's counterclaim.

53. On the facts, the wife had not deserted the husband according to section 95(3)(c) of the Women's Charter. However, an issue on law was raised by the husband; can the court grant a divorce on both the grounds of separation and desertion, if desertion was found?

54. The husband claimed that the court could not grant the divorce on both grounds as the marriage has already broken down due to desertion and could not, in his own words, 'break down' again for a second time as a result of separation of 4 years. However, this inaccurately presupposes that a marriage breaks down automatically when any of the 5 grounds of irretrievable break down of marriage takes place. This is because even if such a break down had taken place, it would be of no legal effect until the court issues a decree nisi of divorce. Accordingly, this argument cannot be sustained.

55. The husband also claimed that if the wife has intended to desert him, the court could not allow the ground of separation for 4 years to stand as a ground for divorce. He made use of an analogy to illustrate his point; that a driver with the intention to knock someone down cannot be said to have done so accidentally. He emphasized the *mens rea* of the deserting spouse and claims that a person found committing a matrimonial offence could no longer use separation for 4 years as a ground of divorce, given that it is premised on 'no fault'. Here, the *Women's Charter* has to be scrutinized closely to determine if it supports the Husband's argument.

56. It is clear from the wording of the *Women's Charter* that one who commits a matrimonial offence under either section 95(3)(a), (b) or (c) is prevented from relying on his or her own offence as a ground of divorce. However, it does not prohibit the offender from applying for divorce on the ground of separation, either with or without consent under section 95(3)(d) and (e).

57. The above distinction between sections 95(3)(a), (b) and (c) and (d) and (e) is expounded in *Halsbury's Laws of Singapore Volume 11 page 212* where it stated that the Women's Charter is straddling between the modern theory (no fault divorce) and the obsolete 'matrimonial offence' theory of divorce. Accordingly, it retained the nature of 'matrimonial offences in three of the five grounds in section 95(3) [(a), (b) and (c)] where the law will not assist the blameworthy party to seek relief in reliance on their own offence while the remaining two grounds of separation places greater emphasis on the modern divorce law theory.

58. Based on the modern theory, once a marriage reaches a stage where it can not be reasonably expected to continue, it is of minimal importance which spouse is responsible for the deterioration of the relationship. Therefore, the finding of desertion does not extinguish the deserting spouse's right to claim for a divorce on the ground of separation.

59. The low threshold required to make out separation is evident in the case of *William Cheng at para 48*, where the court held that improper conduct or ulterior motive is irrelevant once separation has been proven on the facts. Likewise, in this case, any fault found on the wife's part, including matrimonial offences committed under section 95(3)(a)-(c), is inconsequential once separation could be proven.

60. It is also noted here that section 95(3) of the Women's Charter expressly allows a divorce to be granted on more than one of the five grounds if it can be proven by the Petitioner:

*'The court hearing any proceedings for divorce shall not hold the marriage to have broken down irretrievably unless the plaintiff satisfies the court of one or more of the following facts'*

61. Hence, there is no reason why, just because both claims are brought by different parties, the court could not grant a divorce on both the grounds of desertion and separation. Once the parties have been separated for 4 years, the deserted spouse's claim in desertion does not preclude the deserting spouse's claim

in separation of 4 years from arising. There is no justification for the court to reject separation as a ground of divorce if both grounds are found, on the facts of the case.

62. However, it should be noted that in reality, where each party contends that the marriage has broken down due to either separation or desertion, both had in fact admitted that the requisite requirements of separation have already been fulfilled in making their submissions (*Grenfell v Grenfell* [1977] 3 W.L.R 738). Therefore, the court can grant the divorce based on separation alone without the need to determine if there is desertion.

63. This is in line with the underlying philosophy of *Women's Charter* that marriages should be dissolved with minimum bitterness when the union has become an impossible one in (*William Cheng at para 49*). The court would be effectively prolonging the acrimonious union if it has to determine the exact ground for the marriage to be dissolved on.

### **Costs**

64. Costs, fixed at SGD\$12, 000 were awarded to the wife along with disbursements of \$1, 400. In deciding on this quantum, I considered factors such as the following:-

- (a) The issues involved;
- (b) The degree of complexity of each issue;
- (c) The length of the trial;
- (d) The getting up needed.

There were two main factors of special relevance. Firstly, the trial mainly dealt with the counter claim and the husband had failed to satisfy the court that his counter claim had any merit at all. Secondly, the husband had also chosen to contest the wife's divorce application even after admitting that the requirements of separation have been met. *Grenfell's* case was not invoked by either party.

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