

MZ v NA
[2006] SGHC 95

Case Number : D 3220/2004, RAS 14/2006, 18/2006
Decision Date : 06 June 2006
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Bala Chandran s/o Kandiah (Mallal & Namazie) for the petitioner; Faizal Wahyuni (Faizal Wahyuni & Co) for the respondent
Parties : MZ — NA

*Family Law – Maintenance – Assessment of division of matrimonial assets by trial judge
– Applicable principles in varying trial judge's assessment*

6 June 2006

Choo Han Teck J:

1 The petitioner married the respondent on 18 September 1986. At that time she was 25 years old, and he was 28 years old. They have two children from the marriage, a boy aged 16 and a girl aged 13. The petitioner was a housewife and the respondent, who left the family in October 2003, claimed to be a freelance car polisher earning \$1,300 a month, a claim that the judge below was not prepared to accept. In tracing the respondent's career history, the judge noted that he had reached the position of managing director with Morgan Crucibles Pte Ltd, earning \$6,300 a month, and by 2000 he was earning \$7,200 a month. But she noted that he was retrenched in 2002. The parties divorced on 24 September 2004 when a decree *nisi* was granted to the petitioner on the ground of unreasonable behaviour on the part of her husband, the respondent. The district judge who heard the application on the ancillary matters made an order on 3 February 2006 ("the Order") ordering that:

- (a) Custody, care and control of the children of the marriage are to be granted to the wife, with reasonable access to the husband.
- (b) The husband is to pay maintenance of \$400 per month for each child, being \$800 in total, with effect from 15 February 2006, and thereafter on the 15th of every month.
- (c) The husband is to pay maintenance of \$200 per month for the wife, with effect from 15 February 2006, and thereafter on the 15th of every month.
- (d) The maintenance payments are to be made into the wife's bank account, with the account number to be inserted into the Order.
- (e) Within six months of the order, the matrimonial home (a Housing and Development Board ("HDB") flat at Rivervale Walk) is to be sold in the open market. The sale proceeds are to be used to make payment of the following items, which are stated in order of priority:
 - (i) to settle the HDB resale levy (if any);
 - (ii) to effect the requisite Central Provident Fund ("CPF") refunds to each of the party's CPF accounts in respect of the moneys utilised for the purchase of the matrimonial property, together with accrued interest, as determined by the CPF Board ("the Board"); and

- (iii) to settle the costs, expenses and disbursements relating to the sale of the matrimonial property.
- (f) The balance of the net proceeds of sale is to be distributed to the parties equally.
- (g) Subject to the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("the CPF Act") and the subsidiary legislation made thereunder, and pursuant to s 112 of the Women's Charter (Cap 353, 1997 Rev Ed), the wife shall be entitled to \$162,000 of the husband's CPF moneys which shall be charged against the CPF moneys then standing to the credit of the husband's CPF ordinary account with effect from the making of the refund of the requisite CPF moneys from the sales proceeds of the matrimonial home ("the Charged Amount").
- (h) The Charged Amount or the CPF moneys standing to the credit of the husband's ordinary account are to be paid to:
- (i) the husband or his committee of persons and estate when he becomes entitled to and does withdraw his CPF moneys; or
 - (ii) the husband's CPF nominees or beneficiaries upon his death; and
 - (iii) if the CPF moneys are less than the Charged Amount, the lesser sum shall be payable to the wife at such time.
- (i) The husband is restrained, whether by himself, his servants, or agents, howsoever from receiving from the Board the Charged Amount or any portion thereof then payable under the CPF Act and the subsidiary legislation made thereunder.
- (j) Without prejudice to the generality of the foregoing, the husband is restrained, whether by himself, his servants, or agents, howsoever from utilising moneys in his CPF ordinary account for investment purposes under the CPF Investment Scheme, or funding another party's or his own education under the CPF Education Scheme, or participating in any other CPF scheme which allows the husband to utilise his CPF moneys before he is entitled to withdraw them under s 15 of the CPF Act, unless the moneys so proposed to be utilised are in excess of the Charged Amount after the setting aside of the prescribed or requisite minimum sum, Medisave Minimum Sum/Medisave Required Amount, living expenses and any other prescribed or requisite amounts, where applicable, at the time of the husband's application(s) for such utilisation.
- (k) (i) Save as is provided in sub-para (k)(iii) below, where the wife is entitled to apply to the Board directly, the husband or any person entitled under the CPF Act to apply to withdraw any CPF moneys from the husband's CPF account is to apply to the Board for the withdrawal of the Charged Amount or any portion thereof then payable under the CPF Act and the subsidiary legislation made thereunder within one month of such entitlement, failing which the Registrar or Deputy Registrar of the Subordinate Courts under s 45 of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) is directed or authorised to execute, sign, or indorse all necessary documents relating to such application to the Board on behalf of the husband or any person so entitled.
- (ii) Upon the Board's approval of the application for withdrawal referred to in sub-para (k)(i) above, the Board shall make payment of the Charged Amount or any portion thereof then payable under the CPF Act and the subsidiary legislation made thereunder, whichever is less ("the Payment"), directly to the wife upon her request in writing.

- (iii) For the avoidance of doubt, upon the death of the husband before the Payment is made, the wife shall be entitled to apply to the Board directly for the same.
- (l) The Board is authorised to release the Payment to the wife in compliance with the Order and generally to do or cause to be done all acts, deeds and things whatsoever, which may seem to the Board to be necessary or expedient to comply with the Order, including but not limited to notifying the wife that the Board holds the Payment for the wife.
- (m) The wife is empowered to receive the Payment directly from the Board in the name of the husband, which receipt shall be a good and valid discharge to:
 - (i) the Board as regards its obligation as stated in the Order, including the Board's cessation of any liability towards both the wife and the husband pertaining to the Charged Amount; and
 - (ii) the husband as regards his obligation to pay the wife to the extent of the said payment so received by the wife.
- (n) The charge ordered in sub-para (g) above shall be discharged upon the wife receiving the Payment under sub-para (k) above, and the wife shall recover any shortfall between the Charged Amount and the Payment received by her as a debt due from the husband to her.
- (o) The Board shall impose the charge as required by the Order only upon the service of the Order on the Board and the making of the requisite CPF refunds into the husband's CPF account.
- (p) The parties including the Board shall be at liberty to apply for further directions or orders generally.
- (q) The parties are to retain other assets in their own names.
- (r) There will be no order as to costs.

2 The petitioner appealed only in respect of the orders on maintenance and the division of matrimonial property. She wanted her monthly maintenance to be increased from \$200 to \$500, and that of her two children from \$400 each to \$750 each and that her share in the matrimonial assets be increased to 60%, and the amount charged to her husband's CPF account be increased to \$165,200. The respondent cross-appealed in respect of the petitioner's monthly maintenance. He argued that it should be reduced to \$50 a month. The respondent also appealed against the Order in respect of the amount charged against his CPF account, that is, he wanted the Charged Amount to be reduced to \$129,000.

3 In support of the petitioner's case, Mr Balachandran, counsel for the petitioner, submitted that the court below did not take into account various matters which he enumerated as the standard of living enjoyed by the family, the standard of living enjoyed by the respondent after he left the family, the fact that the petitioner had now to provide shelter for herself and the children, and the higher cost of educating the children, especially the elder one who would be at a polytechnic. He also submitted that the court below did not appreciate that the petitioner would not enjoy the benefit from the charge on the sum of \$162,000 until the respondent reached 55 years of age. These were basic and conventional matters that any court would have considered. An appeal based on the ground that the court below did not take them into account must be amply supported by the evidence or from flaws exposed in the grounds of the court's decision. In this case, nothing in

counsel's submission and the court's grounds of decision indicate that these matters had not been considered. Counsel, for instance, submitted that despite the petitioner's list of expenses for herself and her children, the court did not give them a higher sum by way of maintenance. It is the sad fact that the parties in a divorce often end up with less income after the divorce. Consequently, hard adjustments have to be made by both parties. In this case, the petitioner had to start working again. The judge below also noted that she had borrowed money from her family, and even surrendered her life insurance policy. The judge took into account the respondent's claims that he was unable to secure a proper job, and concluded that she would not accept his claim. I could find no basis to increase the maintenance ordered below without any proof of a change of circumstances of the parties. Although the judge below was not convinced that the respondent was earning \$1,300 a month and thought that he might perhaps earn \$2,000, that was a guess made with all the evidence that she had before her. I reviewed the same evidence but could not be certain that my estimation would be more accurate than hers.

4 Mr Balachandran also argued that the respondent was guilty of material non-disclosure, a point made more by way of inference from his lifestyle than from direct evidence. He pointed, in particular, to the respondent's new Mercedes Benz car and living in various condominiums. These were matters that the learned judge below had considered and appeared to have taken into account as she had set them out in her findings. It is arguable that she might have been a little lenient in her views about the respondent's conduct, and might also have taken a more conservative view in regard to how much inference she ought to draw from his lifestyle. But these were matters at her discretion. They have to be measured according to the strength of the evidence in every case. In some cases, the evidence may be more compelling, and in others less so. The affidavits of both parties do not indicate in any way why the court below had misjudged the situation. I would be reluctant to substitute my judgment for hers under the circumstances.

5 Finally, counsel made what I think was a weak point, namely that "it would be more practical for the balance of proceeds (though not substantial) from the sale of the matrimonial home to be given to [the petitioner] as she [needed] it urgently". It may be more practical but I do not think that the decision below ought to be disturbed just for that. It is true that the court has a duty to ensure a fair result, but it is just as important that there is a consistency in the key principles of adjudication because people must be able to anticipate the law and its application so that they can conduct themselves accordingly. If courts were to make minor adjustments for idiosyncratic reasons, that is one sure way of creating uncertainty. By idiosyncratic reasons I mean those circumstances in which one court might say \$40 is adequate pocket money for a 12-year-old child, and another might think that \$50 is more reasonable. The privilege and duty of making that call lies with the judge at first instance. If the decision were to be disturbed it must be for a strong reason, for example, that the court misapplied a principle of law, or had clearly made an error of fact that was not only obvious, but also significant, and, thereby, rendered the consequence unfair to the parties. Whether the balance of the sales proceeds ought to be given to the petitioner because that would have been a more "practical" approach to dividing the proceeds does not merit interference from me. I am doubtful if "practical" is the most appropriate word in the circumstances. The petitioner would probably be better off financially, but not so much that a failure to make that order should be redressed on appeal.

6 I should mention Mr Balachandran's complaint that the respondent will continue to earn interest on the sum of \$162,000 charged against his CPF account amounting to \$4,050 a year until he is 55 years old when it would have reached a total of \$29,700, whereas the petitioner will have to pay interests on her mortgage loan. I do not think that the court needed to make a specific finding that the division made would result in the extra income by way of interests earned, or conversely, incurring more expenses by way of interest payments. It is even less relevant in the present case as I do not think that the sums involved were sufficiently large. I agree that it may be helpful in the

appropriate case, to gently remind the court of the interest factor. But this was not such a case in my view.

7 I now turn to the respondent's cross-appeal. For the same reasons I had given in respect of the petitioner's appeal, I would not disturb the decision below in respect of the respondent's appeal. I need only add that in respect of the apportionment of the matrimonial assets, there was no basis to conclude that the judge below had misread *Ng Hwee Keng v Chia Soon Hin William* [1995] 2 SLR 231 ("*Ng Hwee Keng*"). It seemed to me that the court was using *Ng Hwee Keng* and another case, *Yeo Gim Tong Michael v Tianzon* [1996] 2 SLR 1 ("*Tianzon*"), as general guides. This would be a correct approach because no two cases in such matters can be so alike in their facts. The court's duty was to ascertain what would seem a fair apportionment after comparing the circumstances of the cases in question. The judge below clearly saw that the facts in *Ng Hwee Keng* and *Tianzon* were different. Hence, she drew a conclusion in this case that was different from that in those two cases.

8 For the reasons above, both appeals were dismissed. I am of the view that so far as costs was concerned neither party ought to be granted costs. I therefore ordered that each party was to bear its own costs.

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