

AMW v AMZ
[2011] SGHC 83

Case Number : Divorce No 438 of 2009 (Registrar's Appeal No 141 of 2010)
Decision Date : 07 April 2011
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Lim Hee Thuang Louis (William Poh & Louis Lim) for the plaintiff/appellant; Jeanne Wu (R Ramason & Almenoar) for the defendant/respondent.
Parties : AMW — AMZ

Family Law – Maintenance

7 April 2011

Woo Bih Li J:

Introduction

1 This appeal arises from a matrimonial dispute. The wife appealed against a decision of a district judge on ancillary matters. The appeal covered issues of custody, access, maintenance and division of matrimonial assets.

2 I am setting out my reasons in respect of my decision on maintenance as it involves the general question as to when an order for maintenance should take effect.

3 The district judge made her decision on 6 August 2010. She ordered the husband to pay \$400 a month as maintenance for two young children of the marriage. The maintenance order was to take effect from 1 August 2010.

4 The wife's appeal sought an order that the maintenance for the children commence from 6 August 2008 instead as that was two years before the date of the district judge's decision.

5 The district judge's grounds of decision states, at [32], that:

... I note that an application for backdated maintenance was not raised at the hearing. I would not have granted such an application either, as the wife had not sought interim maintenance nor made any maintenance application prior to the ancillary matters hearings. There would have been no basis to grant this.

6 Apparently, another district judge had expressed a similar view in [28] of *ZG v ZH* [2008] SGDC 293 stating that it is the usual practice of the court not to backdate a maintenance order unless there are good reasons to do so. It was not clear from that decision whether an intention to save the costs of an application for interim maintenance would be considered a good reason.

7 On the other hand, in *TG v TH* [2007] SGDC 172, a district court did backdate the maintenance to start from the month in which the divorce petition was filed as the wife's reason for not applying

for interim maintenance was to save costs (see [43] of that decision). Even then, the maintenance which was backdated to the date when the divorce petition was filed was for a smaller sum than the current maintenance ordered in that decision.

8 Before I continue, I should mention that in the past, an applicant seeking to dissolve a marriage had to file a divorce petition. Nowadays, a writ of summons is filed instead.

9 In the first place, I do not see why a court should use the date of the decision on ancillaries as a reference point to determine when a person should start being liable for maintenance. In the absence of a claim for interim maintenance, a claim for maintenance will usually arise when or after a writ is filed for the dissolution of a marriage. Quite often, the dissolution of a marriage is dealt with first. This leads to an interim judgment. Other issues like maintenance, division of matrimonial assets, custody of and access to children, collectively referred to as "ancillaries", are dealt with later. So usually there are lapses of time from the filing and service of the writ to the date when the interim judgment is given and from the date of the interim judgment to the date when a decision is given on the ancillaries. Quite often each lapse of time is not due to the misconduct of either party, let alone the misconduct of the applicant for maintenance. Therefore, there is, generally speaking, no valid reason to use the date of the decision on the ancillaries as a reference point to commence maintenance. The date of the writ is a better reference point.

10 Secondly, 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 she is compelled to do so because if she does not, she faces the risk that she will be penalised as was the wife in the case before me.

11 To claim interim maintenance, a wife 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 adopt the approach in [5] and [6] above is to encourage applicants to incur unnecessary costs and to clutter the court's calendar with unnecessary applications.

12 Various considerations may have to be taken into account in deciding when to order maintenance to start. For example:

- (a) What was the reason for not applying for interim maintenance?
- (b) What was the income and expenses of the parties in the past?
- (c) Is the man paying the maintenance ordered at the ancillaries stage prejudiced if the commencement of maintenance is backdated to a date before the date of the order or before the date of the writ? Why is he prejudiced if he has not paid maintenance (or if he paid a lower maintenance) in the past? Is it not the applicant who has been prejudiced because she has had to shoulder various expenses on her own or with limited help from him until the order for maintenance is made?
- (d) Will the arrears of maintenance be too sudden and too large a sum to be imposed and will that be balanced by the fact that the man has had the benefit of not paying maintenance or paying lower maintenance in the past?

(e) Will using instalment payments and/or using part of the man's share of matrimonial assets to pay the arrears of maintenance adequately address the issue?

13 The above considerations are not exhaustive. The point is that the court has a wide power to order maintenance to commence from whichever date the court considers fair. The court may even order maintenance to be backdated to a date before the writ was filed, for example, to a date when the applicant left the matrimonial home and was paying for all her expenses on her own. Such a wide power should not be fettered by the approach mentioned in [\[5\]](#) and [\[6\]](#) above.

14 In the case before me, the husband said he had paid for various expenses up to January 2009 although the wife claimed she had put money into his account to make the various payments. Bearing in mind (a) that the husband had stopped paying the expenses from February 2009 even on his own version and (b) that the writ in question was filed in February 2009, I was of the view that it was fair to order his obligation to pay maintenance to commence from February 2009. I so ordered.

15 As regards the argument for the husband before me that the wife had a source of income from letting out one or two rooms in the matrimonial flat in the past, that source of income was also available when the district judge ordered maintenance for the children to be fixed at \$400 per month. That source of income was therefore no reason to preclude the maintenance from commencing from the month the writ was filed.

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