

AKF v AKG
[2010] SGHC 225

Case Number : Divorce Transferred No 776 of 2007
Decision Date : 05 August 2010
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Randolph Khoo and Veronica Joseph (Drew & Napier LLC) for the plaintiff;
Raymond Yeo (Raymond Yeo) for the defendant.
Parties : AKF — AKG

Family Law

[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]

5 August 2010

Tay Yong Kwang J:

Introduction

1 The present matter concerns the division of matrimonial assets, maintenance and custody of two children after interim judgment of divorce was pronounced by the Family Court. The matter is before the High Court as the matrimonial assets have been declared to be above \$1.5 million in value.

Background facts

2 The plaintiff ("Wife") and the defendant ("Husband") met in Hong Kong in 1989 and were married in Singapore in 1994. The Wife is now 46 years old while the Husband is 51. Two children were born during the marriage. The elder son is presently 13 years of age whilst the younger son is 10 years old. They are both schooling. During the subsistence of the marriage, both the Wife and the Husband were gainfully employed and earned their own keep. The Wife is an auditor making more than \$28,000 per month. The Husband is in the advertising industry and, up to January 2007, was drawing a salary of more than \$45,000 per month. He was then placed on "garden leave" from February to end July 2007. He managed to secure alternative employment with effect from 5 January 2009 earning a monthly income of \$25,000. On 15 May 2009, his employment was terminated and he started a business called Innovize. The Husband claims that he derives no income from this business and that it was set up just to maintain his marketability and for public relations purposes.

3 The marriage broke down some time in 2006 and both parties commenced various divorce proceedings. These proceedings were eventually withdrawn and the parties agreed that a fresh writ be filed and that the same proceed on an uncontested basis. The current divorce proceedings were filed by the Wife on 16 February 2007. She relied on the Husband's improper association with a series of women to argue that the Husband had behaved in such a way that she could not reasonably be expected to live with him any longer. Interim judgment of divorce was granted by consent on 13 April 2007 and the ancillary matters were adjourned to be decided on a later date. Since that date, various interim orders have been made by the Family Court upon the parties' applications.

4 The ancillary matters for determination by the High Court are:

- (a) Custody of, care and control of, and access to the Children (collectively referred to as the "Children's Matters");
- (b) Maintenance for the Wife;
- (c) Maintenance for the Children;
- (d) Division of the matrimonial home and other matrimonial assets; and
- (e) Costs of the proceedings.

The Wife's Case

5 In respect of the Children's Matters, the Wife asked for a range of orders, some of which the Husband was agreeable to, while the rest were disputed. The orders which the Wife requested included orders pertaining to joint custody as well as care and control of the children. She also sought various consequential orders concerning matters such as the children's education, health, daily living arrangements (during school term, school holidays as well as major holidays), as well as other administrative matters.

6 In respect of maintenance for herself, the Wife initially sought S\$8,000 in monthly maintenance. Eventually she asked for a nominal \$1 per year as maintenance in order to preserve her rights should she require maintenance in future.

7 As for maintenance for the children, the Wife initially sought S\$14,000 as monthly maintenance for both children but later sought S\$250 per child, totalling S\$500 a month for both children. She also sought an order for a trust fund to be established for the children by the Husband in the amount of US\$250,000 for each child. This trust fund would be paid out to each child once he reaches 25 years of age. Additionally, she wanted both parties to share the children's educational and medical expenses equally, unless such expenses were covered under insurance.

8 Finally on the issue of division of the matrimonial home and other matrimonial assets, the Wife requested a 44% share of the total matrimonial assets. This 44% would comprise 80% of the net sale proceeds (including interest, if any) of the couple's matrimonial home at [address redacted] ("Matrimonial Property") as well as all the assets in her name. The wife hence sought orders that she be allowed to retain 80% of the net sale proceeds of the Matrimonial Property and that all other assets be retained by the respective parties in their sole names.

The Husband's Case

9 With respect to the Children's Matters, the Husband desired that the children spend equal time with both parents. He hence requested joint custody and joint care and control of the children. During

the period in which the children were with either himself or the Wife, he also sought orders governing access by the other parent to them. In respect of the Wife's application seeking a range of consequential orders, the Husband's response to those requests was mixed; he was agreeable to some requests but not others.

10 As for maintenance for the Wife, the Husband was not prepared to offer her any form of maintenance in view of the high salary she is earning, her excellent career path and promising future prospects. He claims that the Wife has received a promotion to principal auditor in a multi-national company.

11 In respect of maintenance for the children, the Husband sought an order that each party maintains the children while they are in their respective care and control and argued that he should not be required to make additional payments of maintenance over and above those incurred while the children are spending time with him since the children would be spending equal time with both parties. The Husband was also agreeable to the setting up of a trust fund but requested that it be funded equally by both parties and that the value of the fund be only US\$150,000 per child.

12 Finally on the issue of division of the matrimonial home and other matrimonial assets, the Husband sought an order that he be allowed to retain 80% of the net sale proceeds (including interest, if any) of the Matrimonial Property.

My Decision

13 Having considered both the Wife's and Husband's respective cases, I made the following orders.

The Children's Matters

14 In respect of the Children's Matters, I noted that both parties consented to having joint custody of the children. Accordingly, I ordered the same. I also noted that at the time of the hearing before me, an interim care and control order was in place for the children. The arrangement was for the Wife and Husband respectively to have care and control of the children on a two-week alternating basis. The children have been living with the parties on this rotational cycle since January 2009 and it appears that this arrangement has been working well. Hence, I ordered a continuation of this arrangement. Access arrangements were also made for the other party when one party has care and control of the children. However, parties could not agree on some details regarding this matter. I hence made the following orders:

(a) The Wife's address is to be listed as the children's official address. There would be a clause explaining that this arrangement is for administrative purposes and that the Wife would provide the Husband with copies of all documents relating to the children, which are sent to her address, as soon as possible.

(b) Both parties would inform the other whenever some information comes to one of them from any external party, such as teachers and doctors. Once again, this notification should take place as soon as the parties are able to.

(c) In the event that either party wishes to change the dates when the children are to be with him/her, at least one week's prior notice is to be given to the other party.

(d) If either party is travelling during the month, the children would remain with the other party during the duration of the party's travel. This period would count as that party's two week

cycle with the children. If both parties are travelling, the children would reside at the Wife's residence and her mother would look after the children in the absence of both parties. If the Husband returns earlier than the Wife, the children would be allowed to stay at his residence provided he informs the Wife before hand and the children's activities would not be affected negatively.

(e) During the children's school holidays, the two week cycle access arrangements would cease and the following arrangements would be put in place. First, each party would have the children for half the school holidays. Second, the parties would be at liberty to take the children out of jurisdiction upon furnishing the other party with written details of the transport (e.g. flight details), accommodation, itinerary and contact details at least one month prior to the trip.

(f) Discussions for access arrangements for public holidays would be reached broadly before the start of the year. Additionally, the children would spend time with each parent alternately for Christmas and New Year. These would be agreed upon in the last two months of each year for the following year's arrangements. The children would also spend Chinese New Year's Eve and Chinese New Year with the Wife.

(g) The parties would send the children for counselling sessions and, if required by the counsellor, would attend the counselling sessions alone or jointly with the Children.

(h) Order 5(IV)(q) of a Draft Consent Order on the Children's Matters which was proposed by the Wife ("Draft Consent Order") would be deleted. This proposed order prohibited both the Wife and the Husband from exposing the children to their partners until both agree on when that would be a right time to do so.

(i) The Husband would not have access with the children on the Wife's birthday and Mother's Day, or, alternatively, the days that the Wife intended to celebrate those occasions with the children. Similarly, the Wife would not have access to the children on the Husband's birthday and Father's Day, or, alternatively, the days that the Husband intended to celebrate those occasions with the children.

(j) The children's birthdays would be celebrated jointly with both parties, where possible.

(k) There would be liberal telephone access.

(l) An overriding clause that both parties are to be flexible in all arrangements would be included in the Draft Consent Order.

Maintenance for the Wife

15 In respect of maintenance for the Wife, I ordered the Husband to make a nominal contribution of \$1 per month to the Wife as it was clear that the Wife could support herself presently and in the foreseeable future. Although this is more than what she asked for (\$1 per year), the Husband is making no issue about the excess \$11 per year. I wanted to preserve the Wife's right to make future applications for maintenance should there be a material change in her circumstances. Under section 112 of the Women's Charter (Cap 353, 1997 Rev Ed), the Court may vary any subsisting order for maintenance. If I dismissed the Wife's application for maintenance, there would not be any *subsisting* maintenance order for the court to vary in future and the Wife would be precluded from applying to court for maintenance forever (*Tan Bee Giok v Loh Kum Yong* [1996] 3 SLR(R) 605 at [13] to [15]).

Maintenance for the Children

16 Turning to the issue of maintenance for the children, section 127(1) of the Women's Charter provides that "the court may order a parent to pay maintenance for the benefit of his child in such manner as the court thinks fit". Additionally, section 127(2) provides that "[t]he provisions of Parts VIII and IX shall apply, with the necessary modifications, to an application for maintenance and a maintenance order made under [section 127(1) of the Women's Charter]". Section 69(4) of the Women's Charter, which is found in Part VIII of the Women's Charter, provides that:

(4) The court, when ordering maintenance for a wife or child under this section, shall have regard to all the circumstances of the case including the following matters:

- (a) the financial needs of the wife or child;
- (b) the income, earning capacity (if any), property and other financial resources of the wife or child;
- (c) any physical or mental disability of the wife or child;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (f) the standard of living enjoyed by the wife or child before the husband or parent, as the case may be, neglected or refused to provide reasonable maintenance for the wife or child;
- (g) in the case of a child, the manner in which he was being, and in which the parties to the marriage expected him to be, educated or trained; and
- (h) the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it.

17 Upon considering the facts before me, I made no order for maintenance for the children as they would spend about the same amount of time with each parent. I also agreed with the Husband's position in respect of the trust fund and ordered a trust fund to be established for both children at US \$150,000 per child, with both the Wife and the Husband as joint-signatories and trustees. Each party would contribute 50% to the trust fund within three months from 3 May 2010 or such time as agreed between the parties. I thought it fair to have both parties contribute equally as they were capable professionals with assets and have high earning capacities. There is no urgency in setting up this trust fund as the money will go to the children only after more than a decade from now. I therefore left the door open for the parties to agree on when they should put up the funds for this purpose.

Division of assets

18 I now come to the division of the Matrimonial Property and other matrimonial assets. This issue appeared to be the parties' main concern as it was keenly contested.

19 The starting point for any division of matrimonial assets is section 112(1) of the Women's Charter which gives the Court the power to order a division of matrimonial assets and a wide discretion in doing the same. This discretion is subject to the overriding requirement that the division

would be in a manner which is just and equitable in the circumstances of the case. Section 112(1) provides as follows:

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 the sale of any such asset in such proportions as the court thinks just and equitable.

Section 112(2) of the Women's Charter further provides a list of factors to be considered by the court when exercising its powers under section 112(1):

(2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

(a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;

(b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;

(c) the needs of the children (if any) of the marriage;

(d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;

(e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;

(f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;

(g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and

(h) the matters referred to in section 114 (1) so far as they are relevant.

The factors enumerated in section 112(2) are not exhaustive and are to be assessed as a whole to achieve a just and equitable division.

20 Both the Wife and Husband made financial and non-financial, direct and indirect, contributions to the 13-year long marriage. The Wife submitted that the relationship was in fact several years longer. To attribute their respective contributions to the division of the matrimonial assets, I opted for "the global assessment methodology", which involves a calculation of the net value of all matrimonial assets followed by a just and equitable division based on the facts. The global assessment methodology was described by the Court of Appeal in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [31] as follows:

The first methodology consists of four distinct phases: viz, identification, assessment, division and apportionment ("the global assessment methodology"). According to this approach, the

court's duty is to (a) identify and pool all the matrimonial assets pursuant to s 112(10) of the Act; (b) assess the net value of the pool of assets; (c) determine a just and equitable division in the light of all the circumstances of the case; and (d) decide on the most convenient way to achieve these proportions of division, ie, how the order of division should be satisfied from the assets (see Leong Wai Kum, *Principles of Family Law in Singapore (Butterworths, 1997)* at p 895). Pursuant to this approach, the percentage for indirect contributions is applied without distinction to all matrimonial assets (see, for example, *Ryan Neil John v Berger Rosaline* [2000] 3 SLR(R) 647 at [24]; and *Tham Lai Hoong v Fong Weng Sun Peter Vincent* [2002] 1 SLR(R) 391 ("*Tham Lai Hoong*") at [12]).

21 The Court of Appeal also mentioned the "classification methodology" for the division of matrimonial assets at [32]:

The second methodology, on the other hand, involves an assimilation of all four of the above steps [of identification, assessment, division and apportionment] into a broad judicial discretion which, in the first instance, separately considers and divides classes of matrimonial assets ("the classification methodology"). Pursuant to this method, the court apportions classes of matrimonial assets separately, for example, the matrimonial home, cash in bank accounts, shares, and businesses, etc. Any direct financial contributions and indirect contributions are considered in relation to each class of assets, rather than by way of a global assessment (see, for example, *NI v NJ* [2007] 1 SLR(R) 75).

22 I opted for "the global assessment methodology" as I was of the view that it would achieve a just and equitable result for both parties while minimizing the inconvenience of having to reshuffle assets between them. It would cause the least disruption to the lives of both parties.

23 The focus of the parties was the division of the sale proceeds of the Matrimonial Property. They appeared contented to retain the other assets in their respective sole names.

24 Turning to the assets of both parties, the Wife and Husband had the Matrimonial Property, as well as a joint Standard Chartered Bank account. The Matrimonial Property has been sold and the sale proceeds, some S\$1,247,044.04, are being held by PKWA Law Practice LLC as stakeholders pending the final determination of the ancillary matters. The total value of the parties' joint assets, *i.e.*, the amount held by the said stakeholders as well as that in the joint Standard Chartered Bank account, stood at S\$1,247,578.80. Additionally, the Wife has several bank accounts in Australian, Singapore and US dollars, insurance policies, stocks and shares, jewellery and watches, club memberships and a motor vehicle. After deducting the Wife's liabilities, her assets totalled some S\$339,583.32, A\$2,973.34 and US\$399.57. The Husband has several bank accounts in Australian and Singapore dollars, insurance policies, stocks and shares, as well as a motor vehicle. After deducting the Husband's liabilities, his assets amounted to some S\$1,435,930.24 and A\$108,935. Upon totalling up the value of the joint assets and the Wife's and the Husband's assets in their respective names, the combined values of all the matrimonial assets subject to division were S\$3,023,092.82, A\$111,908.34 and US\$399.57. After taking into account the respective currency conversion rates, the total was S\$3,167,998.

25 Translating the contributions made by the Wife and the Husband to a sum that fairly represented their respective contributions to the marriage, I was of the view that it would be just and equitable for the Wife to be awarded 40% of the combined value of the total matrimonial assets and the Husband the remaining 60%. This ratio reflects the Wife's and the Husband's respective financial and non-financial, direct and indirect, contributions to the overall assets and welfare of the family. While the Husband made a greater degree of direct financial contribution to the matrimonial assets

(which can be readily traced to the purchase price of those assets), I was of the view that the Wife's contributions towards the family's welfare, which included both financial contributions unrelated to the acquisition or maintenance of any identifiable matrimonial asset (e.g. expenditure on the children's education, healthcare and the like, which was harder to trace) as well as indirect non-financial contributions to the family (e.g. the time, effort and commitment she put in as the children's primary care-giver notwithstanding her career, as well as the support given to the Husband), ought to be recognised. I also took into account the Husband's indirect contributions to the family as a father and husband in deciding on a 40%-60% division. In the result, the Wife ought to receive a sum of S\$1,267,199.20. As the Wife has assets worth S\$343,962.35 in her name (this figure was the sum total, post conversion into Singapore dollars, of S\$339,583.32, A\$2,973.34 and US\$399.57 – see [\[24\]](#) above), the amount due to the Wife, which would be paid out of the sale proceeds of the Matrimonial Property, works out to be S\$923,236.85. I therefore ordered this amount to be paid out to the Wife's solicitors by the stakeholders with the balance payable to the Husband's solicitors.

26 Although paying out S\$923,236.85 of the sale proceeds of the Matrimonial Property to the Wife appears to give her a significant share of the Matrimonial Property, this is pursuant to my decision to award the Wife a percentage of the *total matrimonial assets* and not a percentage of the value of the Matrimonial Property. Her apparently greater share of the sale proceeds of the Matrimonial Property is merely a result of the computation and distribution of assets process. As mentioned earlier, I wanted to minimize inconvenience and disruption to the parties' lives.

Costs

27 As is not uncommon in such proceedings, both parties had a lot to say about each other. However, as each has succeeded or failed to some extent in the ancillary matters, I was of the view that each party should bear his or her own costs of the hearing before me.

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