

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 34

District Court Appeal No 45 of 2024

Between

WYH

... Appellant

And

WYG

... Respondent

GROUND OF DECISION

[Family Law — Maintenance — Child]

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WYH

v

WYG

[2024] SGHCF 34

General Division of the High Court (Family Division) — District Court
Appeal No 45 of 2024
Choo Han Teck J
26 September 2024

2 October 2024.

Choo Han Teck J:

1 The parties are both 45 years old and their marriage lasted about 17 years before the respondent (“Mother”) filed for divorce. They have three children aged 18, 17, and 13 respectively. Judgment was granted in September 2020. The parties entered a consent order on 2 March 2021 which included payment of \$1,000 maintenance for each of the children. On the application by the Mother for a variation of the children’s maintenance to \$1,500 a month for each child, the court granted the application on 5 July 2022. The court also imposed an additional \$800 for each child on an annual basis for additional expenses. The consent order of 2021 did not provide for payment of an annual expense for each child.

2 On 18 October 2023 the appellant (“Father”) filed an application to vary the July 2022 order. He wanted the maintenance to be reduced to \$500 a month

for each child, and the annual expenses for each child to be reduced to \$300. His application for variation was dismissed by the court below. Against that dismissal, the Father appealed before me. I dismissed the appeal.

3 It is unfortunate that cases in the Family Courts are often advanced by litigants who have no legal representation. There are rules of evidence and procedure that have an important bearing on the outcome of the case. In the present instance, both parties were represented so there is little excuse for the courses they took.

4 The Family Courts encourage parties to settle amicably and to leave their grievances and emotions behind so that everyone can move forward in the direction of new lives. In this regard, parties are encouraged to enter into consent orders. But they must understand that orders by consent are not like litigated judgments which the parties can appeal according to the rules of appeal. When a party is not happy with a court order regarding maintenance to which he consented, he has first to apply, not to appeal, but to vary the consent order.

5 Different considerations apply to an application to vary than those to an appeal. One such consideration is that the court may not be sympathetic to matters that could have been foreseen when the consent order was entered into. For example, in this case, the Mother claims that her youngest child was, at the time of her application for a variation of the consent order, already 11 years old and would soon be taking her Primary School Leaving Examination. This is something that she ought to have considered when she entered into the consent order about a year before (when the child was 10).

6 In matters under the Women's Charter 1961 (2020 Rev Ed) ("WC"), the parties are at liberty to vary a consent order relating to a child's maintenance at

any time. Nonetheless, he or she has to produce sufficient evidence to convince the court to do so. The party has to show that the variation is reasonable and for the welfare of the child: s 127(2) read with s 73 of the WC. One such consideration in my view is whether there is a material change of circumstances. In this regard, if the original order is found to be fair and adequate, the court will be less inclined to vary the amount just because the ex-husband had fortuitously got himself a windfall of money that he did not have before the order.

7 In this case, the court below accepted the Mother's application for a variation even though the three grounds advanced, ordinarily, would not have been sufficient. The first, as I mentioned, was that her children needed more school fees. The second was that she was earning only \$3,600 a month, which was not a change from the time of the consent judgment. The third was that the Father was tardy in making payments. That is a matter for enforcement proceedings, not variation in itself.

8 After the court allowed the Mother's application, the Father did not appeal. Instead, he waited a year before applying to vary the variation orders obtained by the Mother. When asked why he did not appeal, his counsel stated that, "Bluntly, he did not have the means". In any case, now that he has applied to vary the new orders of court, he has to satisfy the requirements for a variation.

9 One of the main arguments by Mr Quek, counsel for the Father, was that the court below was wrong in not accepting that the Father's income had dropped, and wrongly found that he had a dual income from selling cars at a well-known car agency, as well as an income from his job as an insurance salesman. Counsel argued, without proof, that the Father had stopped selling insurance. When asked if the Father still has the licence to sell insurance,

counsel replied that he had. The remaining arguments concerned allegations that the court below calculated the overall income and liabilities wrongly. That is clearly a matter for an appeal and not a variation. In any event, the main ground here was that the court did not explain why she found that the Father was earning an average of \$7,700.

10 Mr Quek also submitted that the Father had been jailed three times, each time for a day — all for not paying maintenance. This, counsel argued, shows that the Father truly has no money to pay. In my view, it may also show that the Husband is a recalcitrant ex-spouse when it comes to not paying maintenance. The enforcement court may eventually run out of patience and he may find himself imprisoned for a longer term in future.

11 Ms Tan, counsel for the Mother, in reply, explained how the average income was derived. The court had taken into account the income of \$1,700 and the income from selling cars, which was \$4,500 but rising to \$6,000. Ms Tan also submitted that in the course of discovery when the application by the husband was filed, the Mother discovered that the Father had concealed assets. First, he transferred his convertible Mini Cooper to his 70-year-old mother. He had also transferred \$566,000 to his sister, a famous local actress, in payment of a \$300,000 loan from her. The two matters raised by Ms Tan might have a stronger impact on the court had they been raised in argument when she applied to vary the consent order, but in the instant case, they are not as relevant.

12 This present application by the Father to vary those orders was filed on 18 October 2023. It is far too late to appeal against the 2022 orders, and this application should not be used as an alternative route to appeal out of time. In any event, it is futile to apply for a variation when the Father has not shown any change of circumstances. He does not even have Inland Revenue Authority of

Singapore (“IRAS”) returns as proof because he only started as a car salesman in March this year. Furthermore, all the arguments advanced were arguments that ought to have been made in an appeal.

13 For the reasons above, the appeal against the dismissal of his application to vary the 2022 orders is dismissed. I did not order costs against the Father because the Mother’s application for a variation in 2022 was, in my view, an application made too soon after the original orders. Although some of the evidence came to light recently, they were not discovered at the time of her application. Hence, her application then, was premature, but justice seems to have worked in her favour in the end.

- Sgd -
Choo Han Teck
Judge of the High Court

Quek Liuyong Uthai (I.R.B. Law LLP) for the appellant;
Tan Siew Kim and Hilary Mahesh Rupawalia (Sterling Law
Corporation) for the respondent.
