

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 13

Originating Summons (Family) No 3/2022

Between

VWB

... Plaintiff

And

VWA

... Defendant

GROUND OF DECISION

[Civil Procedure — Appeals — Leave]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

VWB

v

VWA

[2023] SGHCF 13

General Division of the High Court (Family Division) — Originating
Summons (Family) No 3 of 2022

Valerie Thean J

20 January, 13 March 2023

14 March 2023

Valerie Thean J:

Introduction

1 The plaintiff (“the husband”) and the defendant (“the wife”) married in 2006. They divorced some 12½ years later, with interim judgment granted on 23 May 2019.¹ Their ancillary matters were dealt with by a district judge (“the First DJ”) on 14 June 2021 in *VWA v VWB* [2021] SGFC 102 (“*VWA*”).

2 The couple have two children. The First DJ ordered the husband to pay maintenance of \$5,000 per month for the two children of the marriage with effect from 1 July 2021 and until each reached the age of 21 (*VWA* at [19]), and \$2,680 per month for the wife’s maintenance (*VWA* at [67]) for a period of 3 years. The husband appealed, and this appeal was dismissed on 23 February

¹ *VWA* at [3] – [4].

2022 by the High Court with costs of \$8,000 ordered against him: see HCF/DCA 80/2021, HCF/ORC 69/2022.

3 On 21 March 2022, the wife filed an application to enforce the maintenance order. On 21 October 2022, another district judge (“the Second DJ”) determined that the arrears outstanding were \$65,567.64 and ordered the husband to pay the wife these arrears in monthly instalments of \$5,000 with effect from 1 November 2022 (EMO 997/2022, “the EMO”). She also made clear that the maintenance ordered by the First DJ remained payable. The husband was to show proof of payment of the current maintenance and maintenance arrears in court on a scheduled monthly basis for six months. Both parties were represented up to this point in the proceedings.

4 Originating Summons (Family) No 3/2022 (“the OSF”) concerns the husband’s application for an extension of time to file a Notice of Appeal against the EMO and a stay of the EMO pending that appeal. Both litigants acted in person for this OSF. On 13 March 2023, I granted an extension of time for the husband to appeal and dismissed the prayer for a stay pending the hearing of that appeal. These are my reasons.

Leave to appeal

5 Four factors are relevant in the decision whether to grant an extension of time. These were set out by the Court of Appeal in *AD v AE* [2004] 2 SLR(R) 505 at [9] – [10] in the context of provisions in the Rules of Court (Cap 322, R 5, 1997 Rev Ed), which is *in pari materia* to r 15 of the Family Justice Rules 2014: the length of the delay; the reasons for the delay; the chance of the appeal succeeding if time were extended; and degree of prejudice caused to the other party, the wife. All four factors are of equal importance, to be balanced against

one another, having regard to all the facts and circumstances of the case concerned (*Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 (“*Lee Hsien Loong*”) at [28]).

Length of delay

6 The length of the delay is calculated as the time between the between the last day for filing a notice of appeal and the day on which the party who is late files an originating summons seeking an extension of time (*Falmac Ltd v Cheng Ji Lai Charlie and another matter* [2014] 4 SLR 202 at [18]). In the present case the husband had 14 days to appeal, which expired on 4 November 2022. He filed this OSF on 10 November 2022. The length of delay was 6 days. This was a short delay (see, for example, “a short delay” of 8 days in like circumstances of a 14-day appeal period in *UHA v UHB* [2017] SGHCF 27 at [9]).

Reasons for delay

7 A key consideration in considering a party’s reasons for delay is whether the party seeking an extension of time exercised reasonable diligence (see *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 at [45]). The attitude of the applicant is important, whether he had wanted to comply with the rules, and not “take things for granted”: see *Lee Hsien Loong* at [58].

8 The husband’s reasons may be summarised as follows: first, he had been confused by the CrimsonLogic Service Centres in the Family Justice Courts (“FJC”) and High Court and the FJC Registry; and secondly, he understood on 4 November 2022 that a district judge (“the Third DJ”) had on that date granted him an extension of time to 2 December 2022 to file his notice of appeal.

9 The chronology of this matter set out by the husband is as follows. After the hearing on 21 October 2022, he sent an email to the FJC requesting for the FJC to call him on his handphone number, stating that he “will be unable to comply with the courts orders”.² He averred that he visited the Crimson Logic Service Centre in the FJC on 28 October 2022 to file an appeal and was informed he should go to the service centre at the High Court. He also averred that he visited the service centre at the High Court on 2 November 2022 and was told to go to the FJC Registry. He thereafter called the FJC Registry on 2 November 2022 and was told to seek directions from the judge on 4 November 2022.³ This was the date fixed by the Second DJ for him to show proof of payment of his monthly instalment.

10 4 November 2022 was the last day for any appeal to be filed. The husband appeared before the Third DJ in the afternoon. The relevant portion of the notes of evidence released by the FJC reads as follows:

Court: You can have your recourse against the order if you wish. But for the time being, there is an order which I will proceed to enforce and collect the sums for the show payment. **I will give you additional time to do the necessary, but at the next date if you do not comply with the court's directions**, you may be liable for penalties, including an imprisonment term.

RIP: Noted.

[RIP enquires on the applicable form for the Notice of Appeal. Court directs RIP to the FJC Practice Directions]

Court: Directions:

1) Extension of time for R to either (A) show proof of payment of the balance sum of \$9680 for the month of November 2022, or (B) provide proof of the due filing of the Respondent's Notice of Appeal and Summons for a Stay of Execution Pending Appeal,

² Husband's 2nd Affidavit dated 10 February 2023, at p 15.

³ Husband's 2nd Affidavit dated 10 February 2023, at p 2 – 3.

by 2 December 2022 at 3:00pm at Maintenance Mediation Chamber.

2) If neither (A) or (B) is complied with, Respondent is liable to be imprisoned for five (5) days.

[emphasis added]

11 The husband also averred that he was at the FJC Registry at or around 5.03pm on 4 November 2022 to file an appeal but was told that the Registry was closed and for him to return on Monday.⁴

12 At around 6.13pm, the FJC sent an email to the husband (“the 4 November FJC email”). The husband read this as consistent with his understanding that an extension of time had been granted by the Third DJ. The relevant portion of the email states:

3. The Respondent is to produce the balance for November’s show payment of \$9680 by the abovementioned date. Alternatively, **Respondent may submit his Notice of Appeal and Stay of Execution Pending Appeal before a Judge on the show payment date.**

[emphasis added]

13 The husband subsequently tried to lodge an appeal on 7 November 2022. The FJC informed him that he was out of time both in person, and also by email on 8 November 2022. He then filed this OSF on 10 November 2022.

14 The husband’s averment as to being sent from CrimsonLogic in one place to another and his claim that the FJC Registry was closed may not be accurate. In particular, there is no CrimsonLogic Service Centre located at the FJC, although in response to my query on 13 March the husband stated that he meant the CrimsonLogic at the State Courts across the road from the FJC. It is

⁴ Husband’s 2nd Affidavit dated 10 February 2023, at p 3.

a litigant's own responsibility to pursue his case with good sense. The FJC website is clear as to where an appeal from a District Judge's order must be filed, and the husband is highly educated, being a medical doctor with 25 years' specialist experience in diagnostic and interventional neuroradiology.⁵ Nevertheless, the Third DJ's directions on 4 November could have been interpreted in two ways. In the first alternative, it could be read as granting an extension either to show payment on 2 December or to show proof, on 2 December, that a notice of appeal *had been filed on 4 November*. In the second alternative, which the husband averred as his interpretation, an extension of time was granted to the husband to file his Notice of Appeal before 2 December 2022. While the Third DJ had referred to proof of "due filing", he had not specified a date.

15 Three matters are pertinent to this analysis. First, 4 November 2022 was the last date of appeal and the premise of the direction given was that no appeal had yet been filed. The husband was still querying the form of the notice to be used. Second and more crucially, the subsequent email from FJC sent at 6.13pm on the same date was also open to two interpretations. Rather than stating that the husband was to show proof on 2 December 2022 that he had filed his appeal on 4 November 2022, it stated that he "*may submit his Notice of Appeal*" to a judge on 2 December 2022. No distinction was drawn between the Notice of Appeal and evidence thereof (such as reference to a copy or proof), with the use of the word "submit" creating room for ambiguity. In context, mentions courts deal with high case volumes and persons who serve there do so with challenging time limitations. The pertinent point is that the husband's interpretation was not an unreasonable one. Third, he followed up on matters fairly expeditiously on

⁵ Wife's Affidavit dated 7 March 2023 at p 11; Decision of the Second DJ dated 21 October 2022 at [38].

the following Monday, 7 November 2022, and then in the same week on Thursday 10 November 2022. These facts show diligence on the part of the husband and reasonable confusion in attempting to exercise his right of appeal before the expiry of the period for doing so.

Prospects of appeal

16 The standard adopted in assessing the merits of the appeal for the purposes of an application for an extension of time is a low one. The test is whether the appeal is “hopeless”. Unless there are “no prospects of the applicant succeeding on the appeal”, this factor should be considered neutral (*Lee Hsien Loong* at [19] – [20]; *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd and others* [2001] 3 SLR(R) 355 at [43]). In the present case, construction of the prior divorce order and facts raised at trial were examined, factual and legal findings were made. I considered this factor neutral.

Prejudice to the wife

17 Prejudice cannot refer to the mere fact that the appeal would be continued if an extension were granted. Prejudice must refer to other factors, such as an irreversible change of position: see *ARW v Comptroller of Income Tax and another and another appeal* [2019] 1 SLR 499 at [78] – [80]; *AD v AE* at [14].

18 The wife has averred to the husband’s refusal to pay her maintenance.⁶ I deal with this below. Regarding the extension of time for leave to appeal, an award of costs in her favour would remedy any out-of-pocket expense necessitated: see *TOC v TOD* [2016] SGHCF 10 at [5].

⁶ Wife’s Affidavit dated 7 March 2023 at p 3 – 4.

Decision on extension of time for leave to appeal

19 The length of delay was short, the reasons for the delay were reasonable, and it could not be said that there was no prospect in the appeal or that the wife would be prejudiced. I therefore granted the extension of time.

Application for stay

20 The principles relating to a stay of execution pending appeal were summarised in *VOC v VOD* [2021] SGHCF 14 at [13] and are as follows:

(a) As a general proposition, the court does not deprive a successful litigant of the fruits of his litigation pending an appeal. There is no difference whether the judgment appealed against was made on a summary basis or after a full trial.

(b) When a party is exercising his undoubted right of appeal, the court ought to see that the appeal, if successful, is not nugatory. Thus, a stay will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back if the appeal succeeds.

(c) An appellant must show special circumstances before the court will grant a stay. The likelihood of success is not, by itself, sufficient. The special circumstances must be circumstances which go to the enforcement of the judgment and not to its validity or correctness.

21 The husband's sole argument is that he has insufficient funds to pay as ordered. The question of his means, however, was considered in the maintenance order made on 14 June 2021. The same question was considered again by the High Court at his appeal on 23 February 2022. The wife filed the

EMO because the husband did not fully comply with those orders. The order he seeks to appeal dealt with the amount of arrears outstanding and the instalments to be paid towards those arrears. The “fruits of litigation” here relate to the unpaid fruits of prior litigation. This appeal concerns determination and payment of the arrears of maintenance. There is no issue of the appeal being rendered nugatory because there remains an undisputed sum owing arising from the division of the couple’s matrimonial assets; adjustments may be made for any difference on appeal. His argument does not reveal any special circumstances to stay the EMO pending appeal.

22 Finally, for reasons of clarity, I mention that when the husband first appeared before me on 20 January 2023, he was of the view that a DJ on 2 December 2022 (“the Fourth DJ”) had ordered a stay pending the hearing of this OSF; although in his affidavit filed on 10 February 2023, he stated that “all show payment hearing were suspended”.⁷ The Fourth DJ’s minute sheet reflects that on 2 December 2022, the Fourth DJ ordered that “all show payments (be) suspended pending hearing for application for stay of execution of EMO pending appeal”; at the same time, she directed him to check whether the summons for a stay was to be heard by a DJ. It was clear from the query posed in the direction that she had not ordered a stay.

23 The two are nevertheless related. On 21 October 2022, the Second DJ ordered that the husband “show payment” for 6 months. The term “show payment” is a short form used at the FJC for a litigant to show the court proof of payment, such as a receipt, or a statement of account. Such an order is typically used where a party liable to pay maintenance has a history of non-compliance. This is because the court has power to imprison for the non-

⁷ Husband’s 2nd Affidavit dated 10 February 2023, at p 4.

payment of maintenance under s 71(1)(b) of the Women's Charter 1961 (2020 Rev Ed) ("WC"), and the requirement to show proof of payment secures his presence in court. The court may punish him if he does not pay; and the court's power to do so incentivises compliance. On 4 November 2022, the date scheduled for the husband to show proof of payment of the arrears, he did not show proof of any payment. The Third DJ ordered that the husband provide proof of the due filing of the husband's notice of appeal and summons for a stay of execution pending appeal or show proof of due payment of his arrears on 2 December 2022. At the same time, the Third DJ added a default term pursuant to his power under s 71(1)(b) WC: if the husband did not comply with his requirements and again failed to pay his arrears, he would be liable to five days' imprisonment. On the return date of 2 December 2022, when the Fourth DJ suspended the show payment, the effect of her order was to suspend the imposition of the 5-day imprisonment term that would follow from his default in showing proof of payment. This did not abrogate the liability to pay. The court merely withheld the exercise of its power to imprison. But the two are linked. For wilful defaulters, the power to imprison girds the fulfilment of the obligation to pay. It functions as a mode of securing execution on the prior maintenance order. Conversely, where a stay of execution has been granted, the court would not exercise its power under s 71(1)(b) of the WC. In the present case, the suspension, while not intended to amount to a stay, had the practical effect of a stay. This link, and whether there are any grounds for a stay, should be borne in mind when adjustments are made to the enforcement of maintenance orders. Maintenance orders are premised on the ongoing and immediate needs of the particular family; hardship may arise where arrears remain unpaid.

Conclusion

24 In conclusion,

(a) an extension of time to 27 March 2023 was granted for the husband to file an appeal against EMO 997/2022; and

(b) the prayer for a stay of execution was dismissed.

25 Costs were ordered in favour of the wife because the husband's failure to file his appeal within the prescribed time necessitated this application: see *Newspaper Seng Logistics Pte Ltd v Chiap Seng Productions Pte Ltd* [2023] SGHC(A) 5 at [27]. Litigants in person are entitled to compensatory costs: r 870 of the Family Justice Rules 2014. After hearing parties, these costs were fixed at \$100.

Valerie Thean
Judge of the High Court

The plaintiff in person;
the defendant in person.
