

TC v TD
[2007] SGHC 130

Case Number : DA 7/2007
Decision Date : 15 August 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : The appellant in person; The respondent in person
Parties : TC — TD

[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 August 2007

Judgment reserved.

Choo Han Teck J:

1 The appellant ("the Husband") and the respondent ("the Wife") were married on 4 January 1979. Divorce proceedings are ongoing and the parties are presently separated. There are three children to the marriage. The eldest daughter, MA, is 21 years old this year and is studying in Australia. The two sons are ages 18 and 14 respectively and are currently residing with the Wife in Singapore.

2 In MSS 382 of 2006, the Wife applied for an interim order of maintenance under s 69 of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Act"). On 26 May 2006, the District Court ordered the Husband to pay the Wife a monthly maintenance of \$6,650.00. Of this amount, \$4,650.00 was apportioned as maintenance for the Wife and the remaining \$2,000.00 as maintenance for the two sons. The District Court also ordered, *inter alia*, the Husband to continue paying for MA's university tuition fees and rental accommodation and provide MA with a supplementary credit card to cover her living expenses in Australia. The Order made by the District Court in MSS 382 of 2006 will hereafter be referred to as "the Maintenance Order".

3 On 20 October 2006, the Husband filed MSS 5931 of 2006 to vary the Maintenance Order on two grounds. He sought a downward variation of the monthly maintenance sum payable from \$6,650.00 to \$5,000.00. He also applied to set a monetary limit for the supplementary credit card he provides to MA for her living expenses in Australia. The District Judge dismissed the Husband's application and his grounds of decision can be found at *TC v TD* [2007] SGDC 117 ("GD"). The Husband appealed against the decision of the District Judge.

4 The Husband's application was made on the ground that his salary had decreased and there was therefore a material change of circumstances. This is based on s 118 of the Act, which provides:

Power of court to vary orders for maintenance

118. The court may at any time vary or rescind any subsisting order for maintenance, whether secured or unsecured, on the application of the person in whose favour or of the person against whom the order was made, or, in respect of secured maintenance, of the legal personal representatives of the latter, where it is satisfied that the order was based on any misrepresentation or mistake of fact or *where there has been any material change in the*

circumstances.

[emphasis added]

5 The sequence of events leading to the Husband suffering a decrease in salary is as follows. At the time the Maintenance Order was made, the Husband was employed by XXX (S) Pte Ltd ("XXX") and earned a monthly salary of \$11,165.00. XXX was a joint venture between the Husband and one B, a Taiwanese national.

6 The Husband claimed that because the Wife started rumours that XXX was trading in counterfeit goods, XXX suffered losses between January and June 2006 and as a result, the Husband's employment was terminated and he ceased to work for XXX on 30 June 2006. On the very next day, viz., 1 July 2006, the Husband found a new job with YYY Pte Ltd ("YYY"). He was employed as a General Manager and earned a monthly gross salary of \$9,685.00. His monthly nett salary was \$8,875.00. The director of YYY was one W, who was the Husband's former employee in XXX. It appeared that, until then, YYY was a dormant company owned by W. After XXX became defunct, B approached W to "revive" YYY to handle XXX's Taiwan sales in the region. W thus became the executive director of YYY, and hired the Husband to assist him in running the business. The office premises of YYY are those previously occupied by XXX. The Husband's letter of employment dated 30 June 2006 was signed by W. It provided *inter alia* that YYY would "reimburse [the Husband] on all business related expenses". There was a further letter dated 28 November 2006 ("Letter of 28 November 2006"), signed by W, confirming that the Husband "received no further subsidy or allowance from the company".

7 During cross-examination by the Wife, the Husband admitted that he had received a bonus of \$12,846.50 on both 28 December 2006 and 29 January 2007. The District Judge found that this was "heavily inconsistent" with the Letter of 28 November 2006 in which W had certified that the Husband "received no further subsidy or allowance from the company". The District Judge thus found that the Husband had not been entirely truthful or forthcoming, and doubted his credibility (see [13] to [15] of GD). As the District Judge was not satisfied that there had been a material change of circumstances, he dismissed the Husband's application.

8 It should be noted that the District Judge also drew an adverse inference against the Husband because he had not made full and frank disclosure. The District Judge noted that the Husband had not stated in his affidavit that he was entitled to bonus or reimbursements which he appeared to be able to incur without any limit being set either as to their extent or quantum (see [26] of GD).

Downward variation of maintenance for the Wife

9 The Husband's application to vary maintenance for the Wife will first be considered. The main issue was whether, pursuant to s 118 of the Act (set out at [4] above), there had been any material change in the circumstances that justified a downward variation of maintenance. The Husband's expenditure from July 2006 to February 2007, as gleaned from his credit card statements, did not correspond with his position that he had suffered a material change in circumstances. It was apparent from these statements that the Husband could still afford a relatively lavish lifestyle. For instance, in September 2006, the Husband had spent approximately \$6,700.00 on branded goods in Dubai. The Husband explained that these were duty free items that he had purchased on behalf of a friend (who had since repaid him) but the District Judge was not persuaded by this explanation. Indeed, there was no documentary evidence that supported the Husband's version of fact. Also, on October 2007, the Husband purchased a luxury item from MontBlanc for \$3,452.61 and on January 2007, the Husband

purchased a camera for \$3,460.00 for his hobby. It is also clear from the credit card statements that the Husband often dined in restaurants.

10 The Husband explained that YYY would reimburse him for all business related expenses. In support, he produced the Letter of 28 November 2006 (see [6] above). The Husband also tendered a letter dated 9 March 2007 ("Letter of 9 March 2007") that stipulated the procedure that had to be followed before reimbursement was granted. This letter was signed by W and the District Judge placed little reliance on the letter as he found it to be "self-serving" ([18] of GD). The District Judge also found that the complainant was "given considerable leeway to incur large sums of expenses" and had a "veritable free hand" to supplement his salary by making reimbursement claims ([19] of GD).

11 In my view, the District Judge was justified in finding that there had not been a material change in circumstances. First, the Husband's bank statements show that the reimbursements received by the Husband for his expenses were sizeable sums. For example, in August 2006 and September 2006, the Husband received reimbursements of approximately \$7,000.00 and \$10,049.44 respectively. The District Judge's finding that the complainant was earning more than he declared was therefore not unfounded. The circumstances under which YYY was revived into operation also suggested that the Husband was not a mere employee as he wished the court to believe. The products marketed by YYY were the same as those marketed by XXX, where the Husband had once been an equal joint partner. YYY took over the premises used by XXX and, like XXX, received its supplies from B. It appeared that YYY was merely running XXX's previous business and that the Husband exercised considerable control over the business. Second, the Husband acknowledged that he received bonuses that would supplement his income. Indeed, the bonuses he received in December 2006 and January 2007 were of considerable sums. He was thus not as adversely affected by the decrease of salary as he wished the court to believe. Finally, as stated above, the Husband's lifestyle after his alleged decrease in salary did not support his argument that he had indeed suffered a material change in circumstances. The Husband's appeal on this issue was therefore dismissed.

Setting a limit for MA's supplementary credit card

12 Under paragraph 2 of the Maintenance Order, the Husband is required to provide a supplementary credit card to cover MA's living expenses in Australia. In the present proceedings, the Husband applied for a limit to be set on MA's credit card and the District Judge held that a limit of A\$2,000.00 should be set.

13 On appeal, the Husband argued that the limit to be set should be reduced to A\$1,000.00. He claimed that he had already remitted various sums of money to MA's bank account in Australia which were intended to cover her school fees and living expenses. In January 2006, a sum of US\$26,344.30 (approximately A\$35,000.00) was remitted and on January 2007, a further sum of A\$8,000.00 was remitted. According to him, the understanding was that MA would only use the supplementary credit card for emergency purposes. He claimed, however, that since the matrimonial proceedings had commenced, the Wife had been urging MA to spend freely on the credit card. In my view, the Husband's position was not borne out by the Maintenance Order, which stipulated that the supplementary card was to cover MA's "living expenses including her transport". The Maintenance Order thus did not restrict MA's use of the credit card to emergency purposes only. Importantly, as discussed above, the Husband had not satisfactorily proven a material change of circumstances that would justify a further variation of the Maintenance Order. Notably, there was no evidence before me as to whether MA had already spent all the monies remitted in January 2006 and January 2007. In the absence of evidence that MA still had access to such monies, there was even less reason to reduce the A\$2,000.00 limit set by the District Judge. The Husband's appeal on this issue was therefore dismissed.

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