

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2018] SGHCF 2

HCF/District Court Appeal No 48 of 2017
(HCF/Summons No 325 of 2017)

Between

WHM

... Appellant

And

WHN

... Respondent

In the Matter of Divorce Suit No D1755 of 2016

Between

WHN

... Plaintiff

And

WHM

... Defendant

JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]
[Family Law] — [Maintenance] — [Wife]

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**WHM
v
WHN**

[2018] SGHCF 2

High Court — HCF/District Court of Appeal No 48 of 2017 and
HCF/Summons No 325 of 2017
Choo Han Teck J
15 January 2018

24 January 2018

Judgment reserved

Choo Han Teck J:

1 The appellant is 46 years old and used to be a beautician before she married the respondent (who is 59 years old) in September 2003. The marriage broke down in 2014 and they were divorced in September 2016. The respondent works as an executive in an aviation manufacturing company. There were no children to the marriage.

2 The parties' matrimonial home was a Housing and Development Board ("HDB") flat. The value of the HDB flat was found to be \$427,999.57 by the court below (see *UDL v UDM* [2017] SGFC 77 at [21]). Prior to their marriage, the respondent bought a house in Malaysia in the appellant's sole name because she was Malaysian and he, as a Singaporean, was not permitted to own property valued below RM\$250,000. The value of the Malaysian property is estimated by counsel to be RM\$216,002.15, or S\$68,555.11.

3 The court below ordered that the Malaysian property be sold in the open market and the net proceeds to go to the respondent, who had paid for the property entirely. The court below also ordered the respondent to pay the appellant a lump sum in maintenance calculated at \$1,000 a month for three years, making a total of \$36,000. The court below further awarded the appellant 5% of the matrimonial assets. The court below noted that the appellant's counsel did not claim a share of the HDB flat, but the court nevertheless included the flat in the overall assets of the couple.

4 The respondent had amassed a sizeable collection of assets which both sides have referred to as "antiques", despite there being no evidence that the items are genuine antiques. The respondent claims that the appellant has taken many of them, with a total value of \$232,600. The respondent admits that he has some of the antiques in his possession, with a total value of \$97,746.84. The appellant did not question the monetary value of the antiques given by the respondent until the present appeal. The appellant admitted that she has some of the antiques with her but claims that the antiques in her possession are only worth \$17,330.

5 The court below accepted the evidence of the value of the antiques given by the respondent as the appellant did not challenge the evidence or provide any evidence of her own. Consequently, the court found that the value of matrimonial assets in the appellant's possession to be \$300,955.11.

6 The court below found on the above that the total value of the matrimonial assets was \$826,701.52. The court below awarded the appellant 5% of the total matrimonial assets, but accepted that \$300,955.11 worth of matrimonial assets were in the possession of the appellant.

7 The above finding and award is now challenged, and for the first time, counsel for the appellant has attempted to value some of the antiques. Counsel applied for leave to adduce evidence from the appellant's valuer, appointed after the court below had handed down its decision. The appellant claims that she did not challenge the respondent's valuation because she could not find a valuer. The appellant's inability to find a valuer was stated, for the first time, in an affidavit in support of her application to adduce the evidence of Mr Lee Tat Hwang, an antique dealer. Mr Lee assessed the value of 17 items brought to him by the appellant. There is no reason why Mr Lee's services were not engaged before the ancillary hearing. Furthermore, his evidence cannot be admitted without giving the respondent an opportunity to refute it. Even without a valuer, the appellant ought to have resisted the claims by the respondent at the hearing below.

8 The rules of evidence and procedure serve the purpose of ensuring not only a speedy resolution of disputes, but also that the court retains a discretion to ameliorate some of those rules. However, if the court too readily overlooks non-compliance of rules, the courts cannot function efficaciously and worse, parties may be encouraged to find ways to conceal evidence or prolong a case, all of which may lead to injustice to the other side. There is no compelling reason for me here to allow the fresh evidence to be adduced and the appellant's application in Summons No 325 of 2017 is therefore dismissed.

9 For the reasons above, the learned judge below was not wrong to accept the respondent's valuation of the antiques, although she could have adjusted it a little lower if she had reason to believe that the respondent had grossly exaggerated the value of the antiques.

10 The more troublesome issue concerns the respondent's allegations that the appellant had taken \$232,600 worth of the antiques. Ancillary matters are no different from any other trial, and the basic rule that the onus of proof is on he who asserts applies equally. The record shows merely the respondent's assertion and the appellant's denial. Counsel for the respondent submitted that the late admission by the appellant that she had in her possession some of the antiques, which she obtained valuations of, is proof that she had lied and therefore an adverse inference must be drawn against her. That is certainly one perspective, but looking at the list of items and the photographs, it does not seem to me that there is sufficient basis to draw an adverse inference that the appellant had taken the antiques as alleged. I also note his allegation that the marriage broke down because the appellant was getting too close to, and was influenced by a free-lance medium, and that he (the respondent) was tired of drinking ash-infused water concocted by the medium. I do not think that either matters sufficiently merit any interference with the finding below.

11 It is not disputed that the respondent had continued access to the Malaysian property. On the whole, I think that there is insufficient evidence to prove the respondent's assertion that the appellant had taken \$232,600 worth of the antiques. If she had, it is perplexing why she did not obtain valuations of all the items. She could have sold the others, perhaps. Or perhaps she just does not have them.

12 I therefore uphold the lower court's acceptance of the respondent's claim that the total value of the antiques was \$330,346.84. But I would vary the order of the court below and find that the appellant has in her possession \$79,466 worth of antiques on her admission.

13 Counsel for the respondent submitted that there was an error in the calculations of the matrimonial assets because the clear and obvious liabilities had not been taken into account. I agree that the liabilities must be deducted. These liabilities are primarily credit card debts and bank loans, which add up to \$272,128.44. Accordingly, the total matrimonial assets should be \$554,573.08.

14 The learned court below awarded the appellant 5% of the assets, calculated to be \$41,335.08. The court also ordered that the Malaysian property be sold and the net proceeds be given to the respondent in full. By the court's calculations, the appellant had to pay the respondent \$107,997.92, on account of the court accepting that the appellant had taken \$232,600 worth of the antiques.

15 In my view, the overall result needs to be adjusted in that the indirect contribution of the appellant ought to be more than 5%. The appellant was not gainfully employed during the marriage. She had a job as a beautician before marriage and has since returned to that job. Although the parties have no children, and as a result, the contribution by the non-financing spouse would be less, we ought to take into account that this was not a short marriage.

16 I therefore find that the total matrimonial assets to be \$554,573.08, including the HDB flat. I would award the appellant 12% of the assets. There will be no orders in respect of the antiques except that the \$79,466 retained by the wife will be used for the purposes of set-off.

17 I take into account the lower court's finding that the respondent is to pay the appellant \$47,267 for the recovery of an insurance loan and as payment for insurance policies transferred to the respondent. The appellant is thus entitled to 12% of the net matrimonial assets, plus \$36,000 as lump sum in maintenance,

and the aforementioned \$47,267. This adds up to \$149,815.77. The \$79,466 worth of antiques in the appellant's possession is set off against this amount. The net amount the appellant is entitled to is thus \$70,349.77. This is roughly the value of the Malaysian property. Hence, the appellant will retain the Malaysian property in her sole name as well as the \$79,466 worth of antiques in her possession.

18 The calculation by the court below in respect of maintenance for the appellant, given the overall circumstances, is fair and will not be disturbed.

19 Counsel for the appellant is to be released from the entire sum of his undertaking as to security for costs. I will hear the parties on costs, if they are unable to come to an agreement on costs.

- Sgd -
Choo Han Teck
Judge

Thirumurthy Ayernaar Pambayan (Murthy & Co) for the appellant;
Alagappan s/o Arunasalam (A Alagappan Law Corporation) for the
respondent.
