

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 18

District Court Appeal No 59 of 2023

Between

WQX

... Appellant

And

WQW

... Respondent

District Court Appeal No 60 of 2023

Between

WQV

... Appellant

And

(1) WQX

(2) WQW

... Respondents

JUDGMENT

[Family Law — Adultery — Evidence and proof]

[Family Law — Grounds for divorce — Behaviour]

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WQX
v
WQW and another appeal

[2024] SGHCF 18

General Division of the High Court (Family Division) — District Court
Appeals Nos 59 and 60 of 2023
Choo Han Teck J
14 March 2024

27 March 2024

Judgment reserved.

Choo Han Teck J:

1 The husband (“Husband”) is a 51-year-old accountant, and the wife (“Wife”), is a 45-year-old tutor. They filed cross-applications for divorce. The Husband claims that the Wife behaved in a manner that he could not reasonably be expected to live with her. The District Judge (“DJ”) accepted some of the claims in the long list of particulars, and rejected some, but he found the husband’s claim as proved and granted an interim judgment in his favour. There is no appeal against this order.

2 The Wife filed a counterclaim for divorce based on the husband’s unreasonable behaviour and adultery with the co-respondent, a 51-year-old executive (Co-Respondent”). The learned judge also found that the Wife’s case had been proved and granted an interim judgment in her favour on her application. The Husband and Co-Respondent appealed against the DJ’s finding

that they had committed adultery and the Husband appealed against the finding that his behaviour had been unreasonable. The Wife is represented by Mr Vijya Kumar. The Husband and Co-Respondent are represented by Mr John Vincent, and Mr Nevinjit Singh, respectively.

3 The thrust of Mr Nevinjit Singh's and Mr John Vincent's argument is that the DJ below was wrong to have granted the Wife's application for divorce because the evidence adduced by her fell short of the required standard of proof in cases of adultery, namely, proof beyond reasonable doubt. They point out that the DJ did not say whether he found for the Wife on a balance of probabilities or on proof beyond reasonable doubt. At the hearing, Mr Singh invited me to make a ruling on the law regarding the standard of proof in cases of adultery. Mr Vincent submitted that even on the lower burden of proof, namely, on a balance of probabilities, the Wife had not discharged the onus of proof incumbent upon her. Mr Kumar referred to the evidence adduced and submitted that the burden of proof was fully discharged by the Wife.

4 Counsel for the Husband and Co-Respondent submit that even though adultery is no longer a matrimonial offence as conceived under English divorce law, it is a blemish on the reputation of the parties concerned. In this case, counsel says that the Wife has a daughter who is about 14 years old, and the Co-Respondent has a male partner. Thus, the finding of adultery must not be made lightly lest the reputations of those concerned are sullied. In recent times, however, the names of all parties are redacted such that their identities are not known.

5 The last reported case from the High Court that accepted proof beyond reasonable doubt is *Tan Meng Heok v Tay Mui Keow (m w) and Another* [1992] SGHC 100. As can be seen, that was a case before the names of the parties and

families were redacted. The higher test is needed not so much to reflect the criminality of the act of adultery — it is not a crime in Singapore — but to protect the identities of other parties unconcerned with the adultery, and in the event that adultery is not proved, of the named parties themselves. It may even be arguable whether in modern times these are sufficient reasons to warrant a higher standard of proof for adultery. This is especially so when the Women's Charter 1961 (2020 Rev Ed) s 95(3) sets out the various facts for divorce, of which, adultery is one. All the other grounds can be proved on a balance of probabilities.

6 Proof beyond reasonable doubt is normally reserved for the proof of crime and, arguably, fraud in civil cases. However, even in criminal cases, the requirements of proof beyond reasonable doubt have no clearly defined line of distinction from proof on a balance of probabilities. One requires a higher standard than the other. The standard that meets the requirement depends on the nature of the case and the quality of the evidence; that is to say from one end of the spectrum of proof there may be areas of grey. Ultimately, bearing in mind the demands of a high standard of proof, the judge must be satisfied that the assertion has been proved. Hence, the real issue before me is whether the evidence before the DJ sufficiently meets this test.

7 In this case, the DJ did not specifically say which burden of proof he applied. He was not obliged to do so. It is sufficient if he had found that the evidence on the whole justifies a finding of adultery. It is to the evidence that I now turn.

8 The foremost evidence is the report of private investigators commissioned by the Wife to report on the Husband's activities. The report is dated 5 August 2022. The investigators reported that the Husband had gone to

the Co-Respondent's flat in the evening of 30 April 2022 and after the Co-Respondent's daughter (then aged 18) left the house about 1am of 1 May, the couple were the only occupants in the flat. The Husband's black Subaru SUV was parked in the nearby public carpark throughout the relevant time.

9 A similar incident was reported on Saturday 7 May 2022, and it was reported that the couple returned together in the Husband's car at about 9.45pm, to the Co-Respondent's flat. They were carrying a couple of plastic bags in each hand. The Husband was seen personally shutting the main gate and the main door to the Co-Respondent's flat. The Co-Respondent's daughter had left the house earlier, at 6.56pm. The couple were alone in the flat and did not emerge until 10am, Sunday. The Husband had left the flat to retrieve some items, including clothing, from his car, and returned to the Co-Respondent's flat.

10 Next, the Wife adduced evidence from the partner ("Partner") of the Co-Respondent. He testified that he had lived with the Co-Respondent and her daughter (from her previous marriage) for more than ten years. The Partner has a son from his first marriage, but he now lives in Australia. The Partner testified that he did not know that the Co-Respondent was still married when he started dating her. The Co-Respondent eventually divorced her husband after they lived together. He testified that for reasons he does not know, the Co-Respondent was not keen to get married again.

11 The Partner testified that his relationship with the Co-Respondent and their respective children was like a family, and they were fine until 2019 when the Co-Respondent started seeing the Husband. He became suspicious, and later found telephone messages in which the Husband and Co-Respondent referred to each other in endearing terms. He had seen a message on the Co-

Respondent's smart watch appearing as "see you later darling". His number was saved in her phone only under the initials "H" and "L".

12 The Partner testified that the Co-Respondent showed him and her daughter the membership card of a sports complex, and told them that she could now go swimming there. The Partner subsequently found out from the Wife that the Husband packed his swimming trunks when he went out, and returned with the trunks wet — just as the Partner had noticed that the Co-Respondent had packed her swimming suit, returning with them wet.

13 The Partner also testified that he noticed the Co-Respondent often went out, leaving in the black Subaru, and returning past midnight. Once, the Co-Respondent told the Partner that she was out with her ex-colleague, SL. The Partner testified that he called SL, and SL told him that she was not with the Co-Respondent.

14 The Partner decided to confront the Husband. On 30 May 2021, he stopped the Husband at the spot where the Husband usually drops the Co-Respondent. At that time, the Husband seemed surprised that the Co-Respondent and the Partner were still cohabiting. He thought that the Partner had ended the relationship and moved out. The Partner invited the Husband into his flat to show that his belongings were still there, as were those of the Co-Respondent. According to the Partner, the Husband was only concerned as to whether the Co-Respondent and the Partner were still having a sexual relationship. The Partner testified that after his conversation with the Husband "there was no shadow of doubt in [the Partner's] mind that the [Husband] and the [Co-Respondent] were in a serious relationship." He also testified that it left him "with no doubt that [the Husband and the Co-Respondent] were in an intimate relationship, which had long gone beyond having sex with each other."

15 The Wife also went to some length to compile statistics showing when and how long the Husband's car was parked at the public carpark near the Co-Respondent's flat. The results contradicts the Husband's claim that he was not there as often as claimed by the Wife. The records even show which gantry the Husband's car passed — and that was the gantry leading to the Co-Respondent's flat. The Husband tried to explain that he went there to visit his brother, F. The records do not support his story. The DJ did not believe him, and I am of the view that the evidence completely supports the DJ's findings.

16 The Husband and the Co-Respondent also made a feeble attempt to explain their meetings, which they say were to discuss the Wife's application for divorce based on the adultery between them. This found no favour with the DJ, and I too, am not persuaded that the couple would spend so many intimate moments alone to discuss how to reject the allegation of their intimacy. They also claim that the Private Investigation report was made after the divorce had been filed. The learned DJ accepted this, but he found that there was sufficient evidence of the Husband's intimacy with the Co-Respondent to sustain the Wife's claim. There are other evidence concerning the relationship between the Husband and the Co-Respondent that predate the filing of the Divorce Claim and Counterclaim. The Writ was filed by the Husband on 26 August 2021. The earliest evidence of that relationship went back to 2019.

17 That brings us to Mr Nevinjit's argument that the evidence was insufficient to establish a finding beyond reasonable doubt that the Husband and the Co-Respondent had committed adultery. There has never been a requirement that adultery is proved by explicit evidence of sexual congress. Even in days gone by when sexual intercourse was so referred to, idiomatically, courts have accepted evidence of adultery on circumstantial evidence, so long as the

evidence was properly proved and the circumstances strong enough for the court to conclude that the parties had engaged in adultery.

18 In the present case, I am of the view that adultery had been adequately proved, and, for Mr Nevinjit's satisfaction, on proof beyond reasonable doubt. In any event, the Wife had pleaded that the Husband's conduct with the Co-Respondent was such as to have caused the marriage to be irretrievably broken down by reason of the Husband's unreasonable behaviour, namely, that the Husband had slapped her on one instance in June 2016, and that the Husband had spent much time outside the home. Although a solitary slap in itself may not be sufficient to grant a divorce, the DJ had found that it was unreasonable for the Husband to have neglected and spent so much time outside of the home. The DJ had taken the circumstances as a whole into account and cannot be faulted in doing so. Accordingly, I find that the DJ was right to establish the fact of unreasonable behaviour on the part of the Husband.

19 Mr Vincent, counsel for the Husband submitted that the DJ had "disrupted" his cross-examination when the DJ asked the Wife a question as to whether she was saying that the Husband and the Co-Respondent had "physical intercourse". That was followed by another question regarding what the Wife believed the relationship between the Husband and the Co-Respondent was had there been no physical intercourse. Counsel submitted that these questions had disrupted and weakened the effectiveness of his cross-examination. From a perusal of the Notes of Evidence, I have no hesitation in rejecting this submission. Counsel must be made of sterner stuff and recover with ease from the occasional interruptions from the court. Witnesses often give vague or ambiguous answers that needs to be clarified. Sometimes, they can be left to re-examination, but often, it is more convenient and helpful to have them clarified at once.

20 For the above reasons, the appeals of the Husband and the Co-Respondent are dismissed. The DJ ordered costs of \$6,000 to be paid by the Husband and the Co-Respondent equally. He also ordered that the costs of the private investigators be paid in full. I am of the view that the costs ordered was on the low side, considering the length of the trial and the evidence adduced, but I will not disturb that order. Since the costs for the trial was fixed at \$6,000, I order costs of \$2,000 against each of the appellants.

- Sgd -
Choo Han Teck
Judge of the High Court

Nevinjit Singh J (Sureshan LLC) for the appellant in DCA 59 of
2023 and co-respondent in DCA 60 of 2023;
John Vincent (John Law Chambers LLC) for the appellant in
DCA 60 of 2023;
Narayanan Vijya Kumar (Vijay & Co) for the respondent.
