

Wong Siew Boey

v

Lee Boon Fatt

[1994] SGHC 35

High Court — Divorce Petition No 2598 of 1993

K S Rajah JC

17 February 1994

Family Law — Grounds for divorce — Wife petitioning for divorce on ground that marriage broken down irretrievably as proven by fact of husband's behaviour that made it unreasonable to expect her to continue cohabitation with him — Approach taken by court — Whether husband behaved unreasonably — Whether wife could reasonably be expected to continue cohabitation

Facts

The petitioner wife petitioned for divorce on the ground that the marriage had broken down irretrievably by reason that the respondent husband behaved in such a way that she could not reasonably be expected to live with him.

Held, granting the petition:

(1) The question whether the respondent behaved in such a way that it was unreasonable to expect the petitioner to live with the respondent was essentially a finding of fact: at [8].

(2) The court must take into account the cumulative effect of behaviour. Any conduct, active or passive, constituted behaviour. The behaviour was not confined to behaviour towards the petitioner. The behaviour should affect the marriage although it may be towards other members of the family or towards outsiders. All behaviour may be taken into account, including omissions, where it had reference to the marriage. The question whether the petitioner could reasonably be expected to live with the respondent was objective and it was for the court to answer it. The court must, however, have regard to the personalities of individuals before it, however far these may be removed from some theoretical norm, and it must assess the impact of the respondent's conduct on the particular petitioner in the light of the whole history of the marriage and their relationship: at [8] and [13].

(3) Although there were 23 paragraphs of particulars cited, most of the complaints of unreasonable behaviour taken in isolation were in the nature of behaviour arising from the ordinary wear and tear of family life in most homes. The court found, however, that there was behaviour by the husband such that it would be unreasonable to expect the wife to continue to cohabit with him on the totality of the evidence by reason of the various incidents, taken cumulatively, adduced. The marriage had broken down irretrievably: at [4], [18] and [25].

Case(s) referred to

Ash v Ash [1972] Fam 135; [1972] 1 All ER 582 (folld)

Katz v Katz [1972] 1 WLR 955; [1972] 3 All ER 219 (folld)

Livingstone-Stallard v Livingstone-Stallard [1974] Fam 47; [1974] 2 All ER 766 (folld)

Ng v Lim [1968–1970] SLR(R) 338; [1965–1968] SLR 339 (refd)

O'Neill v O'Neill [1975] 1 WLR 1118; [1975] 3 All ER 289 (folld)

V Ramakrishnan (V Ramakrishnan & Co) for the petitioner;
Joseph Lopez (David Lim & Partners) for the respondent.

17 February 1994

Judgment reserved.

K S Rajah JC:

1 The petitioner married the respondent at the Registry of Marriages, Singapore, on 18 January 1989. There are two children of the marriage born on 22 May 1990 and on 24 November 1992. The petitioner has petitioned for divorce on the ground that the marriage has broken down irretrievably by reason that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent. The particulars of unreasonable behaviour run to 23 paragraphs. In short, the complaint is that the respondent has not shown or only shown little love and affection, little communication and when they did communicate, it ended up in a quarrel.

2 The respondent's parents and sisters stayed in the matrimonial home and that had caused problems. The petitioner was deprived of all companionship, had to work long hours and attempts to talk to the respondent would be brushed aside because the respondent wanted to watch television programmes. The respondent was an irresponsible husband who could not discuss matters within the family. Her wish to obtain insurance policies was objected to by the respondent and his family with the result that the petitioner had to take up policies for which she paid with her own money. When the petitioner had to undergo an abortion because of chicken pox during her pregnancy, the husband was uncaring. On a holiday in China, there was a quarrel and the respondent failed to understand the petitioner's wish to be with her first child who had been left behind. The petitioner's suggestion to send the first child to a childcare centre was not accepted and the petitioner had to make her own arrangements. After giving birth to the second child when she suffered from back pain, the respondent reluctantly agreed to take care of the child. When the petitioner resigned from her job to take care of the second child, the respondent was angry. He claimed he could not bear the home expenses alone. There were more quarrels. Conjugal relationship was irregular.

3 The respondent always sided with his family whenever there was a quarrel between the petitioner and his family members. When they went out, the respondent would always walk with his mother and sister. This

made the petitioner feel inferior, uncared for and unloved. After the second child was born, the respondent neglected taking the petitioner and the two children to parks, beaches or for social outings. The respondent had not introduced any of his friends to the petitioner during the five years of marriage. They had a joint bank account but it was closed shortly after it was opened and the respondent did not reveal how much he earned. He did not tell the petitioner when he lost a job or changed jobs. Many disagreements led to the respondent complaining that the petitioner was a lover of money. When called upon to help out in housework, he nagged all the time. When the petitioner was going to her mother's house for one of the weekly visits, the respondent told her that no one was stopping her but she did not have to come back to the matrimonial home. The respondent repeatedly maligned the petitioner in the presence of her family. He said she was a crazy woman and money-faced.

4 Although there are 23 paragraphs of particulars cited, most of the complaints of unreasonable behaviour taken in isolation are in the nature of behaviour arising from the ordinary wear and tear of family life in most homes. The respondent's claim is that the marriage has not broken down and that the allegations of unreasonable behaviour did not amount to unreasonable behaviour in law, and his reason is that on 22 July 1993, the petitioner chided and taunted the respondent over the monthly personal allowance of \$300 provided by the respondent to the petitioner and spat at him, complaining that the amount was too meagre and told the respondent she was not hard up of his money. The respondent had walked away and the petitioner packed her belongings and, together with the two children, left the matrimonial home.

13 Jalan Paras

5 The respondent says that on 17 May 1986 his parents purchased 13 Jalan Paras, Singapore 1441, as a family home for themselves and the children of the two sons (including the respondent) and three daughters. Being traditional Chinese, they registered the property under the sons' names as joint tenants but, subsequent to the marriage of the respondent, the parents, on 23 January 1991, caused the petitioner to be included as a joint owner of the property with the respondent as she was the eldest daughter-in-law. The property was subsequently transferred to the petitioner and respondent as joint tenants at the request of the respondent's brother and all charges were paid by the respondent's parents. The respondent's mother and sister gave evidence and expressed a wish to save the marriage. That there was a genuine wish to save the marriage came across very forcefully when they gave evidence, but it is alleged that their concern is not genuine. I find as a fact that the mother and sister were sincere in their attempts to see the parties reconciled.

6 This property is very much the concern of a number of persons and its importance arises from the fact that, after 23 July 1990, when the petitioner left the matrimonial home with the children, the respondent, to support his claim that the marriage has not broken down, has said that he visited the petitioner in her mother's home and tried to persuade her to return to him as he wanted to save the marriage and in the interests of the children. The petitioner's version, however, is that when the respondent went to her mother's house, he was more concerned with getting her to sign papers for the transfer of the property to him than with being reconciled. The petitioner's evidence on this point was supported by the evidence of her mother and sister, who are related to her, and the evidence must have regard to their relationship. At the hearing, the respondent and his family offered to provide a home for the petitioner and her family. She rejected it outright without regard to the fact that a court, when considering the division of assets, will consider the 11 insurance policies, her CPF and the contributions of the parties to the acquisition of matrimonial assets.

7 The particulars given by the petitioner of unreasonable behaviour are numerous but they are, by and large, not wicked, cruel, harsh or violent and the question whether her marriage had broken down had to be considered on the evidence that was adduced.

8 Whether the respondent's behaviour has been such that the petitioner can no longer reasonably be expected to live with him is essentially a finding of fact and the courts have avoided categorising conduct as guilty or blameless in the abstract. The question whether the petitioner finds it intolerable to live with the respondent must be answered subjectively: whether his attitude is reasonable is irrelevant. In dealing with behaviour, the question is whether the petitioner can reasonably be expected to live with the respondent and it is for the court, and not the petitioner, to answer it. The test becomes objective but it is not the same as asking whether a hypothetical reasonable spouse in the petitioner's position would continue to live with the respondent. The court must have regard to the personalities of individuals before it, however far these may be removed from some theoretical norm, and it must assess the impact of the respondent's conduct and the particular petitioner in the light of the whole history of the marriage and their relationship.

9 The test that is generally accepted is that formulated by Dunn J in *Livingstone-Stallard v Livingstone-Stallard* [1974] Fam 47; [1974] 2 All ER 766 at 771 and adopted by a majority of the Court of Appeal in *O'Neill v O'Neill* [1975] 3 All 289 at 295:

Would any right-thinking person come to the conclusion that *this* husband has behaved in such a way that *this* wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities of the parties?
[emphasis added]

10 The test was developed more fully by Bagnall J in *Ash v Ash* [1972] Fam 135; [1972] 1 All ER 582 at 585:

... I have to consider not only the behaviour of the respondent ... but the character, personality, disposition and behaviour of the petitioner. The general question may be expanded thus: can this petitioner, with his or her character and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to live with this respondent?

11 The respondent's behaviour is therefore not looked at in isolation but in relation to all the relevant circumstances. (See PM Bromley, *Family Law* (8th Ed) at ch 6, pp 192–199.)

12 The particulars taken together must amount to more than a complaint that the parties are incompatible, that they no longer have anything in common and cannot communicate or that one of them is bored with the marriage. Behaviour in this context must, as Baker P put it in *Katz v Katz* [1972] 3 All ER 219 at 223, be:

... something more than a mere state of affairs or a state of mind, such as, for example, a repugnance to sexual intercourse, or a feeling that the wife is not reciprocating the husband's love, or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct by one which affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct, and, in my view, it must have some reference to the marriage.

13 I must look at behaviour by taking into account the cumulative effect of behaviour. Any conduct, active or passive, constitutes behaviour. The behaviour is not confined to behaviour towards the respondent: The behaviour may have regard to the marriage although it is towards other members of the family or towards outsiders. Any and all behaviour may be taken into account, including omissions, where it has reference to the marriage.

14 Joseph Jackson, *Rayden's Law and Practice in Divorce and Family Matters* vol 1 (13th Ed, 1979) at ch 7 p 224 para 26, refers to the cumulative effect of behaviour:

... Regard will be had to the cumulative effect of behaviour, for, while conduct may consist of a number of acts each of which is unreasonable in itself, it may well be even more effective if it consists of a long continued series of minor acts no one of which could be regarded as serious if taken in isolation, but which, taken together, are such that the petitioner cannot reasonably be expected to live with the respondent.

15 In *Ng v Lim* [1968–1970] SLR(R) 338, Tan Ah Tah FJ referred to the respondent's conduct and the combination of all the various factors. He said that the petitioner ought not to be called to endure it.

16 I am not prepared to say that there were no acts of unreasonable behaviour on the part of the petitioner. Taking 11 life insurance policies was no doubt influenced by the fact that her relatives were insurance agents without regard to the financial income of the respondent and is an example of unreasonable behaviour, but it was also an action taken having regard to a feeling of insecurity on the part of the petitioner.

17 Taking into account the whole of the circumstances and the characters and personalities of the parties, in particular the hopeless look in the face of the petitioner, the anger in her voice, the decisive way in which she rejected the offer of a new flat and a new home to start life afresh, it was clear that the respondent's plea for reconciliation would fall on deaf ears and a resolve not to be reconciled.

18 The division of assets is a separate question and I must, as a judge, decide whether the respondent's behaviour was sufficiently grave for me to find that it is unreasonable to expect the petitioner to endure and live with the respondent. Having regard to the characters, personalities and behaviour of the parties, I found with great sadness that the petitioner could not reasonably be expected to live with the respondent. The marriage had broken down irretrievably although the respondent's mother, and, in particular, his sister, were anxious to forget the past and have a new beginning.

19 I am reinforced in my finding by the respondent's conduct.

20 On 20 October 1993, the solicitors for the respondent wrote to the petitioner's solicitors stating that their client still cares for the petitioner and the main problem was a lack of communication and understanding, and reference was made to obtaining the services of a professional counsellor with a view to effect conciliation. There was a great deal of correspondence between the solicitors acting for the parties over the ancillary matters such as custody and access.

21 On 5 November 1993, notice was given to the respondent that the petitioner intended to claim sole right over the property and the respondent gave notice to the petitioner that she was to refrain from entering the matrimonial home.

22 On 14 January 1994, the respondent's solicitors wrote to the petitioner's solicitors saying:

Our client now invites your client to withdraw the petition based on unreasonable behaviour under s 88(3)(b) of the Women's Charter (Cap 353). We are of the view that the particulars pleaded in the said petition are totally untrue, frivolous and vexatious and cannot stand in law. Our client instructs us that he will not claim legal costs if your client agrees to withdraw her petition.

As the relationship between our respective clients is beyond repair, our client is agreeable to a divorce based on three (3) years separation with consent under s 88(3)(d) of the Women's Charter (Cap 353). The date of separation shall be 22 July 1993, as stated in para 9(21) of the petition. Our client shall petition for divorce in 1996. This will save your client from incurring any further costs at a later stage.

...

Our client together with his family are prepared to assist in the purchase of a 4-room HDB flat for the children and your client's occupation. Obviously, this is in consideration of your client transferring her right, title and interest in the property in dispute. The said HDB flat shall be purchased in your client's name and be held on trust for the children. Further, the said HDB flat shall not be sold either until the youngest child attains the age of 21 or is gainfully employed, whichever happens earlier or by agreement with our client.

23 Ancillary relief was considered in a manner which showed that the parties accepted the fact that the marriage had broken down. Little incidents may have to be taken together and the law requires the events to be taken cumulatively to see whether there is unreasonable behaviour and a breakdown of the marriage.

24 This is a very sad case. The respondent wants to save the marriage and the willingness and support of the respondent's family was evident. But the petitioner's stand was also clear and the court must not be asked to play the role of trying to put together a marriage that has broken down or try to put a Humpty Dumpty of a marriage together again.

25 I find as a fact that there is unreasonable behaviour on the totality of the evidence by reason of the various incidents, taken cumulatively, adduced before me and the only question is whether the division of matrimonial assets and ancillary relief should be adjourned to chambers and I make the following orders:

- (a) decree *nisi* for the dissolution of the marriage to be made absolute in three months;
- (b) ancillary matters to be adjourned to chambers;
- (c) parties to file affidavits of means and contributions made towards acquisition of matrimonial assets; and
- (d) costs to the petitioner.

Headnoted by Janice Wong Shi Hui.
