

Toh Buan Eileen v Ho Kiang Fah
[2008] SGHC 32

Case Number : D 3914/2006
Decision Date : 29 February 2008
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Leong Why Kong (Ascentsia Law Corporation) for defendant/appellant; Yap Teong Liang (T L Yap & Associates) for plaintiff/respondent
Parties : Toh Buan Eileen — Ho Kiang Fah

Family Law

29 February 2008

Tay Yong Kwang J:

1 The marriage between the parties took place in September 1980. The plaintiff ("the wife") is 52 while the defendant ("the husband") is 58 in age. They have two sons, one born in August 1982 and the other in December 1988.

2 In August 2006, the wife filed for divorce on the ground that the marriage has broken down irretrievably in that the parties have lived apart for at least four years immediately preceding the filing of this writ. In her statement of particulars, she averred that on 4 July 2002, she left the matrimonial home with the two sons with the intention of putting an end to the marriage and that there was no possibility of reconciliation. She also stated that she had not sought professional help with respect to reconciliation. Besides the dissolution of the marriage and division of the matrimonial assets, she is also asking for sole custody, care and control of the two sons to be given to her.

3 In his defence and counterclaim, the husband averred that the marriage has broken down because the wife deserted him since July 2002, a period of more than two years. He also alleged that the wife had concealed the whereabouts of herself and the two sons, thus alienating him from his children. He asked that the wife's claim be dismissed and that the marriage be dissolved on the ground of desertion. He also asked that custody of and/or care and control of the two sons be given to him.

4 The wife denied having deserted the husband or having concealed herself and the two sons from him. When she and the children were packing their belongings in order to move out of the matrimonial home, the husband was present. He knew where and how to contact her and the two sons and in fact did write to her at her residence and also at her place of work. In December 2006, the younger son received a letter from MacPherson Moral Family Service Centre ("FSC") informing him that the husband had approached the FSC to explore the possibility of reuniting his family.

5 The husband maintained his stand that the wife withheld from him information about herself and the two sons. Members of the wife's family also refused to divulge any information on where she and the two sons were residing. He then asked the FSC to contact his younger son. He reiterated that the wife deserted him by leaving the matrimonial home because of financial woes.

6 The contested divorce proceedings have not been adjudicated upon yet. In September 2007,

the husband applied to the Family Court for the following orders:

(a) that pursuant to s 49 of the Women's Charter (Cap 353, 1997 Rev Ed), the court consider the possibility of a reconciliation, or conciliation, between the parties and for that purpose, nominate a conciliation officer or some other suitable person or organization to assist in considering such possible reconciliation or conciliation;

(b) alternatively, that pursuant to s 50(2) of the Women's Charter, the court direct the parties or their children to attend counselling provided by the Ministry of Community Development Youth and Sport ("MCYS") or as the court may direct.

7 In his affidavit in support, the husband extolled the virtues of conciliation and highlighted the disadvantages of resolving matters through litigation, citing extracts from a book on family mediation. He said that he hoped, with the assistance of an expert, to be able to work out his marital problems with the wife and to reach an amicable settlement of the issues. He had attended a mediation session earlier but discovered that it was merely to get the parties to come to terms with the divorce and was not geared towards reconciliation or counselling. He had sought the assistance of the MCYS but was told that he needed a directive from the court. He had also sought help from the FSC which then wrote to his younger son on 26 December 2006 as follows:

We have been approached by your father, Mr Ho Kiang Fah to intercede and make a request on his behalf. Your father is keen to establish contact with you to mend relations and to explore the possibility of reuniting his family. Although it has been a while since he has had any contact with you, he is optimistic that you, his youngest (*sic*) son is approachable and would respond positively to his request.

We sincerely hope that you will seriously consider your father's request. Please call us at 67XXXXXX to discuss how we can take this forward. If you have any questions, please do not hesitate to call us.

We look forward to your early response.

However, his younger son did not respond to the invitation. The husband believed that "there is a reasonable possibility of reconciliation and counselling".

8 In her affidavit, the wife said she objected to the husband's application as she viewed it as another attempt by him to delay the proceedings. She claimed that the husband had told her that he would prolong the matter in order to make her life difficult. Since the husband was also seeking a divorce on the ground of desertion, the attempt at reconciliation was pointless. She has no intention at any rate of reconciling with him and has already informed the mediation judge that reconciliation was not an option for her. The two sons are 25 and almost 19 years old respectively and the husband's relationship with them has no bearing on the divorce proceedings. The parties attended mediation on 26 March 2007 and 5 July 2007. There were joint conference sessions with the two sons on 9 April 2007, 2 May 2007, 7 June 2007 and 1 August 2007. The husband did not turn up for the sessions on 9 April 2007 and 7 June 2007 while she and the two sons did. The joint conference sessions also included the Family Court's counsellor. The husband had the opportunity to speak with the two sons during the joint counselling sessions. The parties have therefore already undergone the conciliation process and to order them to go through it again would be a waste of time and resources. The two sons have told her that since their father was not interested in making time for the session on 9 April 2007, a session requested by the husband, they would not be attending future sessions. The husband only approached the FSC after divorce proceedings were commenced.

9 In response, the husband denied that he was trying to delay the proceedings. He had proposed to the wife that if she desired an uncontested divorce, she could withdraw her claim and allow the divorce to proceed on his ground. He denied having told the wife that he would prolong the matters to make her life difficult, not having spoken directly to her since July 2002. He would still like a conciliation officer to be appointed "to explore fully all possibilities of avoiding or minimising litigation". An acrimonious divorce would have the effect of driving the children further away from the parent who does not have custody. The husband explained that he could not attend the joint conference session on 9 April 2007 as he was overseas on a trip planned several weeks in advance (he was at his ancestral home during the Qing Ming festival meeting relatives). For the session on 7 June 2007, he had a medical appointment at the Changi General Hospital. He did not deny that the parties had undergone mediation. It was after going through mediation that he realized that its purpose and function were different from those of conciliation. The two sons did not attend the session on 2 May 2007. He met the children only once (on 1 August 2007) and that was for mediation and not for counselling.

10 A district judge heard the husband's application and dismissed it with costs fixed at \$600 to be paid by him to the wife. The husband then appealed to the High Court.

11 Before me, counsel for the husband said that he was not proceeding with the first prayer (under s 49 of the Women's Charter) as the wife was not open to reconciliation. However, the husband would like the court to direct the younger son to attend counselling. It was submitted that the husband did not have much contact with the two sons. They did not contact him while they were staying with the wife. On the one occasion they met the husband in court, they were unresponsive and disrespectful. The husband suspected that their attitude towards him was due to the wife's influence on them. Out of the four sessions involving the two sons, only one was for counselling (7 June 2007) and the husband was unable to attend that session because of his medical appointment, the date of which could not be changed. It was further submitted that a conference should never be equated with counselling because the latter was a serious matter and, if not managed appropriately by a trained professional, the parties may end up feeling worse off and may never be able to reconcile with each other. Only a professional would be able "to help to clear the impasse" between the father and his younger son. If the husband was not given a chance to mend fences now with the sons, he would lose the chance forever. His only hope was with the younger son who will turn 21 soon. He did not have that son's mobile phone number and had no access to him.

12 Section 50(2) and (3) of the Women's Charter provide:

(2) A court before which any proceedings under this Act (other than proceedings under section 65 or 66) are being heard may, if it considers that it is in the interests of the parties or their children to do so, at any stage in the proceedings direct or advise either or both of the parties or their children to attend counselling provided by such person as the Minister may approve or as the court may direct.

(3) Failure to comply with any direction or advice referred to in subsection (2) does not constitute a contempt of court.

13 Contrary to the submissions made on behalf of the husband before the district judge, it is not true that if the court makes a direction under s 50(2), "son would have no choice but to attend". This is made clear by s 50(3). Even if the younger son could be compelled to attend counselling, would it be prudent to do so bearing in mind that he was already past 18 years of age at the material time and did not seem too keen to meet his father? Far from bridging the gulf between father and son, the husband may well be precipitating a major earthquake between them if he persists in his relentless

attempts to force another meeting with his younger son. I do not think that it is in the interests of father and son *at this stage and in these circumstances* to make a direction under s 50(2). If, at a later stage of these proceedings, the situation becomes a little less volatile, the court may reconsider the matter since it can do so “at any stage”.

14 If the husband would be patient, there will probably be opportunities in the future for him to make things right with the younger son or, hopefully, with both sons. He is concerned that the younger son will turn 21 soon and “be out of the jurisdiction of the courts” then (see paragraph 3 of the husband’s skeletal submissions). If he thinks that mending relationships means taking coercive steps to compel people to meet, I fear that he may be sadly mistaken. The husband would do well to recall the fable about the wind’s challenge to the sun to see which of them could remove the coat worn by a man walking on earth below. The more ferociously the wind blew, the tighter the man held on to his coat. We know that it was the wise sun exuding its warmth that won the challenge.

15 I dismissed the husband’s appeal with each party to bear its own costs. To help the husband slowly re-establish contact with his younger son and rebuild their broken relationship, I asked counsel for the wife whether there was any objection to disclosing to the husband the mobile phone number of the younger son. Counsel replied that there was no objection and he would do so after finding out the number.

16 The husband has appealed to the Court of Appeal against the dismissal of his appeal.

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