

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2018] SGHCF 5

HCF/District Court Appeal No 65 of 2017

Between

UEB

... Appellant

And

UEC

... Respondent

EX TEMPORE JUDGMENT

[Family Law] — [Maintenance] — [Child] — [Mortgage Instalments]

[Family Law] — [Maintenance] — [Wife] — [Mortgage Instalments]

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UEB

v

UEC

[2018] SGHCF 5

High Court — HCF/District Court Appeal No 65 of 2017

Debbie Ong J

14 February 2018

Debbie Ong J:

1 This is an appeal against the orders made by the District Judge (“DJ”) on maintenance sought under s 69 of the Women’s Charter (Cap 353, 2009 Rev Ed). The Appellant is referred to as the “Husband”, and the Respondent is referred to as the “Wife”.

2 The DJ’s Grounds of Decision at [7] states that the Wife earns \$7,174 and the Husband earns \$19,949 per month. The parties do not dispute the income that each party earns.

Maintenance for Child

3 The DJ ordered the Husband to pay \$3,000 per month as maintenance for the child of the marriage (referred to as the “Child”).

4 The Husband argued that the DJ failed to take into account several relevant considerations and erred in reaching this sum as maintenance for the Child.

5 The Husband submitted that the Wife's monthly housing instalments should not have been factored into the reasonable expenses for the Wife or the Child. The Husband argued that these sums went towards helping the Wife acquire an asset and should have been viewed as sums for investment instead. On this basis, the Husband argued that the DJ ought not to have included these housing loan repayments in the Child's reasonable expenses.

6 Generally, the court will not find an expense to be reasonable if it was made to accumulate wealth or acquire assets usable in the future. Maintenance is ordered to ensure that the needs proved in the present are met. However, I observe that even if it could be said that mortgage repayments go towards discharging the mortgage on a property and in that sense, go towards the acquisition of an asset, the law on maintenance does not contain any absolute prohibition against the use of maintenance funds to acquire assets. For example, in a situation under s 113 of the Women's Charter, when the court orders a lump sum maintenance for the wife which includes her need for shelter, food, clothing and other reasonable needs, the wife may use the lump sum maintenance to purchase a flat. The court focuses on what is reasonable and fair.

7 The Husband's argument appears to be that, for purposes of determining maintenance, rent is a reasonable expense but a mortgage repayment expense is not a reasonable one to be borne by the Husband, since it is an investment or an acquisition of an asset for the Wife. In my view, both the moneys that go towards rent and the moneys that go towards a mortgage loan ensure that a wife and child have a roof over their heads. It would not be appropriate for

maintenance purposes to make distinctions merely by the way in which the property is being held, such as whether a wife lives as a tenant in a property or is an owner of a property subject to a mortgage. Both are accommodation expenses which the court can take into consideration. However, in the latter situation, it is in the court's discretion to take into account the fact that the wife also owns the property and thus has some financial resources in the form of an asset.

8 Moreover, if a court deciding on maintenance is also making an order on the division of assets (which is not the situation in the present case), it can consider accommodation expenses, whether mortgage repayment or rent, in light of the total financial resources of the parties, including what each receives in the division award.

9 Therefore, it is not inappropriate for the court to consider a wife's mortgage repayments, for this reflects her overall financial burdens. I am well aware that there may be cases where the monthly housing mortgage instalment is higher than the monthly market rental for a particular property. Where this is the case, I am of the view that a reasonable sum, which may be lower than the actual housing instalment, may be considered as the reasonable expenses spent on accommodation.

10 In the present case, I do not think the DJ was wrong, on the evidence available, to reach a finding that the Wife had a housing loan to repay. Here, the Wife's housing loan was owed to her sister rather than to a bank. The monthly housing instalment of \$2,522 is a reasonable sum to include as the Wife and the Child's reasonable accommodation expenses.

11 The Husband also submitted that:

- (a) the Wife had included car expenses to inflate the calculation of her expenses;
- (b) the DJ should have used lower values for the reasonable expenses for the Wife's helper;
- (c) holiday expenses should not have been considered; and
- (d) the Child's expenses when he is with the Husband should have been considered.

12 I do not think the DJ can be faulted in the exercise of his discretion in the manner that he did on these areas raised by the Husband. In my view, the sum of \$3,000 per month ordered by the DJ for the Husband to pay the Wife as maintenance for the Child was not unreasonable. Of importance is the undisputed fact that the Husband earns a high salary of around \$20,000 per month. To provide his child \$3,000 per month given his salary of \$20,000 is reasonable.

13 While it is a very useful practice to determine whether each item in the list of expenses submitted by the Wife is a reasonable one, one should not be overly mesmerised by the approach of reaching a maintenance sum only by totalling up every item of expense as if it were a legal requirement. The law provides that the court shall take into account various factors in deciding the maintenance award. The law does not require that every specific item of expense be proved by receipts or assessed on specific values, as if on a reimbursement exercise. More exceptional expenses though, such as certain medical needs and costs, ought to be supported by evidence. A child's needs and expenses may also fluctuate from month to month; similarly, household expenses may fluctuate over time. Setting out regular specific expenses nevertheless enables

the other party and the court to assess broadly whether the expenses are reasonable. In this case, the very important factors in determining the Child's maintenance are his needs and the financial capacity of the parents to provide for him.

14 As such, this part of the appeal is dismissed.

Maintenance for Wife

15 The DJ also ordered the Husband to pay \$500 per month as maintenance for the Wife.

16 I agree with the Husband that there is a lack of basis for such maintenance. The Wife's income is greater than the monthly expenses found by the DJ to be the reasonable expenses incurred. I am not satisfied that the Wife has proven that she needs maintenance from the Husband.

17 As such, this part of the appeal is allowed.

Other payments

18 The DJ also ordered the Husband to pay arrears for unpaid maintenance totalling \$38,500 and a one-time payment of \$3,723.30.

19 To the extent that I have allowed the appeal in respect of the maintenance awarded for the Wife, the arrears should now take into account a deduction of \$500 per month for the relevant period. The Husband should pay arrears totalling \$33,000 instead of \$38,500.

20 The DJ's order of 60% of the \$6,205.50 as the total expenses for the Wife to make the new apartment liveable for the Child is not unreasonable. It is a small sum. I will not interfere with the DJ's discretion in this respect.

Conclusion

21 I dismiss the appeal against the Child's maintenance and allow the appeal against the maintenance for the Wife. The arrears shall be adjusted to take into account these decisions.

Debbie Ong
Judge

Koh Tien Hua and Ho Chee Jia (Eversheds Harry Elias LLP) for the
appellant;
Hong May Leng (Lexton Law Corporation) for the respondent.
