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2. Redaction HAS been done.

DISTRICT JUDGE KOW KENG SIONG

28 November 2024

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGFC 100

MSS No. 1495 of 2024

Between

XFB

And

XFC

JUDGEMENT

Family Law – Maintenance – Enforcement of maintenance order – Recovery of maintenance arrears – Attachment of earnings order under section 81 of the Women’s Charter 1961 – Applicable principles

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XFB

v

XFC

[2024] SGFC 100

Family Court – MSS No. 1495 of 2024

District Judge Kow Keng Siong
30 September 2024, 6 and 28 November 2024

28 November 2024

District Judge Kow Keng Siong:

Introduction

1 Section 81 of the Women's Charter 1961 ("**Charter**") allows a court to impose an attachment of earnings order ("**AEO**") to secure the payment of maintenance if it is "just" to do so. When is it "just" to impose such an order? MSS No. 1495 of 2024 ("**MSS 1495**") provides an opportunity to address this issue.

2 The facts in MSS 1495 are straightforward and not in dispute:

- (a) The Respondent had been ordered to pay \$500/month as maintenance for (i) the Applicant (his ex-wife) and (ii) their son

(D.O.B.: 5 September 2020) respectively. The total maintenance of \$1,000/month (i.e., for both the Applicant and the son) is payable on the 5th day of each month.

(b) From November 2021, the Respondent began defaulting on his maintenance payments.

(c) As a result, the Applicant initiated MSS 1495 on 3 July 2024. The total maintenance arrears at that time (i.e., from November 2021 to June 2024) were \$29,050.

(d) After MSS 1495 was filed, the Respondent continued to default on his maintenance payments. At the time of the hearing in November 2024, the total maintenance arrears had grown to **\$34,050 (“Maintenance Arrears”)**.¹

(e) Between September 2024 and early November 2024, the Respondent did not have a full-time job. Instead, he worked part-time on an irregular basis during this period.

(f) By the time of the hearing, the Respondent managed to secure a job. His employment commenced from 7 November 2024. The take-home pay is \$2,200/month and is payable on the 7th day of each month.

¹ This is based on the sum of \$29,050 (from November 2021 to June 2024) and \$5,000 (from July to November 2024).

Parties' position

Respondent's monthly expenses and balances

3 During the hearing, the Respondent gave the following breakdown of his monthly expenses:²

Expenses		\$
(a)	Telephone (Residence & Mobile)	50
(b)	Electricity / Water / Gas	50
(c)	Conservancy charges	60
(d)	Eating out	400
(e)	Public transport	100
(f)	Allowance for parents	500
(g)	Payment in lieu of 1 month's notice for resigning from Company A (Payment ends in January 2025)	172
(h)	Payment in lieu of 1 month's notice for resigning from Company B (Payment ends in January 2025)	290

4 Based on his take-home pay of \$2,200/month, the Respondent's monthly expenses and monthly balances are as follows:

² Document containing the Respondent's monthly expenses dated 21 August 2024 (exhibit R1). During the hearing, the Respondent updated that he had completed paying the \$300/month to the moneylenders.

	Period	Expenses per month	Balance per month	Balance per month <i>(If parental allowance is excluded)³</i>
(a)	November 2024 to January 2025	\$1,622	\$578	\$1,078
(b)	From February 2025	\$1,160	\$1,040	\$1,540

Monthly payments

5 The Respondent proposed paying the maintenance arrears and fresh maintenance in the following manner:

	Period	Maintenance Arrears	Fresh maintenance	Total
(a)	November 2024	NIL	NIL	NIL
(b)	December 2024 & January 2025	\$100/month	NIL	\$100/month
(c)	From February 2025	\$200/month	\$1,000/month	\$1,200/month

6 The Applicant counter-proposed that the payments be as follows (key differences with the Respondent's proposal highlighted in grey):

	Period	Maintenance Arrears / Fresh maintenance
(a)	November 2024	\$100
(b)	December 2024 & January 2025	\$500/month
(c)	From February 2025	\$1,200/month

³ According to the Respondent, he gives an allowance of \$500/month to his parents.

Application for AEO

7 Additionally, the Applicant requested that an AEO be imposed. She gave the following reasons for her request:

(a) Raising a child is the parents' joint responsibility. However, for the past four years, the Applicant had been raising the son single-handedly on her limited income. It will be another 17 years before the son reaches the age of 21. It is unfair that the Applicant had to raise the child without any financial support from the Respondent.

(b) Over the years, the Respondent had repeatedly broken his promises to pay maintenance. This necessitated the Applicant to take out various enforcement proceedings against him. These efforts, including having the Respondent imprisoned in early 2024, had failed to ensure that the maintenance payments were made.

(c) The Applicant's frustration with the situation was aggravated by the fact during the relevant period, the Respondent could afford to pay between \$300/month to \$500/month to settle his personal debts, including to moneylenders.

(d) The Applicant wanted a reliable mechanism for ensuring timely maintenance payments. In her view, an AEO will eliminate the need for her to make repeated enforcement applications.

8 The Respondent urged me not to impose an AEO. His reasons are as follows.

(a) The Respondent had just started on a new job and was unsure how the AEO might affect his employment. He was concerned that his

employer (a restaurant owned by a Japanese) (“**Employer**”) might not want an employee who “gave problems” so soon just after starting work.

(b) The Respondent suggested that the AEO be imposed only if he were to default on his promised payment of \$1,200/month.

(c) In response to the Applicant’s point that she had been raising the son single-handedly, the Respondent stated that he had been prevented from seeing the child for the past four years. Although the Respondent was given joint custody of the son, the Applicant effectively exercised sole custody over the child.

Key issues for determination

9 Given that the parties agree on (1) the Maintenance Arrears and (2) the proposed maintenance payments from February 2025 (see [5(c)] and [6(c)] above), the key issues for my determination are as follows.

(a) *First*, should an AEO be imposed in this case? If so, when should the order commence?

(b) *Second*, should the Respondent be required to make any payment – and if so, how much – for December 2024 and January 2025?

My decision**Summary**

10 Having considered the matter, I made the following decision:

- (a) An AEO should be imposed.
- (b) The maintenance arrears and fresh maintenance are to be paid in the following manner:

Month	Payment of Fresh maintenance	Payment of Maintenance Arrears	Total payments
November 2024	(1) Payments are suspended. (2) Suspended payments are to be treated as Maintenance Arrears. (3) Maintenance Arrears are to be payable from February 2025	NIL	NIL
December 2024		Respondent to deposit \$200 into Applicant's designated DBS account (account no. ending with "159") (" Designated Account ")	\$200
January 2025		Respondent to deposit \$200 into the Designated Account	\$200
From February 2025	\$1,000/month	\$200/month	\$1,200/month to be paid by AEO (Last payment under AEO is January 2028)

11 I will now explain the reasons for my decision. But before I do that, let me make a few observations about an AEO.

Effectiveness of AEO as an enforcement tool

12 An AEO can be an effective way to enforce maintenance orders.

(a) *First*, to determine whether an AEO is appropriate, s 85 of the Charter allows a court to ascertain the income of a maintenance defaulter (“**defaulter**”) directly with his/her employer and the Central Provident Fund Board (“**CPF**”). This power can be an effective response to an uncooperative defaulter who refuses to provide, or provides inadequate, income information to frustrate enforcement applications. It also allows a court to do fact-checking where such information is provided. Such a power is not available for other enforcement options under s 71 of the Charter.

(b) *Second*, an AEO may be imposed at any time – even in the absence of a breach of a maintenance order: see s 81(1).⁴ This may be contrasted with the enforcement options under s 71(1) which can be imposed only if a defaulter “fails to make one or more payments required to be made under a maintenance order”.

(c) *Third*, an AEO can be enforced regardless of whether the defaulter is cooperative. This is because it is his/her employer who must comply with an AEO.

⁴ Section 81 provides that an AEO may be made “*when ordering* the payment of maintenance ... or at any time thereafter”.

(d) *Further*, an AEO is easier and faster to enforce than an order for attachment of a debt (“**ADO**”). An ADO, which can be imposed under s 71(1)(c), is subject to several requirements which do not apply to an AEO. These include the need (i) to make the application in a prescribed form, (ii) to serve a notice of attachment on the third party (usually a financial institution), (iii) to allow that party to claim costs of \$100 from the applicant, and (iv) to give the third party the time and opportunity to object to the attachment: see r 742 to r 750 of the Family Justice Rules 2014; r 23 to r 31 of the Family Justice Rules 2024.

(e) *Additionally*, the practical effect of a duly enforced AEO is the prompt and regular payment of maintenance. This is because courts typically order the attached earnings to be paid directly to the applicant’s bank account.⁵

(f) *Finally*, an AEO causes lesser hardship to the defaulter than a term of imprisonment imposed under s 71(1)(b).⁶

⁵ I digress to make some observations regarding s 88 of the Charter. This provision envisages the attached earnings being paid *to the court*, which will then pay the earnings to the applicant. In my view, s 88 does not require that attached earnings must be paid into court in all cases. *First*, if this was the intention, then clearer language would have been used in s 88. *Second*, the purpose of the provision appears to be to simply *clarify* that the earnings are to be used to discharge the maintenance arrears first and thereafter any costs payable by a defaulter: s 88(2). This purpose can be achieved by a court making the same clarification at the time of imposing an AEO, if needed. *Third*, it is far more practical for attached earnings to be paid directly to the applicant than through the court – with no prejudice to any party. If attached earnings are to be paid into the court first, then they can be paid out to the applicant only after onerous requirements have been met – see Part 27 of the Family Justice Rules 2024.

⁶ By way of *obiter*, I am of the view that imprisonment, as an enforcement option, is generally not suitable if a defaulter truly cannot afford to pay the maintenance. Imprisonment can also be counter-productive in enforcing a maintenance order – *first*, a defaulter will not be able to generate income during the period of his incarceration, *second*, the fact that a defaulter has been in prison may jeopardise his current and future employment prospects. In my view, the imprisonment option is most suitable for a

13 The above observations should not be seen as suggesting that an AEO is the solution to all maintenance enforcement issues. Some of the challenges and limitations involving AEO are as follows.

(a) *First*, there is a risk that an employer may decide to terminate a defaulter’s job on receiving an AEO. Anecdotal evidence suggests that an employer may do so for various reasons, including the following:

(i) A belief that the defaulter may not be a reliable employee – either because he is perceived to have “money” problems or to be in trouble with the law.

(ii) A concern that an AEO – being a court order imposed on the *employer* to pay money – may give the impression that the employer is in financial arrears and a judgement debtor.

(b) *Second*, an AEO will be ineffective if the defaulter loses or changes his job.

Relevant considerations

14 Having considered the effectiveness of AEO as an enforcement tool, I will now touch on when it is appropriate/inappropriate to issue an AEO. In my view, the relevant considerations include the following:

defaulter who is able – but unwilling – to pay maintenance. A threat of imprisonment can be a very powerful deterrent to such a defaulter. Finally, I wish to stress that the foregoing observations are not intended in any way to reflect the legal position after the Charter is amended pursuant to the Family Justice Reform Bill 2023.

(a) *Is the defaulter receiving “earnings” that can be attached?*⁷ An AEO works effectively where the defaulter has regular and stable earnings. The following observations in the Second Reading speech relating to the intended amendments to the Charter provisions under the Family Justice Reform Bill reflects this view:⁸

... Attachment of earnings orders work effectively where there is a *regular and stable stream of income* that can be directed towards the fulfilment of periodical maintenance payments.

They do not work so well where the income is *unpredictable*, such as for freelancers and contract workers. *Including such arrangements may lead to hardship for the parties and administrative challenges* for the firms who engage these workers. Hence, *attachment of earnings orders will, generally, not be made in respect of income from gig work, which is unstable.*

[emphasis added]⁹

(b) *Clear information regarding the defaulter’s “employer”.* Such information is important because an AEO (i) must be directed at a known legal entity and (ii) must be served on that entity: s 81A(1).

⁷ See the definition of “earnings” in s 80 of the Charter.

⁸ The speech is given by Ms Rahayu Mahzam, the Senior Parliamentary Secretary to the Minister for Law: see *Singapore Parliamentary Debates, Official Report* (8 May 2023) at Vol 95.

⁹ Where a defaulter has the financial means to pay but his/her earnings are not regular and stable, then either (1) the imposition of a banker’s guarantee under s 71(1)(d) read with s 71A of the Charter or (2) an ADO may be worth considering: *Singapore Parliamentary Debates, Official Report* (10 January 2011) at Vol 87, col. 2050; *Singapore Parliamentary Debates, Official Report* (27 August 1996) at Vol 66, col. 529.

(c) *Is it “just” to impose an AEO?* See s 81(1) and s 82(1) of the Charter. In my view, the considerations that are relevant to this issue include the following:

(i) *The parties’ conduct.* For instance, does the defaulter have a history of defaulting on maintenance payments? See *Fong Chin Leng v Loh Lee Aik* [1994] SGHC 215 (last paragraph). If the answer is yes, then what are the reasons for these defaults? Is the defaulter to be blamed for them? Did the defaults occur because, e.g., the defaulter was irresponsible in managing his/her finances? Or did the defaults occur because he wilfully refused to pay even though he had the relevant funds? How much effort did the defaulter put into making the payments? The applicant’s conduct is also relevant on whether it is just to impose an AEO. For instance, has the applicant acted in an unconscionable manner, e.g., by making false or misleading representations that the defaulter does not need to pay the maintenance in full or promptly?

(ii) *Impact of imposing/not imposing an AEO.* Apart from the parties’ conduct, it is also necessary to compare and balance the relative hardship likely to be caused to the parties if an AEO is imposed/not imposed. For instance, the fact that an AEO may cause a defaulter to lose his job is clearly a relevant factor: *TYW v TYX* [2017] SGFC 24 at [6]. It is also relevant to note s 121(3) of the Charter which stipulates that “no amount owing as maintenance is recoverable in any suit if it accrued due more than 3 years before the institution of the suit unless the court, under special circumstances, otherwise allows”.

(d) *What is a “reasonable” sum of the earnings to be attached? In making this determination, “the resources and needs of the defaulter and the needs of persons for whom the defaulter must or reasonably should provide” is a relevant consideration: s 82(2).*

AEO is appropriate in this case

15 Applying the above considerations to this case, I find that it is appropriate to impose an AEO on the Respondent. My reasons are as follows.

Respondent receiving regular earnings

16 *First*, the Respondent will be receiving regular earnings from the Employer. According to his employment agreement with the Employer, he will be paid \$2,200/month (take-home pay) from 7 December 2024.¹⁰

It is just to impose an AEO

17 *Second*, it “just” to impose an AEO in the present case.

(a) The Respondent has a poor record of complying with maintenance orders. He had defaulted on maintenance payments for almost three years and had broken many promises to pay along the way. With such a poor track record, one cannot blame the Applicant for being sceptical about the Respondent’s bare promise that he will start paying \$1,200/month in about three months after the hearing is over.

(b) There is also evidence to suggest that the Respondent has poor self-discipline when it comes to financial matters. For instance, during

¹⁰ This is exhibit R3.

the period when he defaulted on his maintenance payments, the Respondent had chalked up personal debts and borrowed from moneylenders. When asked how the debts were incurred, the Respondent was defensive and did not want to disclose. One is left wondering whether these debts were due to ill-considered decisions – such as choosing to resign from two jobs, at about the same time, with the result that he (i) was left jobless and (ii) saddled with the obligation to make payments to his former employers in lieu of one month’s notice: see [3(g)] and [3(h)] above. One cannot ignore the fact that the monthly sums of \$300/month to \$500/month that the Respondent had paid to settle his personal debts could have been used to pay maintenance instead.

(c) The Respondent is concerned that an AEO might adversely affect his current employment. In my view, this concern can be managed: see [19], [20] and [26(b)] below.

(d) The Respondent stated that he had been prevented from seeing the son for the past four years. He seemed to be hinting that this justified not paying maintenance. I cannot agree with such a view. Paying maintenance is both a legal and moral obligation. This obligation is not contingent on the Respondent being able to exercise his child access and custody rights. If necessary, the Respondent can take up the relevant applications regarding these issues.

Terms of the attachment*Amount to be attached*

18 Having determined that it is appropriate to impose an AEO in this case, I now turn to how much of the Respondent's earnings ought to be attached. In this regard, he had proposed paying \$1,200/month to the Applicant: see [5(c)] above. The Applicant did not object to this: see [6(c)] above. Accordingly, I found that a sum of \$1,200/month ought to be attached. This sum can be used to (a) settle the Maintenance Arrears (at \$200/month) and (b) to pay the fresh maintenance (at \$1,000/month).

Start date

19 Next, I turn to the issue of when the AEO should commence. On this issue, I noted the Respondent's concern that the AEO may cause the Employer to have a negative opinion of him – for “giving problems” so soon after he started work in November 2024.

20 To manage this concern, one option is for the AEO to take effect only a period after the Respondent had started working for the Employer. This way, he will have sufficient opportunity to show the Employer that he has the relevant work abilities and a positive work attitude, and thus deserves to be retained.

21 In this regard, I found that it would be appropriate for the AEO to start from February 2025. *First*, the Respondent will already have worked for *about three months* by then. This should be sufficient time for him to build up a good track record. *Second*, February 2025 is also the time when, according to the Respondent, his financial circumstances will stabilise.

End date

22 The next question is how long the AEO should last. In my view, the order should last for three years. My reasons are as follows.

(a) There are dangers if an AEO is to last for an undefined or an unduly long period.

(i) *First*, the AEO is a novel arrangement for all parties concerned. There may be unforeseen issues arising from its compliance and enforcement. These include changes in the Respondent's employment situation, his salary, or his employer. In view of this, it would be prudent to be conservative in setting the duration of the AEO.

(ii) *Second*, s 84(3) and s 86 of the Charter impose legal obligations on both the Employer and the Respondent, including reporting requirements. An AEO that lasts for a very long period can significantly increase the risk of the parties inadvertently tripping over some of these obligations.

(iii) *Third*, the Respondent is 30 years old and should learn how to get his financial affairs in order on his own. An AEO that lasts for many years may end up creating a crutch mentality in the Respondent.

(b) In my view, an AEO of three years' duration will be long enough to provide financial relief and certainty for the Applicant, while at the same time avoid the issues highlighted above. If needed, the Applicant can apply for another AEO after the first one lapses.

Payments from February 2025

23 Accordingly, I made the following orders:

- (a) The Employer is to make payment, out of the Respondent's earnings, of a sum of \$1,200/month to the Applicant.
- (b) Such payment is to be made as follows:
 - (i) Every month on the Respondent's pay day.
 - (ii) From February 2025 to January 2028.
 - (iii) The payment is to be deposited into the Designated Account.

Payments for November 2024 to January 2025

24 I now come to the issue of whether the Respondent should make any payment to the Applicant between November 2024 to January 2025. The parties took very different positions on this issue. Their positions are stated in [5(a)] and [5(b)] (Respondent's position) and [6(a)] and [6(b)] (Applicant's position).

25 Having considered the matter, my decision is as follows:

Month	Payment of Fresh maintenance	Payment of Maintenance Arrears	Reasons
November 2024	(1) Payments are suspended. (2) Suspended payments are to be treated as	NIL	(a) The Respondent had just started work in November. (b) His salary for this month's work would only be paid on 7 December 2024.

Month	Payment of Fresh maintenance	Payment of Maintenance Arrears	Reasons
December 2024	Maintenance Arrears. (3) Maintenance Arrears are payable from February 2025	Respondent is to deposit \$200 into the Designated Account	(c) According to the Respondent, despite starting to receive salary for December 2024, his finances will still be very tight. This is because he needs to pay \$462 to his former employers for having resigned in lieu of notice: see [3(g)] and [3(h)] above. These payments will stop in January 2025.
January 2025		Respondent is to deposit \$200 into the Designated Account	<p>(d) Based on his monthly salary and expenses, the Respondent will only have a balance of \$578/month – if he continues to give an allowance of \$500/month to his parents: see [4] above.</p> <p>(e) The Applicant did not insist on the fresh maintenance being paid in December 2024 and January 2025.</p> <p>(f) She however asked for \$500/month to be paid instead – presumably to settle the arrears.</p> <p>(g) In my view, it is reasonable for the Respondent to pay \$200/month in December and January towards the Maintenance Arrears. This amount is consistent with the arrears payable from February 2025.</p>

Conclusion

26 Before concluding, I wish to direct the following message to the parties:

To the Respondent –

(a) The AEO has legal implications:

(i) While an AEO is in force, you must notify the court in writing of changes to your employment and earnings not later than 7 days from the date of such changes: s 86 of the Charter.

(ii) It is an offence to breach an AEO. The offence is punishable with a fine, imprisonment, or both: s 91 of the Charter.

(b) I understand your concern that an AEO may give your employer a negative impression of you. To address this concern, one option is for you to proactively speak to your employer, as soon as possible, on why the AEO was ordered. Such a conversation can help your employer understand your situation better and view you positively – as someone who needs a job desperately to provide for spousal and child maintenance and is thus a committed worker.

(c) You have indicated your unhappiness at allegedly being denied involvement in your son's life.

(i) To be able to effectively exercise your custody rights, you must first demonstrate, minimally to your ex-wife, that you can make sound life decisions *for yourself*. This will help prove

to her that you can make sound life decisions *for your son* as well.

(ii) You are now already 30 years old. It is time to organise your life and get your financial affairs in order. Remember – *financially*, you will need to support your son for the next 17 years. To equip you with the relevant awareness of how to better manage your finances, I order that you undergo financial counselling.

(iii) Being a father is not just about providing financial support for your son. You should – and can – also support him *emotionally*. He is only four and in his formative years. Your child does not have any set views against you, yet. Do not waste this opportunity to be a positive role model for him. I sincerely wish you all the best in this endeavour.

To the Applicant –

(d) Research has shown that a child grows up better where both parents cooperate and are involved in his/her life. From your conduct in court, you are clearly a reasonable person. Let your ex-husband be part of your son's life, if you have not already done so.

(e) I know that it has been difficult to financially support your son single-handedly for the past few years. Hopefully, the AEO that I have imposed will alleviate some of this burden. Do note the following when you enforce the AEO:

- (i) You must serve the order on your husband's employer. This can be done by prepaid registered post at the employer's registered place of business: see s 81A of the Charter.
- (ii) The AEO does not come into force until the expiration of 7 days from the date when a copy of the order is served on the employer: see s 82(4) of the Charter.
- (iii) It is for you to decide when the best time is to serve the AEO. In making this decision, bear in mind the considerations in [8(a)] and [19] to [21] above. Do also note that serving the AEO too early can undermine the intention for starting the AEO only in February 2025.
- (f) Finally, at this stage, you are likely to be concerned about what will happen in three years' time when the AEO expires. Hopefully, by then, your ex-husband will be a changed person – and is able and motivated (because of efforts by you and your son) to provide for both of you without the stick of the law.



Kow Keng Siong
District Judge



Applicant and Respondent appeared in person.