

AXM v AXO
[2013] SGHC 108

Case Number : Divorce No 4306 of 2008 (Registrar's Appeal from Subordinate Courts No 55 of 2012)
Decision Date : 15 May 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Linda Ong and Tan Li Jie (Engelin Teh Practice LLC) for the plaintiff; Defendant in-person.
Parties : AXM — AXO

Family Law – Maintenance

Family Law – Ancillary powers of court

15 May 2013

Choo Han Teck J:

1 The plaintiff (wife) and defendant (husband) married in Australia on 29 September 2001. They have three children aged 11, 8 and 6. They are all Australian citizens and are all residing in Australia. The ancillary matters were heard by District Judge Jen Koh (“the District Judge”) who delivered her judgment on 12 June 2012.

2 The plaintiff appealed against the District Judge’s orders concerning maintenance for the children as well as for the plaintiff. She also appealed against the District Judge’s order that the maintenance order be backdated to 1 May 2011. Finally, the plaintiff also appealed against the order concerning the division of matrimonial assets.

3 Lengthy and detailed submissions were made by counsel for the parties before me on appeal. On 3 October 2012 I dismissed the plaintiff’s appeal. The plaintiff then sought leave from me to appeal to the Court of Appeal.

4 I was of the view that the plaintiff’s claims did not merit any further determination in our courts. I was of the view that the plaintiff could and ought to have sought relief in the Australian courts. Now that both of them as well as their children and assets are in Australia, it is even less appropriate for the matter to be pursued further in our courts. I declined to grant leave to appeal.

5 The plaintiff’s application to the Court of Appeal was dismissed save for the straightforward issue of whether the District Judge was entitled to backdate the final order regarding maintenance to 1 May 2011. I accept that an interim maintenance award should generally not be disturbed by way of backdating because, unless revised on appeal, it represents what was right and fair at the time. However, the courts do have the power to backdate a final award of maintenance, where, for example, it was of the view that the final award was made with fuller arguments on both sides that may have enabled the court to make small, minor adjustments without having to change the principal amount. In this case, the court seemed to have done just that. The court below took into account the fact that the defendant had applied to vary the maintenance on 22 November 2010 but that

application was stalled till October 2011 when the third ancillary affidavits were filed. The delays were occasioned by the plaintiff who sought time to find supporting documents in aid of her case. She also filed further submissions. The court found that the delays had prejudiced the defendant's application for a variation. The defendant indeed continued to pay the interim maintenance until he was unable to do so, after which, he disposed of his assets to pay the maintenance. Ultimately, he served two weeks' imprisonment when he was unable to make the payments. His employment pass was revoked on account of his imprisonment. The court did not believe that the defendant would have done all this merely to avoid paying the maintenance. Having heard the defendant's arguments in person on appeal, I am of the view that there was no reason for me to disagree with the court's findings and opinion below. Counsel for the plaintiff was unable to adduce any evidence or present any argument to the contrary.

6 In my view, the District Judge was entitled to backdate the payment of A\$5,000 as maintenance for the children to 1 May 2011. I agree with the District Judge that the delays in prosecuting the ancillary matters entitled her to backdate the payments and that the period of 10 months was not unfair or excessive. The reasons for the backdating are found in pages 14 to 20 of the District Judge's grounds of decision dated 12 June 2012.

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