

AQD v AQE and another matter
[2011] SGHC 92

Case Number : Divorce No 5136 of 2010 (RAS No 211 of 2010) and Originating Summons (Family) No 229 of 2010 (RAS 212 of 2010)
Decision Date : 12 April 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Bernice Loo Ming Nee (Allen & Gledhill LLP) for the plaintiff; Wong Soo Chih (Ho, Wong & Partners) for the defendant.
Parties : AQD — AQE

Conflict of Laws – Family Law

12 April 2011

Judgment reserved.

Choo Han Teck J:

1 This is the defendant’s (“the wife”) appeal against the District Judge’s refusal to grant a stay of the parties’ divorce proceedings (“the divorce suit”), and proceedings regarding the parties’ children’s custody, care and control, and access (“the Originating Summons”).

2 The parties are English nationals who have been living in Singapore since 1991. They are not permanent residents of Singapore. They were married in 1994 and have a son aged 11 and a daughter aged 15. The son started attending a boarding school in England in September 2010. Prior to that, he lived and studied in Singapore. Currently, the daughter still resides and studies in Singapore. The wife intends to move to England with the daughter permanently in the middle of 2011. The husband intends to remain living in Singapore.

3 The plaintiff (“the husband”) first filed the Originating Summons regarding the children’s matters on 8 September 2010. The wife then filed a divorce suit in England on 10 September 2010. The husband subsequently filed the divorce suit in Singapore on 13 October 2010. The Originating Summons proceedings were concluded on 21 October 2010 when the Singapore court made its orders as to the children’s custody, care and control, and access. The court made an order for joint custody, with the wife having care and control of the children. The wife did not appeal against the order for joint custody.

4 The main issue in this appeal is whether the parties’ divorce action should be heard in England or Singapore. Whichever jurisdiction was to hear the divorce should also decide the ancillary matters, namely, the children’s matters, the division of matrimonial assets, and the maintenance of the former wife and children. That would be the fairest and most expeditious way of adjudicating the entire action. The distribution of judicial tasks across jurisdictions makes it less likely for either court to make just and equitable orders across the entire matter with confidence because cross-jurisdictional orders may result in conflict with each other. Hence, the jurisdiction which bears the greater connection to the matter as a whole should hear the both the divorce action and the ancillaries. In the present case, I consider there to be more and weightier connecting factors to England than Singapore.

5 First, the fact that the children's matters have been substantively decided by the Singapore court should not prevent the wife from applying for a stay of the Originating Summons. The parties have agreed to share custody of the children, with care and control to the wife and access to the husband. This means that parties have in fact agreed that the children will live with the wife. Given that the wife intends to relocate to England together with the children in the near future, and the children will be residing and receiving their education there, what will be subsequently contested must be the husband's terms of access. The husband's terms of access to the children must be determined according to the children's best interests. And a child's best interest is best determined by the forum which is best equipped to determine what is best for the child in all material respects of his well-being. The English court will undoubtedly be in a better position than a Singapore court to determine this issue afresh in the light of the wife's lifestyle and children's new schooling schedule there. More importantly, it will also be in a better position to enforce these orders effectively.

6 Secondly, although there could be disputes of fact regarding the circumstances which led to the marital breakdown, these evidential issues may ultimately turn out to be less critical. On the one hand, the wife in her suit filed in England alleges that the husband committed adultery. On the other hand, the husband in the divorce suit filed in Singapore alleges that the wife behaved unreasonably. The husband contends that witnesses who can give evidence relating to the marital breakdown are to be found in Singapore, and therefore, the stay should not be granted. But neither party disputed that the marriage had broken down irretrievably. This perspective, coupled with the contemporary philosophy of no-fault divorce in both Singapore and England, may mean that whichever fact that the parties intend to rely upon to prove an irretrievable breakdown of marriage (namely adultery or unreasonable behaviour) is immaterial both practically and normatively. Hence, the fact that the divorce may be contested is no longer such a crucial factor.

7 Thirdly, the English courts will be better placed to make decisions with respect to the other ancillary matters, namely the wife's and children's maintenance and the division of matrimonial assets. The parties have much property located around the world and the Singapore court will not enjoy any logistical advantage over the English court in the process to delimit the pool of matrimonial assets. Conversely, the English court has an important advantage over the Singapore court. The determination of ancillary matters must not only have regard to the past conduct of the parties, it should also anticipate their future conduct and circumstances. Hence, the wife's and children's standard of living in England, potential earning capacity of parties in their new habitats, *inter alia*, should be considered. These are matters which the English court can more conveniently decide and they are the real live issues in a marriage that appears dead in the view of both parties.

8 On the balance, therefore, I am of the view that the divorce application and Originating Summons proceedings in Singapore should be stayed. The English court will be a more appropriate forum to resolve the matters in a just and equitable manner. I thus order accordingly.

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