IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 13

District Court Appeal No 121 of 2020

Between

VPX

… *Appellant*

And

VPY

… *Respondent*

JUDGMENT

[Family Law] — [Maintenance] — [Child]

VPX
v
VPY

[2021] SGHCF 13

General Division of the High Court (Family Division) — District Court Appeal No 121 of 2020
Choo Han Teck J
19 May 2021

3 June 2021 Judgment reserved.

Choo Han Teck J:

1 The appellant wife (the "wife") appeals against the decision of the District Judge (the "DJ"), who ordered the respondent husband (the "husband") to pay S$2,500.00 per month to maintain their child with effect from 1 December 2020.

2 Both parties are citizens of the United States ("US"). The husband did not attend the hearing before me on 19 May 2021. According to the wife's counsel, the husband is 41 and the wife is 36 this year. The wife is a financial controller at [AB] and earns S$7,387.00 per month. The husband works in his family's business and is also a consultant who builds websites. The parties were married in Nevada in May 2007. Their son, who was born in September 2007, will turn 14 this year.

3 In November 2007, the wife and child moved to Texas. The parties' marriage was annulled in Nevada on 23 September 2008, 16 months after the marriage. Counsel for the wife does not know what the ground for annulment was. The husband filed a guardianship application for the child in early 2009. On 22 June 2010, the [nth] District Court in Dallas County, Texas (the "Texas Court"), made interim orders concerning the child, including an order that the husband pay USD 700 for the child's monthly maintenance. The Texas Court found that the husband was "the biological father" of the child and "paternity is so established" (the "Texas Court Order"). However, the Texas Court eventually dismissed the husband's application on 9 July 2010 "for want of prosecution" (the "Dismissal Order"). According to the wife, he did not turn up at the hearing. The wife moved to Singapore in June 2015. After securing a job and receiving her employment pass, she brought the child to Singapore in January 2016. The husband lives in Ohio.

4 On 16 June 2020, the wife filed an Originating Summons under the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) ("OSG 80"). She applied for orders for the parties to have joint custody of the child, for her to have sole care and control and the husband to have reasonable access, and for the husband to pay S$14,000.00 monthly maintenance for the child with effect from May 2017, reimburse her 80% of the child's summer course fees, continue to provide for the child's medical expenses as provided by his company's insurance policy, and do all steps necessary to facilitate the renewals of the child's US passport.

5 The wife was granted leave on 15 July 2020 to effect service of legal process on the husband in Ohio. The husband was served with the papers on 4 August 2020. However, he did not file any affidavits in OSG 80 and did not attend the hearing before the DJ.

6 The DJ ordered that both parties were to have joint custody of the child and the wife was to have sole care and control, with reasonable access for the husband. In the Grounds of Decision dated 10 March 2021 ("GD"), the DJ noted the wife's claim that the child's monthly expenses were S$17,390.50 (GD at [8]). The wife asserted that the husband earns four times her monthly salary, in the region of USD 20,000 to USD 30,000, but did not produce evidence to support her claim (GD at [10]).

7 The DJ said that the husband has been paying USD 634 per month for the child since 2009, which is about S$900.00 (GD at [9]). The DJ accepted that this sum was insufficient for the now 13-year-old child (GD at [14]). However, the DJ was not persuaded that the amount of maintenance requested by the wife was reasonable, as it was "way above" the wife's income and was not for the child's "essential living expenses" (GD at [13]).

8 The DJ held that it would be reasonable for the parties to spend about S$5,000.00 a month, including medical and dental expenses, on the child. In the DJ's view, this was sufficient to cover the child's essential expenses, which "include[d] school fees as a foreigner, accommodation, transport and food". In the absence of any independent evidence on the husband's income, the DJ held "it would be fair to assume that the [husband] has about the same income level as the [wife]" and ordered that each party contribute half of the maintenance, *ie* S$2,500.00. The DJ also ordered parties to each pay 50% of the child's hospitalisation and related expenses if this was not covered by the child's insurance (GD at [15]).

9 Finally, the DJ ordered the husband to pay the monthly S$2,500.00 with effect from 1 December 2020 rather than 1 May 2017 as the wife "did not give

any good reasons to explain why she only sought recourse presently" (GD at [15]).

10 Counsel for the wife, Mr Cheong, submits that the DJ had erred by placing the burden of proof of the husband's income on the wife. The husband's income is a fact especially within his knowledge and would be disproportionately difficult for the wife to prove. The duty of full and frank disclosure requires the husband to disclose his own income.

11 Second, the DJ's approach treated an absent litigant more leniently than a litigant who is present. If the husband had attended the hearing and refused to disclose his income, an adverse inference would have been drawn against him. His absence created the "perverse outcome" where the wife was prejudiced for failing to prove his income. The court should draw an adverse inference against the husband and "fully accept" the wife's allegations as to the husband's income. This would not cause injustice to the husband because he could apply to set aside the judgment under rule 572 of the Family Justice Rules 2014 (S 813/2014), if he had a good reason for his absence.

12 Third, Mr Cheong submits that the DJ had erred in her assessment of the child's expenses. The DJ only considered certain categories of "essential" expenses (school fees, accommodation, transport and food), but these are "woefully insufficient" to raise a child, and on the wife's calculation, those four categories of expenses identified by the DJ amount to S$6,882.00.

13 Finally, the DJ should have backdated the maintenance order because the husband had "acted in bad faith" in respect of these proceedings and his own child, and a signal must be sent to the husband to properly discharge his duty to maintain the child.

14 I am troubled by several unresolved issues in this case. First, at the hearing before me on 19 May 2021, Mr Cheong submitted that no US court had jurisdiction to make these orders, and the Singapore court was the only one that had jurisdiction. On 28 February 2019, the wife was advised by her US solicitor that, in view of the Dismissal Order, there was no "continuing, exclusive jurisdiction, i.e., no final order entered regarding the child" and he did not see why she could not "file in Singapore". The US solicitor went on to say:

> If, however, by some chance there is a court of continuing, exclusive jurisdiction in Texas, because neither the child, nor either parent resides in Texas, and there is no longer significant connection to Texas, I think Texas would lose its jurisdiction to modify the order.

However, even if the Texas court does not have jurisdiction, I do not know whether the Nevada court (where the parties were married and subsequently annulled the marriage) or the Ohio court (where the husband lives) would have jurisdiction. If a US court did have jurisdiction, it would be much easier for the wife to find out the husband's income and obtain an order for the child's maintenance there.

15 Second, Mr Cheong did not know the ground for the annulment. The wife's affidavit for OSG 80 dated 16 June 2020 states that it was "by reason of fraud", as the husband "had no intention of living together" with her and "being a husband" to her. The Decree of Annulment issued by the Nevada court states that the wife "should be granted a Decree of Annulment for the reasons set forth in the Complaint", but this "Complaint" is not enclosed in the Decree.

16 Third, I do not even know if the husband is the child's biological father. Mr Cheong pointed me to the Texas Court Order, which stated "The Court finds that [the husband] is the biological father of [the child] and paternity is so established." But I do not know the evidence considered by that court to make

this finding. From the evidence before me, there appears to be no full hearing in the US courts in which the husband appeared. I have thus to make my decision without any of this information and on the assumption that there is no US court with jurisdiction, that the husband is in fact the child's biological father, and without knowing the ground for the annulment.

17 I first consider Mr Cheong's submission that the DJ erred in her assessment of the child's expenses. After considering the list of expenses provided by the wife (GD at [8]), I agree with the DJ that the monthly maintenance of S$17,390.50 the wife says the child needs is not reasonable as it was "way above" the wife's income. And some of these expenses are clearly extravagant.

18 For example, the wife said in her affidavit for OSG 80 that she usually gives the child "$1,000 in cash as his Christmas gift", but she included this S$1,000.00 as part of the child's monthly maintenance. If her intention is to put aside S$1,000.00 every month for the child's Christmas gift, that would amount to S$12,000.00 per year for a 14-year-old's present, which is, in my view, excessive in the circumstances, and unnecessary. The same can be said of the wife's claim that she needs S$258.00 per month for the child's "birthday expenses", including birthday trips to destinations like the Maldives. Another example is the wife's claim for S$214.00 per month to replace the child's iPhone "once every year" and pay for repairs. That is, in my view, an unwarranted expense. A child's phone does not need to be replaced once every year. If the wife wishes to provide such items for the child, she should pay for them herself.

19 Mr Cheong argued that, according to the wife's calculation, the four categories of "essential" expenses identified by the DJ (school fees,

accommodation, transport and food) amount to S$6,882.00. In my judgment, the wife's calculation of some of these expenses is subjective and may be over-estimated. For example, the wife said that the child's 1/3 share of the S$7,000.00 monthly rental is S$2,333.00, but apportioning a 1/3 share for the child may not be appropriate if the wife would have rented this same accommodation with her partner whether or not the child was residing there. In past cases, the court has accepted one party's inclusion of the child's share of the monthly rental expenses in the child's maintenance (*eg* Tan Lee Meng SJ's decision in *VNW v VNX* [2021] SGHCF 1 at [135]–[138]; my decision in *UJP v UJQ* [2018] SGHCF 9 at [6]). In my judgment, those cases had taken into account the fact that, but for the children, the spouse could have paid less rental by renting smaller and cheaper accommodation, and the spouse must therefore be assisted in providing for the child by "attributing" some portion of the rental to the child. There is an element of subjectivity in assessing what portion of the rental, and other shared household expenses, ought to be "attributed" to the child, depending on what that spouse's expenses would be had she or he not been living with the child. In this case, while the DJ did not explicitly say so, she appears to have taken this subjectivity into account and had given a discount in assessing that S$5,000.00 per month was sufficient. I am of the view that the claim by the wife is a little excessive, and I would have reduced it had the DJ not done so. I am of the view that the DJ's assessment of the child's monthly maintenance to be S$5,000.00 is not unreasonable and should therefore not be disturbed.

20 I next consider how much of this S$5,000.00 the husband should pay. I agree with Mr Cheong's submission that the husband's income is a fact that is disproportionately difficult for the wife to prove. But I do not think that the court should therefore "draw an adverse inference against the [husband] and fully accept the [wife's] allegations as to the [husband's] income". An adverse

inference may be drawn where there is "a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn", and "that person must have had some particular access to the information he is said to be hiding" (*UZN v UZM* [2021] 1 SLR 426 at [18]). In this case, there is no substratum of evidence establishing a *prima facie* case against the husband because he has not appeared at the hearing and the wife has no evidence of his income.

21 It might not have been right to assume that the husband had the same income as the wife, but I am not minded to overturn the DJ's decision for each parent to pay half the monthly maintenance that the DJ had ordered and which I think ought to stand, as I think it is fair that both parents bear equal responsibility for their child. I therefore uphold the DJ's order that the husband is to pay half of the S$5,000.00 each month, *ie* S$2,500.00. For completeness, I note that the husband has been paying USD 643 (about S$900.00) for the child since 2009, and I agree with the DJ that this sum is now inadequate, since the child will turn 14 this year and has more expenses. It is also not known on what basis the husband has been making the maintenance payments. If it were from an order of court, the wife ought to have gone to that court for the variation that she sought.

22 Mr Cheong argued that the DJ should have backdated maintenance to 1 May 2017. In the Appellant's Case dated 12 April 2021, counsel stated that the wife had, on several occasions, asked the husband to increase his contributions to the child's expenses beyond his monthly payment of USD 643, but he refused. Nonetheless, the wife could still support the child as she was "able to rely on the generosity of her parents and on her savings to meet the child's needs", and the wife was "also living with her partner who, presumably, is assisting her with the child's needs". Given that the wife was able to provide

for the child prior to her application in OSG 80, I do not think that it is necessary to backdate the child's maintenance.

23 For the reasons set out above, I uphold the DJ's order for the husband to pay S$2,500.00 per month to maintain the child, with effect from 1 December 2020. I make no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Cheong Zhihui Ivan and Ho Jin Kit Shaun (Withers KhattarWong LLP) for the appellant;
The respondent absent and unrepresented.