Lee Siew Choo *v* Ling Chin Thor
[2014] SGHC 185

Case Number : Divorce Transferred No 2965 of 2012

Decision Date : 24 September 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Mimi Oh Kim Heoh (Mimi Oh Law Practice) for the plaintiff/wife; Wong Chai Kin (Wong Chai Kin) for the defendant/husband.

Parties : Lee Siew Choo — Ling Chin Thor

Family law – Maintenance – Child

Family law – Maintenance – Wife

Family law – Matrimonial assets – Division

24 September 2014 Judgment Reserved

Choo Han Teck J:

1 This case concerned issues of maintenance of both ex-wife and child, and the division of matrimonial assets. The plaintiff/wife is 56 years old and works as a part-time accounts executive. The defendant/husband is 63 years old and was working as an engineer in China before he retired in 2006. He remains unemployed. The parties married on 30 August 1979. The wife filed for divorce on 18 June 2012. The interim judgment for divorce was granted in the District Court on 10 August 2012 on the ground that the parties to the marriage have lived apart for a continuous period of at least four years immediately preceding the filing of the writ for divorce under s 95(3)(*e*) of the Women's Charter (Cap 353, 2009 Rev Ed). They lived apart since January 2008. Effectively, the marriage lasted for 29 years. The ancillary matters were transferred to the High Court because the matrimonial assets exceed $1.5m.

2 The parties have two daughters aged 25 and 23. The older daughter is a nurse and still lives with her father at 27 Hazel Park Terrance, ("Hazel Park property") which was the parties' matrimonial home. The younger daughter is studying in the National Institute of Education ("NIE") for a Bachelor of Arts (Education) – Primary on a scholarship awarded by the Ministry of Education. The scholarship pays her tuition fees and gives her an annual allowance (referred to in the scholarship agreement as "stipend") of $5,000. She started in August 2013 and is expected to graduate in May 2015. The wife's lawyer said that the younger daughter was also on a scholarship for the diploma in 2011 and 2012. Her monthly scholarship allowance then was $1,600. I note that the academic calendar does not last the whole calendar year, nor does it start in January. The wife seeks lump sum maintenance for the younger daughter only. There is no need for maintenance for the older daughter who has reached maturity and has a job.

3 I start with the division of the parties' matrimonial assets. The figures provided were up to 2012 only. The largest matrimonial asset is the Hazel Park property. Its estimated value in 2012, according to the wife, is $1,325,000. The husband's estimate of the value of the property in 2012 is $1.3m. Now however, the husband says that the property price should be estimated conservatively at $1.2m as

the government introduced fiscal measures in 2014 that resulted in a fall in property prices. The parties are in agreement that they are tenants-in-common of the Hazel Park property – the wife holds a 25% share in it; whereas the husband holds the remaining 75% share. The husband says that this mirrors the financial contributions made by them. The wife says that the entirety of the sales proceeds from the en-bloc sale of the previous matrimonial home at 1B Gillman Heights ("Gilman Heights property") amounting to $844,974.12 was used to finance the purchase of the Hazel Park property. The Hazel Park property was purchased for $805,000 in May 2009. The wife did not adduce any evidence of the financial contributions made by the parties in purchasing the Gilman Heights property. The parties do not co-own other property.

4 In respect of the Hazel Park property the wife claims that the husband has had sole enjoyment of that property since August 2010 to date. Her counsel submits that this is a factor that should be borne in mind in dividing the matrimonial assets. The husband did not enjoy sole occupation of this property. On the contrary, he lived in it with the older daughter. I am aware that the wife was excluded from the Hazel Park property and that she now lives in a HDB flat in Bukit Merah. Her expenses incurred in respect of alternative accommodation (if any) should be considered, but she has not adduced any evidence of such.

5 The property in the wife's name consists of money in bank and CPF accounts, insurance policies, shares and a motor vehicle (Honda). The wife is prepared to pool these assets (except the motor vehicle) with those of the husband for division. She says that the car is due to be scrapped next year and it would be pointless to include it in the matrimonial pool. In any event, she says she paid for it. The value of the assets the wife is prepared to include in the pool of matrimonial assets, according to her, is $687,989.56. The husband says that the wife owns assets worth $997,290.26 (including the Honda). The discrepancy in the figures is due in large part to the wife saying that the following sums of monies should not be included in the pool of matrimonial assets:

(a) $208,004.34 (monies belonging to the wife's mother, Madam Tang Kim Lien);

(b) $28,761.16 (savings of the two daughters held in the wife's POSB account); and

(c) the remaining value of the motor vehicle.

(a) and (b) should not be included in the pool of matrimonial assets. But there is no basis to exclude (c) from the pool of matrimonial assets. The fact that the motor vehicle is due to be scrapped next year is no basis to exclude it from the pool. It is not disputed that the motor vehicle was purchased during the marriage. It therefore falls within the definition of matrimonial asset under s 112(10) of the Women's Charter.

6 The wife says that the husband owns monies in bank and CPF accounts, insurance policies and shares amounting to $1,659,068.79, which should form part of the pool of matrimonial assets. The husband disputes this. He says he owns property totalling about half of that - $811,979.72. This is the sum total of what he declares in his written submissions: (1) personal cash in three bank accounts totalling $663,510.93 and (2) monies in his CPF account totalling $148,468.79. The husband says he has made full and frank disclosure, and that if there is any adverse inference to be drawn, it should be against the wife for failing to declare the contents of her safe deposit boxes. The husband states at paragraph 11 of his affidavit dated 25 June 2013 that the wife, in paragraph 9 to her affidavit filed on 4 October 2012 "acknowledged she had safe deposit boxes but failed to declare her assets in [them]". But there is no reference to any safe deposit box in that paragraph of the wife's affidavit. I am inclined to believe that the husband has not made full and frank disclosure and has under-declared his assets. First, the husband only disclosed entries on pages 8 to 10 of his POSB

Savings Account Book (but not the first seven pages). Second, the husband did not furnish statements from his Hong Leong Finance deposit account even though he admits that he owns this account in his paragraph 7 of his affidavit dated 30 November 2012. I therefore accept the wife's submission that the value of the husband's assets to be included the matrimonial pool is $1,659,068.79.

7 The husband submits that the wife should get not more than a 30% share in the Hazel Park property and at most 35% share in the other assets. The wife submits that assets should be divided equally for the division of matrimonial assets to be just and equitable. Section 112(1) of the Women's Charter provides that:

> The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of sale of any such assets in such proportions as the court thinks just and equitable.

Section 112(2) of the Women's Charter goes on to state a list of non-exhaustive factors that a court should take into account in deciding a just and equitable division.

8 It is evident that the wife's financial contributions are less than those of the husband. But this is not surprising given that her pay is lower. Financial and non-financial contributions are equally important in determining the parties' entitlement in the event of a division of their matrimonial assets. A marriage is sustained by both non-financial contributions and financial contributions.

9 I am of the view that an equal division in this case would be just and equitable. Equality of division may not be the norm (*Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [55]), but for long marriages, such as this, the courts have leaned towards equality of division. The Court of Appeal in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 approved the High Court order of equal division where the homemaker wife served her role for 22 years bringing up the couple's three sons. Similarly, the High Court in *MZ v NA* [2006] SGHC 95 also refused to interfere with the District Court order that the homemaker wife who had served her role for 20 years bringing up the couple's two children should get just as much as the husband of their matrimonial assets.

10 I now deal with the issues of maintenance of the younger daughter and ex-wife. For both, the wife seeks lump sum maintenance to have a "clean break". In this regard, she relies on decision of our Court of Appeal in *Lee Puey Hwa v Tay Cheow Seng* [1991] 2 SLR(R) 196. In that case, the court held at [9]:

> The Court's power to order a lump sum payment, as an alternative to periodical payments, makes it possible for a husband, who has the means to make a lump sum payment, to achieve a clean break, and is clearly a method which should be taken advantage of whenever this is feasible. In deciding whether to order a lump sum payment, the Court should consider the individual circumstances of the parties, particularly the needs of the wife and the obligations and responsibilities of the husband, in addition to his assets, his earning capacity and other available resources. In any case, an order for lump sum should not be made if the husband does not have adequate cash or other capital assets which can be readily disposed of, or if the lump sum payment or the disposal of assets will effectively cripple his earning power.

11 For the maintenance of the younger daughter, the wife seeks lump sum maintenance of $26,400, which I understand includes past maintenance not paid. This sum of $26,400, the wife submits, should be deducted from the husband's share in the sales proceeds of the matrimonial home.

The wife says that even though the husband agreed to pay $100 monthly maintenance for the second daughter, he has not. The wife arrives at the sum of $26,400 by adding the following. First, $12,600 past maintenance for the period 2009 to June 2013. She says that she gave the second daughter an average allowance of $550 monthly during this period. For these 42 months, she submits that the husband should pay $300 monthly maintenance. Second, $13,200 for the period August 2013 to July 2015. The wife says she paid $900 a month for these 24 months. She says the husband should pay monthly maintenance of $550 for this period.

12 The husband submits that the maintenance of the younger daughter is a non-issue since the second daughter was already past 21 years of age when the interim judgment was granted on 10 August 2012. Indeed, the issue of the second daughter's maintenance was not even mentioned in his written submissions. In his affidavit dated 26 June 2013, the husband says has been providing $300 monthly maintenance to the second daughter from 2008 to September 2010 when she moved out of home. He proposes to give the second daughter nominal monthly maintenance of $100 as long as she is on scholarship.

13 I allow the maintenance for the second daughter at a lump sum of $15,000 for the period January 2013 to July 2015. The $15,000 is the sum total of the following:

(a) $300 per month for the period 2009 to June 2013 save for 2011 and 2012 (30 months, totalling $9,000) when the second daughter was on the diploma scholarship. The daughter does not need maintenance in 2011 and 2012 as the monthly allowance for that scholarship is $1,600.

(b) $250 per month for the period August 2013 to July 2015 (24 months, totalling $6,000). The monthly maintenance of $250 is much lower than that asked for by the wife, but it is a reasonable and fair amount to award. During this period, the second daughter was on the Bachelor of Arts (Education) – Primary scholarship that provides for a monthly allowance of about $416.70 ($5,000 yearly divided over 12 months). The stipend should be taken into account in deciding the quantum of maintenance.

14 The $15,000 is to be deducted from the husband's share of the sales proceeds of the matrimonial home. This is in one lump sum, and backdated to take into account unpaid maintenance. I think that this order is appropriate for the following reasons in this case:

(1) lump sum maintenance allows the parties to have a clean break;

(2) the husband does not contest his ability to pay a lump sum maintenance; and

(3) there is no prejudice to him as the maintenance is to be deducted from his share of the sales proceeds of the matrimonial home.

15 The fact that the wife did not ask for interim maintenance for her second daughter earlier does not preclude her for asking for backdated maintenance at the ancillary hearing. A backdated order for maintenance ensures that the parent in default pays for the child's needs right from the outset instead of from only from the time maintenance is sought. It is a practical and pragmatic tool that, if used judiciously and as the circumstances warrant, can vindicate parental responsibility for a child's needs. The Women's Charter is silent on whether maintenance orders for children can be backdated. But the Family Courts have been granting backdated maintenance where the circumstances warrant (see *eg*: *TEL v TEK* [2014] SGDC 229; *TAW v TAZ* [2014] SGDC 101; *BEM v BEO* [2012] SGDC 328; *ACM v ACN* [2009] SGDC 411; *WB v WC* [2008] SGDC 22). There are no cases from the High Court and the Court of Appeal on backdating of maintenance for children. Nonetheless, there are principles that

can be gleaned from the cases involving backdating spousal maintenance (see *eg*: *AMW v AMZ* [2011] 3 SLR 955; *AJE v AJF* [2011] 3 SLR 1177; *TG v TH* [2007] SGDC 172) that apply to children.

16 In deciding whether to grant an order for backdated maintenance, the court should have regard to the overall circumstances of the case, and in this regard, the following are some of the considerations that it ought to bear in mind:

(a) First, maintenance is based on need. As such, the applicant has to show that he/she needs maintenance from the date prior to the application for maintenance or ancillary hearing;

(b) Second, the applicant should give reason(s) for the delay in seeking maintenance for the child/children. Not making interim maintenance to save costs is a good reason in explaining the delay (*TG v TH* (see above: [14]) at [43]);

(c) Third, income and expenses of the parties in the past (*AMW v AMZ* (see above: [16]) at [12(b)]) and whether circumstances have changed since;

(d) Fourth, the applicant should generally not be obliged to apply for interim maintenance pending the hearing of ancillaries if she is willing or able to wait until ancillary matters are heard. As Woo Bih Li J in *AMW v AMZ* held at [10]:

> There is no reason why, generally speaking, an applicant for maintenance should be compelled to apply for interim maintenance pending the hearing of ancillaries. I say [the applicant] is compelled to do so because if she does not, she faces the risk that she will be penalised.

(e) Fifth, potential savings in costs, time and resources in having maintenance for children dealt with in the ancillary hearing, instead of having a separate hearing for interim maintenance. The court in *AMW v AMZ* held at [11]:

> To claim interim maintenance, [the applicant] has to file a set of cause papers. In addition, there will be a hearing for the interim maintenance application. The process is duplicated to some extent after a writ is filed for a judgment to dissolve the marriage and maintenance is sought. Why should costs be incurred and the time of the court be spent on an interim maintenance application if the wife is able and willing to wait till the ancillaries are heard to obtain maintenance? To [do otherwise might] encourage applicants to incur unnecessary costs and to clutter the court's calendar with unnecessary applications.

(f) Sixth, the detriment caused to the parent in default if backdated maintenance is ordered (*AMW v AMZ* (see above: [16]) at [12(c)]-[12(d)]). It is not difficult to appreciate why this might be the case. On the backdating of an order, the payer is instantly in arrears in respect of the payments due prior to the claim for maintenance. The payer might not have the means to pay, or if he does, at the cost of hardship to himself;

(g) Seventh, an order for maintenance is an order of court. If the parent in default does not pay, he/she potentially faces committal proceedings;

(h) Eighth, difficulties or hardship that the applicant faced in trying to meet expenses prior to the claim for maintenance. These were alluded to by Kan Ting Chiu J in the High Court case of *AJE v AJF* (see above: [16]), who there described an extreme situation of hardship (see above: [16]) (at [27]):

> If the [applicant] had to incur debts or sell possessions to make up for the shortfall in maintenance, that would be a strong ground for backdating the maintenance.

But in some situations, the applicant faces no hardship. The applicant might have in fact been maintained the child with income from other sources beside his/her own. This was the concern Kan J expressed in *AJE v AJF* (at [27]):

> [I]f the [payee] had been able to had been able to manage…, back-payment would be a windfall, and the case for backdating would be weaker.

(i) Ninth, the length of the period for which maintenance for the child is claimed, and whether the applicant sought maintenance from the parent in default to begin with.

17 The above is not an exhaustive list. The court has a wide power to backdate maintenance to a date which the court considers fair. Besides backdating maintenance, the court may even award the applicant a higher share of the matrimonial assets or higher maintenance for the child in the future. The order for maintenance may even be backdated to before filing of the writ of divorce (*AMW v AMZ* at [13]) and even to the time when the failure to provide reasonable maintenance was proven to have begun (Leong Wai Kum, *Elements of Family Law* (LexisNexis, 2nd Ed, 2013) ("*Elements of Family Law*") at p 433).

18 Further, s 121(3) of the Women's Charter has to be considered. That section provides:

> **Recovery of arrears by maintenance**
>
> **121.** – …
>
> …
>
> (3) No amount owing as maintenance shall be recoverable in any suit if it accrued due more than 3 years before the institution of the suit unless the court, under special circumstances, otherwise allows.

Section 121(3) ostensibly suggests that an order for maintenance should only be backdated three years since an order for backdated maintenance can be a way of recovering arrears. Punch Coomaraswamy J, in referring to the 1975 version of this provision (which does not have the phrase "unless the court, under special circumstances, otherwise allows"), alluded to this possibility in *Gomez v Gomez* [1985] 1 MLJ 27. But Punch Coomaraswamy J ultimately held that he would express no definite view on this point as the question was not before him. However, I do not think that s 121(3) restricts the backdating of an order for maintenance for children to only three years for the following reasons:

(a) First, s 121(3) does not apply here; it only applies in cases of maintenance of an ex-wife by her former husband (*Elements of Family Law* at p 433);

(b) Second, it would be unworkable to apply s 121(3) as a restriction on the date of commencing the maintenance order as there is no date of the institution of a civil suit as a reference; and

(c) Third, Coomaraswamy J's comment in *Gomez v Gomez* was made in reference to the 1975 version of s 121(3), which as mentioned, does not have the phrase "unless the court, under

special circumstances, otherwise allows". That phrase now permits a claim for arrears before 3 years from the date of commencing a civil suit if required. There is thus no longer any immutable and absolute time restriction even if that had been the case previously.

19 There is no need to award maintenance for the ex-wife in this case. Maintenance of an ex-wife supplements the division of matrimonial assets and is awarded to even out any remaining financial inequities after division (*BG v BF* [2007] 3 SLR(R) 233 at [74]–[75]). In my view, the financial inequities in this case have been evened out with the division of matrimonial assets. The wife has not yet reached retirement age and can still work, at least sufficiently to cover the last bit of expenses of the younger daughter.

20 My orders are therefore as follows:

(a) The matrimonial home is to be sold and the proceeds divided equally;

(b) A $15,000 lump sum maintenance for the second daughter and to be deducted from the husband's share of the sales proceeds of the matrimonial home and given to the wife;

(c) The husband's assets are determined at $1,659.068.79;

(d) The wife's assets are determined at $687,989.56;

(e) The wife is entitled to 50% of the total sum of other assets (*ie*, assets beside the matrimonial home); and

(f) The parties are to bear their own costs.