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Adb Vs. Adc

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Court : Singapore Supreme Court

Decided On : Apr-17-2014

Judge : The Honorable Mr. Justice Choo Han Teck

Appeal No. : Divorce Transferred No. 206 of 2012

Appellant : Adb

Respondent : Adc

Judgement :

Choo Han Teck J:

1. In this case, the defendant/wife ("defendant") sought maintenance for both herself and the child. The defendant was born in 1966. The plaintiff/ husband ("plaintiff') was born in 1967. Parties were married in 2002. It was the plaintiff's first marriage and the defendant's second. The defendant had a child from the previous marriage, whom the plaintiff had adopted. The child was born in 1997 and was studying in junior college at the time of proceedings. In the statement of particulars for the divorce suit, the gradual break down of the marriage was set out in four paragraphs.

2. The couple faced increasingly frequent bouts of disagreements and quarrels, and had little communication otherwise. Marital intimacy ceased from October 2008, and they led separate lives since 1 January 2009. The only thing they still had in common was their love for their child. Nevertheless, the plaintiff sought a

clean break from what he described as a "loveless" marriage, and interim judgment was granted on 13 March 2012. Parties agreed to have joint custody of the child, with care and control to the defendant and liberal access to the plaintiff. Since the commencement of the marriage, parties have been jointly contributing to the child's maintenance, though this seemed the extent of their financial co-operation. This is evident from their ability to have resolved the usually cumbersome matter of division of assets on their own.

3. Before this court, the defendant sought maintenance for herself, and the child. She sought $120,000 in lump sum maintenance for herself and $2,500 per month for the child. The defendant is Regional Sales Manager of a multi-national company. Her remuneration package is partially commission based. She earns a net monthly income of between $6,605.43 and $8,834.09. The plaintiff is a senior officer in the Singapore Prison Service, and earns a net monthly income of $8,187.29. Counsel for the plaintiff argued that, with bonuses, the defendant earns about $13,660 per month. Counsel for the defendant did not dispute that the defendant was capable of earning that figure - in fact, the defendant's tax declaration in 2010 indicated a gross yearly income of $215,900. She merely pointed out that the figure was not consistently as high. Salary aside, it was undisputed between parties that the defendant owned significantly more assets than the plaintiff - in fact, even on the defendant's calculation in her declaration of matrimonial assets, she had more than twice the amount of assets the plaintiff owned.

4. The facts were largely undisputed. This was a brief marriage. Each party was a capable individual earning a comfortable income. In fact, the defendant more so than the plaintiff, having amassed a significant pool of assets, which she held in her own name (most notably in her Central Provident Fund account). Both parties love the child, and continue to be involved in his life. In this regard, noting that the defendant has care and control of the child, I will allow her application for maintenance for the child from the plaintiff, in the sum of $1,000. Her claim for $2,500 was unjustified, given that - even on her own account - the total monthly expenses incurred by the child amounted to $2,810. I was not persuaded by her calculation. I accept the plaintiff's account that his share should be in the sum of

$1,000. It is undisputed that the plaintiff has been providing $1,000 monthly to cover the child's expenses, well before parties came before this court. The defendant argued that this application was necessary because the child was reaching the age of 17, at which point his expenses "will increase definitely".

5. The plaintiff was agreeable to commit himself to shoulder his share of the child's tertiary education expenses. He had indicated that although the child was his step-child, he had adopted him as his own and he has a good relationship with the child. There was no communication between the plaintiff and defendant and the defendant was not aware that the plaintiff had offered to continue his support of the child up to $1,000. The defendant's resort to this court might have been a little too hasty but the state of their relationship was such that she would not even consider mediation. Counsel for the defendant, Miss Chia, submitted that the defendant claimed $2,500 in maintenance only because it was based on the first affidavit. Now that the plaintiff is willing to pay $1,000 for the child's maintenance, she (the defendant) will leave the amount of maintenance for the child to be decided at the court's discretion.

6. On the facts of this case, the defendant was slightly older than the plaintiff. She earned slightly more than him. They kept and spent their personal income separately and were independent of each other financially throughout the marriage. The defendant is gainfully employed, and so is the plaintiff. There is no problem maintaining their 17 year old son, and I am ordering that the plaintiff's contribution to the son's maintenance be fixed at $1,000 a month.

7. The remaining issue before me was whether there should be an award of maintenance for the defendant. Counsel for the plaintiff, Miss Sharma, submitted that there should be no award of maintenance for the defendant. Miss Chia submitted that a lump sum of $120,000 should be awarded (calculated presumably based on $1,000 for each month of the marriage, which was deemed to have lasted 10 years).

8. In some cases, courts have awarded a token $1 monthly maintenance, presumably with a view to "preserve" the wife's rights to maintenance. In my view, this token gesture is unnecessary because s 118 of the Women's Charter (Cap

353, 2009 Rev Ed) permits the wife (and husband) to apply for a variation or rescission of the maintenance order at any time. Thus, an order that there be no maintenance for the time being with liberty to apply would have sufficed to preserve the parties' rights. In any event, should it be thought that technically, a token sum should be awarded (in case a husband should subsequently argue that the court cannot vary a "0" sum), then it becomes important to appreciate the distinction between an order for no maintenance and one for no maintenance but with liberty to apply. Not only does s 118 refer to a variation of the maintenance order and not the maintenance sum, but even in terms of mathematics, a "0" is also a number.

œ8. Sometimes the court may decide not to order maintenance because the husband may be truly and clearly incapable of providing maintenance for the time being - say, that as a result of illness, he becomes bedridden. However, should he recover and resume work, his obligation to pay maintenance would resume. In such cases, the order should be "no maintenance but with liberty to apply".

9. Conversely, if the court is of the view that no maintenance is payable, the order is final and the wife would not be allowed to make a fresh application should she subsequently become impecunious. If the court is of the view that no maintenance is payable, not because the husband was unable or incapable of paying, but because, as in the present case, the defendant had not depended nor would she be depending on any maintenance from the plaintiff, the order should just be "no order for maintenance". If women were to be accepted as equal to men in marriage and in divorce, this distinction is important.

10. The idea that maintenance is an unalloyed right of a divorced woman is an idea borne from the time when women were housewives living on the maintenance of the men. The Women's Charter was passed in 1961 to "protect the rights of women and girls in Singapore", a quote taken from the website of the Ministry of Social and Family Development Singapore. This sentiment was reflected in parliamentary debates at the time. One Member of Parliament, during the sitting on 6 April 1960, stated that:

[w]omen are still too exposed to the economic and moral forces - or, shall I say, the immoral forces - in this cruel world of ours. Accordingly, it becomes necessary for society to seek provisions to protect these women from the clutches of certain men.

On 2 May 1996, in discussing amendments to the Women's Charter, another Member of Parliament mentioned "[m]y upbringing and my background [tell] me that it is the duty of the husband to maintain his wife". It was clear that the Honourable Member of Parliament was also speaking in the context of women who were in need of support. The general sentiment that prevailed even in 1996 was that, in the words of another Member of Parliament on 27 August 1996, "the Women's Charter [was] essentially legislated for the protection of women".

11. The idea that women needed protection was yoked to an old attitude that should be changed. If it were to continue even where protection is no longer needed, it might lead to the suppression of women in the name of chivalry. If the woman is truly equal and independent, she does not require nor would she, I think, desire patronising gestures. Those gestures belie deep chauvinistic thinking. To award even a token sum would be wrong if it was merely symbolic. That symbol for women has to be torn asunder in fact and in spirit. The time may come when the Women's Charter is replaced by a wider, more encompassing bill that might be more suitably named the Marriage Charter, but when that moment might be is for the legislature to determine.

12. The justification for the defendant's application here for $120,000 in maintenance was that the defendant "had been a devoted mother and wife all these years to the [plaintiff] and the child, whilst juggling her full time job concurrently". I do not disregard those contributions. Considerations for the efforts of a wife in non-financial contributions to the home must be taken into account but that would be for the purposes of determining the division of matrimonial assets. Sometimes, courts use the award for maintenance to make fine adjustments to the overall orders relating to the division of assets and maintenance, but when this is done, the reasons and the calculations must be express and clear. In this case, there was no need to make such adjustments as there was no dispute over

dividing the parties' assets.

13. This is not an exceptional case in which maintenance for the wife was denied. In Chan Choy Ling v Chua Che Teck [1994] SGHC 194, the wife - who was earning $5,900 a month - sought spousal maintenance from her husband - who was earning $4,082 (and imprisoned for a period). The judge held "justice would not have been done by ordering any maintenance for the wife". In AAE v AAF [2009] 3 SLR(R) 827, the wife's application for maintenance was rejected, in particular because the high court found she "deliberately misled" the district judge in her application for interim maintenance, by making herself out to be a housewife with no income. On the contrary, the High Court found that she was financially independent (at [22]” [24]). More recently, in Anthony Guo Ninqun v Chan Wing Sun [2014] SGHC 56, the High Court denied maintenance to the wife (who claimed $6,500 a month) holding that "she [was] an able and enterprising individual with good business acumen", and would have been able to enjoy economic independence to support her lifestyle (at [124]).

14. I hence make the following orders:

(a) Plaintiff to pay $1,000 per month as maintenance for the child;

(b) The defendant's claim for maintenance for herself is dismissed; and

(c) Each party to bear his/her own costs.

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