IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2018] SGHCF 9

HCF/Divorce (Transferred) No 5125 of 2015

Between

UJP

… *Plaintiff*

And

UJQ

… *Defendant*

JUDGMENT

Family Law *— Custody — Care and control*
Family Law *— Custody — Access*
Family Law *— Maintenance — Wife*
Family Law *— Maintenance — Child*
Family Law *— Matrimonial assets — Division*

UJP
v
UJQ

[2018] SGHCF 9

High Court — HCF/Divorce (Transferred) No 5125 of 2015
Choo Han Teck J
12 February, 12 March 2018

3 April 2018 Judgment reserved

Choo Han Teck J:

1 The parties were married for 15 years before their marriage broke down in 2015. The plaintiff is 48 years old and works as a programme manager. The defendant is 46 years old and is a managing director of a financial technology company. The parties have three children, two daughters aged 17 and 15, respectively, and a son aged 10.

2 The parties raised five issues before me — care and control over the children, maintenance for the children, division of the matrimonial assets, maintenance for the plaintiff, and costs.

Care and control

3 On the first issue, of care and control over the children, counsel for the plaintiff submitted that the plaintiff should be awarded care and control over the

children, with reasonable access for the defendant. Counsel for the defendant submitted that the parties should have shared care and control over the children. During my interview with the eldest child, she stated that she does not wish to see her father. She appeared sufficiently matured to express an independent opinion, and to decide what is best for herself. I thus award care and control over her to the plaintiff. The two younger children have been alternating between the homes of the plaintiff and defendant during the divorce proceedings. From my interview with them, I find that they seem well adjusted to the living arrangements. I am of the opinion that it would be in the best interests of the two younger children for the status quo to be preserved, and thus award the parties shared care and control over the two younger children.

Maintenance for the children

4 On the second issue, of maintenance for the children, counsel for the plaintiff submitted that the defendant should pay for the children's school fees, and $9,150 per month for the other expenses of the children (approximately 75% of their total monthly expenses of $12,165.24). Counsel for the plaintiff further submitted that the $9,150 per month should be backdated to the commencement of the divorce proceedings (November 2015), taking into account the $1,500 per month paid by the defendant pursuant to an interim maintenance order granted in February 2016. The plaintiff is also claiming $7,300.05 as additional expenses incurred by the eldest child's gap year abroad in 2016. Counsel for the defendant submitted that the parties should pay for the children's expenses in proportion to their incomes, resulting in the defendant paying for 65% of the children's expenses.

5 The defendant has indicated that he is willing to bear the bulk of the children's expenses on the condition that he is allowed to make payments

directly to the relevant vendors. Seeing as the children's school fees have always been borne by the defendant, I agree that the defendant should continue to pay for the children's school fees, and that payment should be made directly to the school.

6 For the children's other expenses, the defendant does not dispute the sum of $12,165.24 claimed by the plaintiff as the children's monthly expenses (excluding school fees), aside from stating that the expenditure for rent should be removed since the plaintiff is no longer renting the specific property she was renting when she derived the figure of $12,165.24. I reject counsel for the defendant's argument. Even if the plaintiff is no longer renting the specific property, she is still living in a rented property, and I will take the previous rental expenditure as a reasonable estimate of her current rental expenditure.

7 Both parties agreed that the children's other expenses should be borne in proportion to their incomes. The sole dispute is thus the proportion of their incomes. Counsel for the plaintiff argued that the proportion is 75-25 in favour of the defendant, based on their incomes from the past four years. Counsel for the defendant argued that the proportion is 65-35 in favour of the defendant, based on their current incomes. Counsel for the plaintiff contended that the defendant's current income is inaccurate, as it does not include any bonuses. In response, counsel for the defendant contended that the defendant has only recently commenced his current job, and thus cannot predict how much bonus he will get. Counsel for the defendant further contends that the plaintiff included rental income from the parties' properties when calculating the defendant's income, but not when calculating the plaintiff's income. Since the defendant has been, and will be, shouldering the school fees of the children, which amount to about $6,587.08 per month, I am inclined to accept the proportion proposed by the defendant. The defendant is thus to pay $7,900 per month (65% of

$12,165.24) as maintenance for the three children.

8 I am inclined to backdate the maintenance order for the children, given the not insignificant period of time that has passed since the interim judgment. However, I will give credit to not only the $1,500 paid by the defendant as maintenance for the children pursuant to the interim maintenance order, but also for the $1,880 the defendant has spent on the children per month, whilst they were with him. I thus backdate the maintenance order for the children for a year.

9 As for the plaintiff's claim for $7,300.05 as additional expenses incurred by the eldest child's gap year abroad in 2016, I will order the defendant to pay 65% of that (amounting to $4,745.03), consistent with the proportion of their incomes that I have adopted above.

Division of matrimonial assets

10 On the third issue, of division of matrimonial assets, the parties were unable to come to an agreement on whether some assets formed part of the matrimonial pool. I will deal with each disputed asset in turn.

11 First, counsel for the defendant submitted that 1/3 of the share of Property 1 should be excluded from the pool as it is held on trust by the parties for the defendant's brother. Specifically, the defendant claimed that his brother gave him a loan in respect of Property 1, thus giving rise to the trust. The plaintiff claims that such an arrangement does not exist, and even if it did, in law a loan would not have given rise to a beneficial interest in Property 1. I agree. Property 1 is thus added, as a whole, to the matrimonial pool.

12 Second, counsel for the defendant submitted that the plaintiff's BNPP

Employee Savings Account ("BNPP account") should be included as it contains moneys obtained during the marriage. In particular, counsel contended that the plaintiff contributed to the account during the first three years of the marriage and although there were times when the plaintiff stopped work due to her pregnancies, the plaintiff was under paid maternity leave, and thus continued to accumulate moneys in her BNPP account. Counsel for the plaintiff submitted that the account should not be included as the moneys in the account were mostly accumulated before the marriage. Since the plaintiff does not dispute the fact that she had accumulated moneys in her BNPP account during the marriage, I will include a portion of the plaintiff's BNPP account to reflect the moneys accumulated during the marriage, just as I will for the defendant's BNPP account. As no evidence of the exact amounts accumulated during the marriage was adduced, I will use a proportion derived from the number of years the respective party accumulated moneys in his or her BNPP account during the marriage, divided by the number of years the respective party accumulated moneys in his or her BNPP account. Including the plaintiff's paid maternity leave, the plaintiff would have contributed about a year's worth of income into her BNPP account during the marriage. The plaintiff claims that she started contributing to the account in 1998, and stopped in 2001. I thus add one quarter of the value of the plaintiff's BNPP account into the matrimonial pool. This works out to $7,534.34.

13 Third, counsel for the plaintiff submitted that the defendant's BNPP account should be included in the pool as it contains moneys obtained during the marriage. As stated above, I will include a portion of the defendant's BNPP account to reflect the moneys accumulated during the marriage. The defendant claims that he started contributing to the account in 1995, and stopped in 2003. I thus add 4/9 of the value of the defendant's BNPP account into the matrimonial

pool. This works out to $90,035.88.

14 Fourth, counsel for the defendant submitted that the plaintiff's account with Targo Bank should be included in the pool. Counsel for the plaintiff submitted that the account should not be included in the pool as the moneys are meant for the children. I note that the defendant similarly has POSB bank accounts with moneys meant for the children. The defendant has stated his intention to close the accounts and to pay the moneys to the children. The plaintiff has confirmed that she has no objections to the arrangement, and contended that the Targo Bank account should similarly be excluded from the matrimonial pool. I accept that the Targo Bank account may be excluded from the matrimonial pool, on condition that the plaintiff also pay the moneys in the Targo Bank to the children.

15 The parties were further unable to agree on the valuation of some of the matrimonial assets. I will deal with each disputed valuation in turn.

16 The defendant contended that the parties bank accounts should be valued according to the same dates. The plaintiff contended the defendant's bank accounts should be valued as of July 2016, but that it would be unfair to take the value of the plaintiff's bank account at that date, since she has since used the moneys in her bank account for the children's expenses. The plaintiff thus contended that her bank accounts should be valued as of August 2016. I agree with the defendant that the bank accounts should be valued at the same date. The plaintiff's objection is no longer of much weight since I have backdated the maintenance order. I will use the figures as of July 2016 since parties did not provide me the figures for the defendant's bank accounts as of August 2016.

17 The next dispute concerned the defendant's Cortal Securities account.

The plaintiff alleged that she "found" a spreadsheet prepared by the defendant which shows that the Cortal Securities account had a balance of $1,053,000 in 2013, compared to the measly balance of $40.65 in 2016. The plaintiff thus contends that the balance in 2013 should be adopted. I am not inclined to rely on the spreadsheet adduced by the plaintiff. The circumstances and context surrounding the creation of the spreadsheet are unknown and I thus consider it unsafe to rely on the information therein. The value of the Cortal Securities account is to be taken as $40.65.

18 The parties further disputed the value of a parcel of land in Poland owned by the plaintiff, but registered in her uncle's name. The plaintiff alleged that the land is worth $9,720, "based on enquiries with [her] uncle". The price of $9,720 is also the price the plaintiff paid for the parcel of land, in about 2004. The defendant has attempted to value the parcel of land based on online advertisements adduced by the plaintiff. The defendant reached a range of $19,500 to $48,360. The two values proffered by the parties are entirely speculative and unsatisfactory. In the absence of clearer evidence, I will value the land based on an average of the figures proffered by the parties. This amounts to $21,825.

19 Lastly, the plaintiff claimed that the value of the defendant's Suravenir Retraite account should be taken as of December 2012, as "there was no explanation provided by the [defendant] as to why the amount was significantly reduced in 2015". The value of the account was €82,428.18 in December 2011, €76,888.23 in December 2012, and €35,632.17. I note that the reductions took place over the course of a few years, during which these proceedings cannot be said to have been imminent, as the marriage only broke down in 2015. I also consider that the increase in the rate at which the value of the account was depleted is not enough to convince me that there was dissipation. I thus adopt

the value of €35,632.17 for the Suravenir Retraite account.

20 The matrimonial assets are thus as follows:

Asset	**Value ($)**
Assets held in joint names	
Property 1	$834,299.45
Property 2	$869,744.77
DBS account ending with 760	$181.06
DBS account ending with 614	$6,829.24
DBS account ending with 392	$284.91
Total	**$1,711,339.43**
Assets held in the plaintiff's sole name	
Land parcel in Poland	$21,825
OCBC account ending with 001	$55,074.32
DBS account ending with 351	$3,637.96
CPF	$76,162.62
BNPP account	$7,534.34
Total	**$164,234.24**
Assets held in the defendant's sole name	
DBS account ending with 772	$8,931.18
DBS account ending with 683	$5.31
DBS account ending with XAU	$0.00
DBS account ending with 031	$0.00

ANZ account ending with 363	$16,272.05
ANZ account ending with 366	$0.00
ANZ account ending with 369	$6.92
ANZ account ending with 301	$94,319.83
ANZ account ending with 797	$1.49
LCL account ending with 627	$15.31
CPF	$72,984.97
ANZ shares portfolio ending with 134	$29,606.68
ANZ mutual funds portfolio ending with 134	$67,817.10
Funds Supermart account ending with 036	$278,892.24
DBS account ending with 223	$0.29
Cortal Securities account ending with 55S	$40.65
Suravenir Retraite Account ending with 695	$57,724.12
BNPP account	$90,035.88
Total	**$716,654.02**
Grant total	**$2,592,227.69**

21 I now turn to the ratio according to which the matrimonial assets should be divided. As to the ratio of direct contributions, counsel for the plaintiff argued that the "income approach", where the ratio of direct contributions reflects the ratio of the parties' incomes, should be adopted. Counsel for the plaintiff thus

submitted that the ratio should be 72.08-27.92. Counsel for the defendant argued that the income approach was inappropriate in this case because the parties' income varied across the years, and they had not used joint accounts for the acquisitions. Counsel for the defendant thus submitted that the ratio of direct contributions should be 79.23-20.77 for Property 1, 87.40-12.60 for Property 2, 100-0 for assets held in each party's sole name, and for the income approach to be adopted for the remaining assets held in joint names.

22 I do not see how counsel for the defendant can argue that the income approach is inappropriate in one breath, and in the next, apply the income approach for the remaining assets held in joint names. Perhaps counsel for the defendant resorted to using the income approach due to the lack of evidence concerning the assets in question. That is precisely the beauty of the income approach, which has the benefit of simplicity, and the ability to do rough and ready justice in the face of lack of evidence, as is often required in matrimonial disputes. In happy times, blissful couples do not keep accounts. I thus adopt the income approach for all the assets, and find that the ratio of direct contributions is 72.08-27.92 in favour of the husband.

23 As for the ratio of indirect contributions, counsel for the plaintiff submitted that the ratio ought to be 70-30 in favour of the plaintiff, who was the principal caregiver and gave up her career in France to relocate to Singapore for the defendant's job. Counsel for the defendant argued that the ratio ought to be 60-40 in favour of the defendant, who was involved in the children's activities, and supported the plaintiff. In the circumstances, including the length of the marriage and the fact that the plaintiff was the primary caregiver, the ratio of indirect contributions is 65-35 in favour of the plaintiff.

24 The average ratio is thus 53.54-46.46 in favour of the defendant. Both

parties contended that the average ratio should be adjusted. The plaintiff contended that an uplift of 11% should be given to her as the defendant did not make full and frank disclosure. The defendant contended that an uplift of 10% should be given to him as the wife "attempted to deceive and/or mislead the Court" when listing and valuing the matrimonial assets. I do not think that the evidence on either side is strong enough to justify an uplift either way.

Maintenance for the plaintiff

25 On the fourth issue, of maintenance for the plaintiff, counsel for the plaintiff submitted a lump sum figure of $468,000, derived using a multiplicand of $1,500 and a multiplier of 26 years. Counsel for the defendant submitted that no maintenance should be awarded as the plaintiff was gainfully employed during the marriage, and earns a substantial income of about $13,897.83 per month.

26 An order for maintenance is meant to complement the order for division of matrimonial assets. Here, the plaintiff will be awarded about 50% of the matrimonial assets, which works out to $1,296,113.85. I also note that the plaintiff is earning an income of about $13,897.83, and claims that her monthly expenses (including expenses for the children) comes up to about $19,173.99. I thus see no need to make an order for maintenance for the plaintiff.

Conclusion

27 In conclusion, care and control is to be awarded to the plaintiff for the eldest child, and is to be shared for the two younger children. The defendant is to pay the children's school fees directly to their school, $7,900 per month to the plaintiff as maintenance backdated for a year, and $4,745.03 to the plaintiff for the eldest child's gap year. The defendant is entitled to $1,387,878.71 worth

of matrimonial assets, and the plaintiff is entitled to $1,204,348.91 of the same. Parties are to come to an agreement on how to distribute the assets in accordance with my decision, and are at liberty to apply for further orders if they are unable to come to an agreement.

Costs

28 Counsel for the plaintiff submitted that the defendant should be made to pay costs as his conduct delayed the proceedings, the interim judgment was granted on the basis of the plaintiff's claim of unreasonable behaviour, and the defendant lied on many occasions. Counsel for the defendant submitted that the defendant has already been penalised for his actions as the plaintiff has asked for costs at the previous hearings, where relevant.

29 I accept counsel for the defendant's argument and make no order as to costs.

- Sgd -
Choo Han Teck
Judge

Loh Wai Mooi and Wang Liansheng (Bih Li & Lee LLP) for the plaintiff;
Shen Luda Genesis (Templars Law LLC) for the defendant.