

AXC v AXD
[2012] SGHC 15

Case Number : Divorce (T) Suit No 1222 of 2010/C (RAS 140 of 2011)
Decision Date : 19 January 2012
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Randolph Khoo and Tan Yanying (Drew & Napier LLC) for the plaintiff; Carrie Kaur Gill (Harry Elias Partnership LLP) for the defendant.
Parties : AXC — AXD

Family Law

19 January 2012

Judgment reserved.

Choo Han Teck J:

1 The plaintiff (hereinafter “the wife”) is a Japanese citizen who is forty-eight years old while the defendant (hereinafter “the husband”), forty-nine years of age, is an American citizen and a Singapore Permanent Resident. The husband is a hedge fund manager currently earning \$12,500 a month while the wife has been a housewife for around twenty years since the birth of the parties’ first child in 1989. The parties have four children, namely a daughter [A] who recently turned twenty-two years old and three sons ([B], [C] and [D]) aged eighteen, fourteen and thirteen years old respectively. Both [A] and [B] are currently pursuing their university education in the United States of America. [C] and [D] are currently studying in a private school in Singapore. According to the wife, [C] suffers from Asperger’s Syndrome. The husband, however, claims that [C] has attention-deficit hyperactivity syndrome. Whatever the case is for [C], both alternatives are not consoling from any parent’s point of view.

2 The parties were married on 24 July 1989 in Tokyo. Their marriage had lasted for about twenty-one years when they lived apart in separate households under the same roof in June 2006. They eventually moved to separate apartments about February 2010 onwards. The wife commenced divorce proceedings on 16 March 2010 in the district court and obtained an uncontested interim judgment of divorce against the husband on 21 September 2010. The wife also applied for interim maintenance, joint custody, and care and control of her three sons with consequential access orders on 14 April 2010, to which the district judge made orders on 10 August 2011 for –

- (a) the wife to receive interim monthly maintenance of \$12,200 from the husband,
- (b) the parties to have joint custody of the three sons, and
- (c) the wife to have interim care and control of the three sons with liberal access terms given to the husband.

The parties are now seeking my orders on the final ancillary matters for their divorce. At the same time, the defendant is appealing against the interim orders made by the district judge.

3 There is no matrimonial home in the present case as the parties have been living in a rented apartment in Ardmore Park since they settled down in Singapore in 2007. Since their separation, the husband has been co-habiting with his girlfriend in a rented apartment at The Sail in Marina Bay at a monthly rent of \$8,000 while the wife has been putting up in an apartment at La Crystal along Killiney Road before moving to The Cascadia in Bukit Timah in August 2011 at a monthly rent of \$5,750. The only matrimonial assets liable for division are mainly liquid assets such as moneys deposited in bank accounts held in the parties' individual and joint names, and two motor vehicles. These assets amount to between \$2.5 million to \$2.7 million in value. The evidence is not conclusive either way, and since the difference is not a vast one in the circumstances I will assume the value of the assets to be \$2.6 million for the purposes of division.

4 Before me, the wife is asking for an equal division of the matrimonial assets given her non-financial contributions in the course of the twenty-one year marriage. The husband, however, submitted that the wife should be awarded no more than a 15% share in the matrimonial assets on the grounds, *inter alia*, that (a) the wife's non-financial contributions were insignificant, and (b) the husband, under the district judge's interim orders, has to bear all educational and related expenses of all his children.

5 Having regard to the case authorities cited to me by the wife's counsel showing judicial awards to be between 40% to 60% of the matrimonial assets in favour of homemaker wives in marriages lasting at least 15 years (see, *eg*, *Wong Ser Wan v Ng Cheong Ling* [2006] 1 SLR(R) 416, *Tan Cheng Guan v Tan Hwee Lee* [2011] SGHC 216, *NK v NL* [2007] 3 SLR(R) 743, *Lee Nyuk Lian v Lim Nia Yong* [2007] 2 SLR(R) 905), and taking a broad view in the present case, I think that a just and equitable division of the available matrimonial assets here should be a 60:40 split in favour of the husband. This apportionment also takes into account an "advance" of the wife's share of the matrimonial assets, in the sum of US\$250,000 (\$318,550), obtained from a portion of the sale proceeds of the parties' previous home in the United States of America. As mentioned, the parties' marriage lasted for a relatively long period of twenty-one years. Although the wife has not made any significant financial contribution to the household or any acquisition of assets in the course of the marriage, I accept that she has nevertheless made significant non-financial contributions as a dutiful housewife and primary caregiver to her four children during the course of the long marriage. It should also be added that the family had relocated several times abroad prior to their settling down in Singapore in 2007, and each time the family relocated the wife would attend to the children's daily needs while the husband worked long hours as an investment banker.

6 I should also add that I do not think it to be correct for the wife's rightful share of the matrimonial assets to be reduced simply by taking into account the district judge's order for the husband to bear all existing and future educational and related expenses of all his children. It is premature and speculative to determine the actual amount of money that will be incurred for the children's education in the future. It is also uncertain whether the children would pursue their tertiary education before they reach the age of twenty one. I therefore think that the husband's suggestion that a 15% share of the matrimonial assets should be awarded to the wife on account of his greater potential expenses for such education is unfair. The husband would not have even been able to make this argument if not for the district judge's order for him to bear all existing and future educational and related expenses of all his children. In this regard, I am of the view that the district judge's order would likely do more harm than good to the children as it would likely give the husband reason to quarrel over the children's education in future. Having regard to the foregoing, the district judge's order for the husband to bear all existing and future educational and related expenses of all his

children is set aside with effect from the date of this judgment. The parties are therefore free to make their own arrangements for the funding of the children's education whenever such issues arise.

7 The parties are seeking joint custody of their three sons. As there are no disputes arising from this particular matter, the order is thus granted as prayed. However, the parties disagree regarding the care and control order that ought to be granted in respect of their three sons. In his submissions, the husband claimed that the wife has not been discharging her parental duties properly and effectively. For instance, the husband pointed out that under the wife's care, [D] had been performing dismally in his studies to the point of being placed on academic probation in school. The husband claimed that it was not until he intervened to involve [D]'s teachers that [D]'s schoolwork began to improve. Likewise, the husband also claimed that [C] who initially faced difficulties in school during the initial breakdown of the marriage has made improvements under his care and is currently scoring mostly 'A's in his subjects notwithstanding [C]'s disability (see above at [\[1\]](#)). The wife, on the other hand, argued that it would not be in the children's best interests for them to be taken care of by the husband. The wife claimed that the boys had indicated to her that the presence of the husband's girlfriend at The Sail made them feel uncomfortable. The wife also alleged that the husband would not always be present to see to the everyday needs of the children given that he travels frequently for business and holidays with his girlfriend. The wife further alleged the husband's inability to "properly control and address [D]'s teenage issues" in her effort to show that the husband is not well placed to have care and control of the children.

8 I interviewed [C] and [D] in chambers on 17 October 2011. [C] expressed his preference to live with his father mainly for the reason that he feels "disorganised" and a lack of freedom living with his mother. [D], on the other hand, prefers to live with the mother because he feels that she looks after them well. He also prefers to have [C] with him. I would uphold the lower court's orders for the following reasons. Although [C] has been staying with the husband for some time notwithstanding the district judge's order giving the wife interim care and control of the children, I was nonetheless of the opinion that it would not be in the long term best interests of both [C] and [D] for such effective split in care and control to continue when the boys are still at a fairly young age. I am further of the view that it would be relatively more beneficial for the boys to remain together in the care and control of their mother given the husband's fairly hectic schedule in work and travel. Accordingly, I ordered that the district judge's interim care and control order to stand and dismissed the husband's appeal in that regard. This order shall also be made final in respect of the ancillary matters hearing before me.

9 The district court ordered interim maintenance of \$12,200 a month to be paid by the husband to the wife. This sum of money comprised the following:

- (a) \$6,000 for rent;
- (b) \$3,000 for the wife's maintenance;
- (c) \$2,500 for [C]'s and [D]'s maintenance; and
- (d) \$700 for utilities, telephone land line, cable internet and cable television.

In my opinion, this is a fair sum considering the interim nature of the maintenance order. I therefore

see no reason to disturb the district judge's interim maintenance order set out above. As such, the main issue which remains to be decided is the contested issue of the quantum of the wife's maintenance from the date of this judgment.

10 The husband argued that there should be no maintenance for the wife because the "[wife has the] ability to find meaningful employment". The husband claimed that the wife should have no difficulty securing a job since she is currently only forty-eight years old and had working experience in a bank. The wife explained that she had left the workforce for almost twenty years - after she was pregnant with her first child. She said that she has yet to obtain a Permanent Resident ("PR") status in Singapore. Even if she were to receive PR status, it would be difficult for her to secure a job in Singapore given her poor command of the English language. As such, the wife is seeking lump sum maintenance with \$3,000 as the multiplicand and nineteen years as the multiplier. That would amount to \$684,000. I agree that given the age and different lifestyle of the parties, a clean break is suitable but the formula should be adjusted to \$3,000 a month for twelve years. I would also vary the maintenance for the children to maintenance for [D] only at \$1,250 a month for five years making a total of \$75,000 lump sum.

11 In summary, the district judge's interim orders dated 10 August 2011 are upheld save for Order 6(b) (requiring the husband to pay for, *inter alia*, the children's existing and future educational and related expenses) which is set aside with effect from the date of this judgment. For the purposes of the final outcome of the ancillary matters hearing before me, the final orders are as follows:

- (a) lump sum maintenance to the wife in the sum of \$432,000;
- (b) lump sum maintenance for [D] in the sum of \$75,000; and
- (c) the available pool of matrimonial assets is to be divided in the proportion of 60:40 in favour of the husband. This apportionment shall take into account the "advance" received by the wife from the sale proceeds of the parties' previous home in the United States of America (see [\[5\]](#) above).

12 I will hear the parties on costs at a later date.

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