

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2019] SGHCF 12

District Court Appeal No 37 of 2018

Between

UHA

... Appellant

And

UHB

... Respondent

District Court Appeal No 38 of 2018

Between

UHB

... Appellant

And

UHA

... Respondent

JUDGMENT

[Family Law] — [Maintenance] — [Child] — [Due proof of neglect or refusal]

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**UHA
v
UHB
and another appeal**

[2019] SGHCF 12

High Court (Family Division) — District Court Appeal Nos 37 and 38 of 2018
Debbie Ong J
2, 3 April 2019

27 May 2019

Judgment reserved.

Debbie Ong J:

1 This case involves two cross-appeals against the District Judge's ("DJ's") decision to make a maintenance order under section 69(2) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC").

Background

2 The parties were in a relationship for eighteen years but were never married. They have a 13-year-old child together ("the child"). The appellant in DCA 37/2018 and the respondent in DCA 38/2018 is the mother of the child ("the Mother"). The appellant in DCA 38/2018 and the respondent in DCA 37/2018 is the father of the child ("the Father").

3 The Father is an Australian citizen and a Singapore Permanent Resident. The Mother is a Japanese citizen. The child has dual Australian and Japanese citizenship.

4 The parties and the child lived in Singapore as a family from 2007 to December 2014. During that time, the Father was responsible for all household expenses, including the expenses of the Mother and the child. The Mother was a full-time caregiver for the child.

5 In December 2014, the Mother and the child moved to Japan where the child enrolled in an international school. The Father remained in Singapore. The reasons for the move were in dispute. The relationship between the parties began to fracture in 2015 and there were issues over financial matters. On 28 December 2015, when the Mother and the child were still in Japan, the Mother filed the first maintenance application, MSS 5536/2015, for maintenance on behalf of the child. On 8 March 2016, the Father filed OSG 40/2016 for the return of the child to Singapore.

6 The Mother withdrew MSS 5536/2015 on 14 February 2017 on the first scheduled hearing day of the maintenance proceedings. The reasons for the withdrawal were in dispute. However, there is no dispute that the Father transferred a total sum of \$36,766.03 to the Mother on 6, 7 and 8 January 2017, after he was served with the first maintenance application.

7 OSG 40/2016 was heard on 26 April 2017. The DJ found that the child was habitually resident in Singapore and it was in her best interests to return to Singapore; as such, the Mother was ordered to return the child to Singapore by 1 July 2017 (“the Return Order”). The DJ also ordered joint custody and shared care and control of the child, who was to reside with the Mother from Monday

morning to Friday morning and with the Father for the remaining days. The Mother returned to Singapore with the child on 1 July 2017 and appealed against the Return Order. Her appeal was dismissed by the High Court on 15 May 2018.

8 The Mother filed the present maintenance application, MSS 801386/2017, on 14 October 2017.

The parties' cases

9 The Mother was represented by counsel at the trial below while the Father appeared in person. Both parties tendered written submissions in these appeals and both appeared in person at the hearing before me.

The Mother's case

10 In MSS 801386/2017, the Mother claimed that the Father neglected or refused to provide reasonable maintenance for the child. Although her initial claim was for maintenance from January 2017 onwards, she confirmed at the hearing before the DJ that her claim related to maintenance for the child from 1 July 2017 onwards, after their return to Singapore.

11 The Mother alleged that the Father had stopped all payment for the child's maintenance after December 2016 and that he only made a one-time payment of \$7,500 in August 2017 after the court encouraged him to do so.

12 In the proceedings below, the Mother sought a monthly maintenance sum of \$9,200 (including school fees). She submitted that the Father should bear all of the child's expenses, alleging that the Father had assured the court in OSG 40/2016 that he would be entirely responsible for the child's expenses. Her submission was that the court had made the Return Order on these assurances and the Father should be held to his word. She also submitted that the Father

should be responsible for her share of the rental, alleging that the Father had told the court that he would provide financial assistance to the Mother upon her return to Singapore.

13 The Mother submitted that she could not afford to maintain the child as her inheritance moneys should not be taken into consideration in calculating her income, which was negligible.

14 The Mother also submitted that the child's expenses should include an additional insurance policy. However, at the hearing, she conceded that she was not challenging the DJ's calculation of expenses. I will not consider this issue in reaching my decision.

The Father's case

15 The Father's main submission is that the court had no jurisdiction to order him to pay maintenance as the Mother had not shown due proof that he neglected or refused to maintain the child.

16 Specifically, the Father pointed to payments he made to the Mother totalling \$174,180.07 from November 2014 to November 2017. He submitted that the DJ erred in finding that these were used to pay for "extraordinary expenses" as the Mother failed to provide any evidence of the said expenses. He alleged that since the disputes arose in 2015, the Mother has not provided him with any details of the child's expenses.

17 The Father also challenged the quantum of expenses that the DJ reached and the proportion he should bear, but did not provide an alternative quantum. At the hearing, he indicated that he was satisfied with the DJ's sum in that even

if his appeal was allowed, he would continue to provide the sums voluntarily for the child.

18 The Father submitted that the present maintenance application and the Mother's appeal are attempts to challenge the Return Order when it had already been affirmed by the High Court. He denied making any assurances that he would be wholly responsible for the child's expenses or the Mother's costs of relocation and pointed out that he was deliberately careful never to make such a promise.

Decision below

19 The DJ first assessed the quantum of reasonable maintenance for the child that the Father should bear from 1 July 2017 onwards because it was necessary to determine whether there was any neglect to provide maintenance. The DJ considered two distinct periods – the first from 1 July 2017 to November 2017, when the child was not enrolled in school, and the second from December 2017 onwards, when the child was enrolled in school.

20 In respect of the first period from 1 July 2017 to November 2017, the DJ found that the child's reasonable monthly expenses were \$2,842. In respect of the period from December 2017 onwards, the DJ held that the child's reasonable monthly expenses were \$6,857 including school fees.

21 In light of the parties' incomes, the DJ held that the Father should bear 85% of the child's reasonable expenses. This was \$2,450 per month from July to November 2017 and \$2,200 per month from December 2017 onwards. The latter figure was obtained by taking 85% of the child's reasonable monthly expenses of \$6,857 and deducting the school fees and school-related expenses that the Father paid directly to the service provider. The DJ also held that the

Father should pay for 85% of the one-off expenses that the Mother incurred when returning to Singapore with the child.

22 With these figures, the DJ then considered the preliminary question of whether the Father had neglected to provide reasonable maintenance. He accepted the Mother's submission that the money that the Father transferred to her before 2017 was not meant merely for the child's expenses, and the Mother had spent it on "extraordinary expenses." He reached this conclusion on the basis that any payments made when the Mother and child were still in Japan would have been meant for the Mother as well, as the Father used to provide for her when they were in a relationship. Some expenses would also have been incurred when the Mother and child moved to Japan to set up home there. The DJ also found that the Father had not adduced any credible evidence to support his claim that the payments were meant for the child only, and concluded that it was an afterthought. Having excluded the earlier sums, the DJ found that the Father only paid a sum of \$7,500 in 2017 and 2018 and had also stopped topping up the child's school lunch card. He concluded that the Father had neglected or failed to provide reasonable maintenance for the child.

23 The DJ held that alternatively, even if the Father had not neglected to provide reasonable maintenance, it was in the best interests of the child for a maintenance order to be made. He considered that it was best to clarify the parties' financial obligations to the child once and for all because there was acrimony between the parties, they were based in separate countries and the Father had since remarried. The DJ held that in certain limited circumstances, it would be just and equitable to make an order to advance the welfare of the child even if it has not been proved that there was neglect in paying maintenance.

24 The DJ therefore ordered the Father to pay \$2,450 a month from July 2017 to November 2017 and a one-off sum for expenses of \$2,612.11. The Father was also ordered to pay \$2,200 a month from December 2017 onwards, and the full school fees, school bus costs, and school lunch card top-up directly to the service provider. Further, the Father was to bear 85% of the cost of the child's medical and dental expenses, school text books, and stationery.

Summons to adduce fresh evidence

25 Since the decision below, parties have initiated separate custody and committal proceedings in the lower courts. Both parties filed summonses for leave to adduce fresh evidence in this appeal.

26 As there are pending proceedings below that are not entirely unconnected to the issues on maintenance, I considered that there might be fresh evidence placed before me in these appeals that might also be placed before the family court in the other proceedings below. In light of these circumstances, I think it just and expedient to confine the present appeals to the matters which were available before the DJ. The parties did not object as they understood that bringing in new evidence for these appeals could cause the pending and any future proceedings to become more complicated. I make no order as to the Mother's Summons 393/2018 and the Father's Summons 386/2018 and I consider only the evidence that was available to the DJ at the hearing below.

27 On 11 April 2019, the Mother wrote to the court with further submissions and requests. As no leave was granted by the court for any further submissions or evidence, I did not consider them in reaching my decision.

The issue in the present case

28 Section 69(2) and (4) of the WC provides:

(2) The court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his child who is unable to maintain himself, order that parent to pay a monthly allowance or a lump sum for the maintenance of that child.

...

(4) The court, when ordering maintenance for a wife, an incapacitated husband or a child under this section, shall have regard to all the circumstances of the case including the following matters:

- (a) the financial needs of the wife, incapacitated husband or child;
- (b) the income, earning capacity (if any), property and other financial resources of the wife, incapacitated husband or child;
- (c) any physical or mental disability of the wife, incapacitated husband or child;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) the contributions made by each of the parties to the marriage to the welfare of the family, including any contribution made by looking after the home or caring for the family;
- (f) the standard of living enjoyed —
 - (i) by the wife before her husband neglected or refused to provide reasonable maintenance for her;
 - (ii) by the incapacitated husband before his wife neglected or refused to provide reasonable maintenance for him; or
 - (iii) by the child before a parent neglected or refused to provide reasonable maintenance for the child;
- (g) in the case of a child, the manner in which he was being, and in which the parties to the marriage expected him to be, educated or trained; and

(h) the conduct of each of the parties to the marriage, if the conduct is such that it would in the opinion of the court be inequitable to disregard it.

29 The Mother argued that the Father ought to bear 100% of the child's reasonable expenses as well as the Mother's share of accommodation expenses. The Father argued that he had not neglected or refused to provide reasonable maintenance for the child. The burden of proof is on the party claiming maintenance to provide proof that the other party has neglected or refused to provide reasonable maintenance. To determine whether that burden has been met, it is first necessary to determine what "reasonable maintenance for his child" is on the facts of the case. After determining what the quantum of reasonable maintenance is, the next step is to determine whether the Father had indeed provided, or had neglected or refused to provide, such reasonable maintenance. I will discuss the issues below in two main sections: first, what is reasonable maintenance in the present case and second, whether there was neglect or refusal to provide reasonable maintenance.

What is reasonable maintenance in the present case

30 The DJ first calculated the child's reasonable monthly expenses, then assessed the proportion that the Father ought to bear as reasonable monthly maintenance. He concluded that the Father ought to bear 85% of the child's expenses.

31 At the hearing before me, the Father did not dispute the quantum of the child's reasonable monthly expenses or reasonable maintenance. The Mother confirmed that she did not dispute the quantum of expenses but challenged the order in two ways: first, that "reasonable maintenance" should consist of 100% of the child's expenses and second, that the Mother's personal share of the rental ought also to be provided by the Father.

32 The Mother repeatedly stated that at the hearing of OSG 40/2016, the Father assured the court that he would provide for all of the child's expenses when the child returned to Singapore. According to her, the court was therefore misled or induced into ordering the return of the child to Singapore.

33 I deal first with the allegations about the Return Order because these are allegations against the integrity of the court. The Mother alleged that the Father had misled the court, and the court deliberately ignored this “as to acknowledge it would result in having to undo the Return Order and [the child] returning to Japan. Not wanting this outcome, the Court had to look the other way on the Father's misconduct.”

34 The Mother's assertion that the court had made the order based on the Father's assurances is not borne out by the DJ's grounds of decisions. The court ordered the child's return to Singapore on the basis that the child was habitually resident in Singapore and it was in her best interests to return: see *UHB v UHA* [2017] SGFC 134 at [30] and [54]. Any assurances that the Father may have made – which the Father vehemently denied – was not decisive in the DJ's decision to make the Return Order or this court's decision in affirming it.

35 I add that I do not think any of the statements that the Mother points to can be taken as assurances that the Father agreed to bear all of the child's expenses. The Mother's submissions that the Father had given an undertaking or should be estopped from refusing to pay all of the child's expenses has no basis.

36 As to the reasonable maintenance that parents must provide, the law is clear – both parents are equally responsible for providing for their children, but their precise obligations may differ depending on their means and capabilities

(see *AUA v ATZ* [2016] 4 SLR 674 at [41]). I do not find that the DJ erred in calculating the proportions of both parties' income on the evidence that was before him and relying on that to calculate their share of expenses. In the present circumstances, there is no basis for ordering the Father to bear all of the child's expenses.

37 It is undisputed that when the parties were living together, the Father supported the Mother and the child. During the hearing and in her affidavits, the Mother made several references to the length of their relationship, which she submitted would qualify as a common law marriage in other jurisdictions. However, as the Mother herself admitted, these relationships are not recognised as marriages in Singapore. There is no basis for the Father to provide maintenance for the Mother as she is not a wife under s 69(1) of the WC or an ex-wife under s 113 of the WC. The Mother accepted this legal position, and did not seek maintenance on this basis.

38 Instead, the Mother relied on alleged assurances or undertakings that the Father made to the court in OSG 40/2016 that he would take care of the Mother's accommodation. She therefore submitted that the Father should cover her share of rental, which is \$1,950 by the DJ's calculations.

39 As stated above, these alleged assurances had no impact on the court's decision in OSG 40/2016. Further, I do not accept that the Father made any assurances that he would provide for the Mother's expenses. The only evidence that the Mother pointed to indicated that he was at most willing to discuss some assistance for the sake of the child.

40 Alternatively, the Mother's argument would require the court to consider her rental expenses as part of "reasonable maintenance" for the child.

I sympathise with the Mother's submission that the only reason she lives in Singapore and incurs the cost of rental is to be with the child. However, I do not think that it would be fair under the present circumstances to include the Mother's accommodation expenses as "reasonable maintenance" for the child.

41 I do not think the DJ had erred in his finding on the quantum of reasonable maintenance that the Father ought to provide. I now consider the Father's submission that he never refused or neglected to provide this sum.

Whether there was neglect or refusal to provide reasonable maintenance

Legal principles

42 The Father submitted that the Mother failed to show that he had neglected or refused to provide maintenance for the child and the court did not have jurisdiction to make a maintenance order.

43 Parents have a legal duty to maintain their children; this is a fundamental aspect of parental responsibility and is encapsulated in s 68 of the WC. The court's power to make a maintenance order is conferred by statute in s 69 of the WC. In making a maintenance order, the court must first be satisfied that the parent has neglected or refused to provide reasonable maintenance for the child.

44 Where one party takes out maintenance proceedings against another, it is easy to assume that there has been a neglect or refusal as the matter has escalated to the court. However, the burden is on the complainant to satisfy the court that the respondent has "neglected or refused to provide reasonable maintenance for his child". This is a legal requirement in s 69(2).

45 In determining whether the legal threshold is satisfied, the court will assess what is "reasonable maintenance" as a monetary sum on the facts of the

case, and will take a practical approach to assess whether the parties have reasonably provided such maintenance. Cooperating reasonably as parents is part of parental responsibility whether or not the parents are married or divorced, or were never married.

Reasonableness of the expenses

46 The court can consider “reasonableness” in several ways. First, the court can consider the *reasonableness of the expenses* in question. This goes towards the quantum of maintenance that the court considers reasonable on the specific facts of the case. Not all expenses are reasonable and the non-payment of such expenses is not conduct envisaged in s 69(2).

47 Suppose, hypothetically, the mother of a child does not consult the father about enrolling the child in horseback-riding classes that cost \$1,500 a month. The father is of the view that their family of five, with a monthly household income of \$9,000, cannot afford such an expense, and such expenses are in any case not the more common ones such as those arising from academic tuition classes or music and swimming enrichment classes. If the father refuses to pay for the horseback-riding classes, can he be said to have refused to provide reasonable maintenance? Another hypothetical example is where a mother purchases a car for their 19-year-old child and requests the father to pay for the car, being the child’s “transport expenses”. Some disagreement or resistance to less common and reasonable expenses is not inevitably a refusal to provide maintenance. Naturally, this assessment of reasonableness is dependent on all the facts and circumstances of the case including the standard of living enjoyed by the child and the family.

Reasonableness in communication of child's expenses

48 Second, the court can also consider whether one party *reasonably communicated the child's needs or expenses* to the other party. To find neglect or refusal to provide maintenance, the alleged non-paying party must be aware or ought to have been aware of the child's needs or expenses. A parent ought to be aware that provision for basic needs would be required, whether or not a specific request for basic needs has been made. But where expenses are incurred for items beyond the usual necessities, it may not be reasonable to expect the parent to pay an undefined and unlimited amount at any time when no or little information is provided, for the purposes of finding neglect or refusal in s 69(2). The precise facts and circumstances of the case must be considered in assessing the matter.

Reasonableness of mode of provision

49 Third, the court can consider whether the paying party used a *reasonable mode of provision* of maintenance. An example of a reasonable mode of provision is giving direct access to funds in a bank account or a credit card.

50 Where the mode of provision is less than reasonable, the court may find that there is neglect or refusal to provide. For example, a paying party who insists on providing maintenance only on a reimbursement basis, requiring copies of every receipt, even for mundane recurring expenses, may not be providing maintenance in a reasonable way. A paying party who only provides reimbursement one year after the expenses are incurred may also be said to have failed to provide in a reasonable way. The court will consider all the facts and circumstances in making such assessments.

Application of legal principles to the present facts

51 In the present case, the relevant time period for assessing a refusal or neglect to pay is from 1 July 2017 onwards, as that is the Mother's claim. While the exact time period may not be an issue in most maintenance cases, it is relevant here because the Father alleged that he had overpaid the Mother in previous months due to the Mother's failure to inform him of the child's exact expenses.

52 The question before me was whether there was any refusal or neglect by the Father to provide reasonable maintenance for the child at the time the Mother filed MSS 801386/2017 on 14 October 2017.

Reasonableness of the expenses in present case

53 I have dealt with the question of the reasonableness of the expenses in the present case in [30] to [41] above.

Reasonableness in communication to the Father in present case

54 The DJ found that the Mother made repeated requests for money for the child, but this occurred in 2015, when the Mother was still in Japan. While that may have been the parties' approach to finances at the time, this was prior to the Father's transfer of large sums in January 2016. The Mother should not be able to rely on those requests.

55 Instead, it is clear that subsequent to those requests, the Father transferred large sums of money to the Mother at irregular intervals. There is no evidence that the Mother made any further reasonable attempt to seek maintenance from the Father on behalf of the child. The Father's complaint was that the Mother never communicated any specific needs to him and he had to

estimate the child's reasonable expenses, which was difficult as they were in separate countries and their relationship had deteriorated.

56 After their return, the Father alleged that the Mother still failed to inform him of the child's expenses. On 21 September 2017, the Father wrote to the Mother's counsel stating the following:

As your client has provided no details regarding [the child's] expenses, either in [Japan] or in Singapore (other than the belated and incomplete information provided through her affidavits), I can only say that the \$7,500 payment (as with all previous payments made by me under protest), is intended to cover maintenance payments for [the child] that I am legally obliged to make under Singapore law.

...

I am, of course, unable to provide any proposal on maintenance in the absence of complete details regarding [the child's] expenses and up to date information regarding the income of your client.

57 The Mother's counsel responded later that same day stating, "We will take our client's instructions on the same, and revert shortly." The Father submitted that there was no response after this, and indeed there is no evidence that the Mother's solicitors "reverted". Instead, on 14 October 2017, the Mother filed the present maintenance application.

58 When asked, the Mother did not tender evidence of any requests for payment. She pointed to a text message conversation on 15 June 2017 where the Father refused to pay the \$10,000 administrative fee required to enrol the child in school. The Father explained that he had paid the \$10,000 fee, but it had been forfeited because of alleged delay on the Mother's part. As discussed, the touchstone for the conduct of the parties is *reasonableness*. In these circumstances, I do not think that this incident constituted unreasonable conduct sufficient to demonstrate a neglect or refusal to provide reasonable maintenance.

59 The Mother also relied on affidavits filed in the course of the other proceedings between the parties to argue that the Father was aware of the child's expenses. I do not think these affidavits, whether in the present proceedings or related ones, demonstrate neglect. The Mother has to communicate the child's needs and expenses reasonably. The Father has to have an opportunity to provide reasonable maintenance before the matter is escalated to court. Regardless of how extensive court proceedings are, I do not think the request should be found only in an affidavit.

60 I find that despite the Father's requests, the Mother did not provide any information on the child's expenses before commencing the maintenance application. The Father had tried to discuss child support but the Mother was not cooperative in that respect. This occurred after he had transferred a substantial sum of money to her in 2015 and 2016, and his evidence is that he had overpaid in those months because he had not been informed of and had no way of knowing the child's reasonable expenses.

61 The present case can be distinguished from the more common cases where one parent, with no funds at all, has to repeatedly ask for moneys from the other parent, who pays only irregularly and/or an inadequate sum. A maintenance order provides the predictability and stability that ensures the child is financially provided for, and avoids a situation where a parent (who reasonably communicates the child's expenses) has to continuously pursue contributions from the other parent.

Reasonableness of mode of provision in the present case

62 It is not disputed that the Father only made a single transfer of \$7,500 from January 2017 to April 2018. As the Father asserts that he had provided

reasonable maintenance for the child because he had “overpaid” in earlier months, his earlier payments will now be considered.

63 The Father made the following payments to the Mother from November 2014 to August 2017:

Date	Amount paid (\$)
November 2014	32,000
March 2015	23,279.83
June 2015	13,193.72
September 2015	12,060.68
January 2016	36,766.03
April 2016	31,462.50
December 2016	24,000
August 2017	7,500

64 The DJ found that it was more likely than not that payments made to the Mother up to 2016 were made for both the Mother and the child’s expenses and other “extraordinary expenses”. He made this finding based on the fact that the Father used to support both the Mother and the child, and the Father and Mother only ended their relationship sometime in end-2015. He also found that the Mother and child likely incurred extra expenses setting up a new home in Japan.

65 I do not see a reason to disturb the DJ’s finding on when the parties ended their relationship, and that any payments made in 2015 should be disregarded as it would have been used to support both the Mother and child. I also agree that the Mother and child would have incurred larger expenses in 2015 when setting up a new home in Japan. However, I do not think that the

2016 payments should be disregarded. The Mother admitted that the payments made in January 2016 were a direct result of the first maintenance application filed in December 2015, which had been served on the Father the day before. By then, the relationship between the parties had deteriorated and I find that it is more likely than not that the January 2016 payments and subsequent payments were meant solely for the child, perhaps to stave off further maintenance applications.

66 The Father paid a total of \$99,728.31 to the Mother from January 2016 to August 2017. Considering the period up to 14 October 2017 (the date of filing of MSS 801386/2017), which was a period of around 22 months, the sum paid works out to a provision of \$4,533 a month. This would work out to \$15,865 in total for the period of 1 July 2017 to 14 October 2017. On the basis of the DJ's findings on reasonable maintenance, including his findings on rental and one-off expenses, the Father would have had to pay \$11,187.11 during that same period. The Father had provided at least that sum as at 14 October 2017.

67 The DJ held that the Father failed to adduce credible evidence, such as contemporaneous messages, to support his claim that the payments were meant solely for the child. However, the burden of proof is on the Mother, as the complainant, to prove that the Father had refused or neglected to provide reasonable maintenance. As it is undisputed that the Father did pay these amounts, if the Mother asserts that there was an agreement that the money was also for her expenses or valid extraordinary expenses, the burden is on her to bring the evidence before the court.

68 The DJ found that the Father unilaterally stopped certain payments such as topping up the child's school lunch card. This occurred after the maintenance application was filed on 14 October 2017, and is not helpful in determining

whether the father had neglected or refused to provide maintenance at the time the suit was filed.

Decision

69 The present case presents unique circumstances. The parties were not married and lived in separate countries for over two years before the total breakdown of their relationship. By 1 July 2017, the parties were deeply entrenched in litigation. I accept that it may have been challenging by then for the Mother to request payment, and it is possible that the Father would have refused to pay. However, by refusing to communicate with the Father or make any request for payment, the Mother did not act reasonably. The Father cannot be faulted when the Mother did not reasonably communicate the child's needs to him under the circumstances. During the relevant period, the Father paid for all accommodation, utilities, and expenses during the three days a week that the child stayed with him. It is possible that, absent a specific request for payment, he had assumed the earlier payments and these provisions were sufficient maintenance.

70 As such, the Mother has failed to show due proof that the Father had neglected or refused to provide reasonable maintenance for the child, and the threshold requirement in s 69(2) has not been met.

Best interests of the child

71 At [56] of his grounds of decision, the DJ appeared to have some doubts over whether the Father had neglected to provide reasonable maintenance. However, he concluded that he still had the power to make the maintenance order as it was in the best interests of the child:

... [G]iven the specific circumstances of this case including the fact that parties are often squabbling about their respective financial contributions towards supporting the child, that the parents are of different foreign nationalities and often travel back to their home countries, that the child was born out of a previous relationship where the parties were never married to each other and the father has now moved on and married a different spouse, I was of the view that *it is [in] the best interest of the child* for a maintenance order to be made so that the situation and their respective financial obligations towards the child is clarified once and for all between the parties.

[emphasis added]

72 There is no doubt that the welfare of the child is the paramount consideration in proceedings involving children and this principle ought to override any other consideration (see *BNS v BNT* [2015] 3 SLR 973 at [19]). However, it does not override the statutorily prescribed jurisdiction of the court. The legal threshold serves as a safeguard against unnecessary intervention by the court in family matters. One does not simply walk into the court to seek an order for any matter that is alleged to be in the best interests of the child; the court's jurisdiction and powers are prescribed by the law.

73 In the present case, the Father has not had regular contact with the child for a substantial period of time. A court order finding that the Father neglected or refused to provide for the child may reinforce any negative perception she may have of her Father and contribute to this estrangement. I make this observation to explain that it is not necessarily in the child's best interests to grant a maintenance order even if the parents have an acrimonious relationship. The important point here is that given that the threshold legal requirement in s 69(2) was not met in the present case, the court should not have made a maintenance order.

Conclusion

74 I allow the Father’s appeal in DCA 38/2018 and I dismiss the Mother’s appeal in DCA 37/2018.

75 Even though the order is rescinded, the Father is still obliged as a parent to provide reasonable maintenance for the child. Since the DJ’s decision, the Father has transferred \$2,200 to the Mother every month in compliance with the order. At the hearing, he expressed relief that the court proceedings had provided clarity on his legal obligations. He confirmed that he would continue to transfer \$2,200 to the Mother every month even without an order in force. I hope this will provide the Mother and child a measure of stability at this time.

76 I urge the Mother to act reasonably in seeking provision for the child, by making reasonable requests to the Father and providing details of the child’s expenses where appropriate. The parties, as parents, should cooperate to provide the best for the child.

Costs

77 At the hearing below, the DJ ordered the Father to pay the Mother costs of \$4,500 because the Mother did “succeed” in her claim for maintenance and costs should follow the event. As I have allowed the Father’s appeal, these costs should not be payable by him to the Mother.

78 As for the appeals, both parties appeared in person at the hearing; I order the Mother to pay for the Father's reasonable disbursements in both appeals. The parties shall have liberty to apply.

Debbie Ong
Judge

Both parties in person.
