ADD *v* ADE
[2014] SGHC 80

Case Number : Divorce No 54 of 2012 (Registrar's Appeal from the State Courts No 30007 of 2013)

Decision Date : 21 April 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Kamalarajan Malaiyandi Chettiar (Rajan Chettiar LLC) for the appellant; Tan Tiong Gee Andrew (Andrew Tan Tiong Gee & Co) for the respondent.

Parties : ADD — ADE

Family Law – Custody – Access

Family Law – Maintenance – Child

Family Law – Matrimonial home – Division

21 April 2014 Judgment reserved.

Choo Han Teck J:

1 This is an appeal by the appellant/wife against the decision of the district judge on 27 September 2013. The three issues on appeal are:

(a) access of the respondent to Child A;

(b) maintenance to the children; and

(c) division of the matrimonial home (5-room flat in Hougang Central).

2 The appellant was born in August 1973, and the respondent/husband in April 1961. They were married for about 15 years, from 7 July 1997 to the date of interim judgment, 23 July 2012. They had three children of the marriage, of which the eldest is "Child A", born in December 2000. The other two children were born in 2005 and 2007 respectively. During the ancillary matters hearing on 27 September 2013, the district judge made orders regarding custody, maintenance of the children and division of assets. I set out below the relevant portions of that order:

(a) the parties shall have joint custody of the 3 children of the marriage, with care and control to the appellant;

(b) the respondent be allowed reasonable access to the 3 children of the marriage as follows:

(i) Wednesdays from 7pm to 9pm;

(ii) overnight access from Friday 7pm to Saturday 9pm; and

(iii) half of the children's school holidays in June and December each year, subject to the

children's schedules;

(c) the respondent be allowed access to Child A every Monday from 7pm to 9pm, subject to her tuition and school schedules;

(d) the respondent, within 6 months of the date of extraction of the final judgment, is to transfer all his rights, title and interest in the matrimonial home to the appellant, upon the appellant paying a consideration equivalent to 25% of the net value of the matrimonial home (and if not transferred within 6 months, for the home to be sold within the next 6 months, with the net sale proceeds to be divided in the proportion of 75% to the appellant and 25% to the respondent);

(e) the respondent is to pay the appellant a sum of $1 in spousal maintenance, with effect from 27 September 2013; and

(f) the respondent is to pay the appellant a sum of $350 for the maintenance of each child (total sum of $1,050), with effect from 27 September 2013.

3 Before this court, the appellant argued that:

(a) the order allowing the respondent access to Child A every Monday from 7pm to 9pm should be revoked, as it is disruptive to her studies;

(b) the order of maintenance for each child should be increased from $350 per month to $500 per month (total sum of $1,500); and

(c) the order pertaining to the disposal of the matrimonial home should be amended, such that rather than the appellant having to pay the respondent consideration equivalent to 25% of the net value of the matrimonial home, the appellant should only have to refund to the respondent's Central Provident Fund ("CPF") account the amount that he had utilised for the purchase of the property, inclusive of accrued interest.

I will deal with each of these in turn.

4 First, the appellant argued that allowing the respondent access to Child A every Monday from 7pm to 9pm would be disruptive, as Child A usually has tuition classes on Mondays from 7pm to 8.30pm, or from 5pm to 6.30pm, depending on her school schedule and availability of her private tutor. In response, counsel for the respondent highlighted that the order for Monday access to Child A was indeed subject to tuition and school schedules, and pointed out that the Saturday access that was granted to the respondent was frequently denied because the appellant's mother would take the children out after their tuition classes on Saturday afternoon. It is not easy to determine who was right (if there could be a right party) in this situation. For the reasons that follow, it was not necessary for me to make a specific finding on this issue but the parties must appreciate what the nature of an access order is. Ultimately, the court has to decide based on the best interests and wellbeing of the children in making such orders and would do so by getting both parents involved in the upbringing of the children. It is important that the child continues to interact with both parents more so than issues of tuition schedules. I thus dismiss the appellant's appeal on the access order, and leave it to the parties to sort out the scheduling issues themselves, but with liberty to apply.

5 Second, the appellant sought more "child maintenance" from the respondent. The appellant is earning about $19,500 net per month. The respondent is earning about $3,000 per month. The

appellant is 12 years younger than the respondent. Before the district judge, the appellant sought $800 in maintenance per month per child, from the respondent. Her counsel later adjusted this figure down to $500. The appellant argued that the expenses of the three children totalled $11,460 each month. The district judge deemed this an exorbitant figure, preferring a figure of $4,366 instead for all three children each month, based on his calculations. The district judge ordered the respondent to contribute $1,050 in maintenance – in total – to the three children, as he assessed this to have been about 25% of the expenses of the children. Before this court, the appellant did not argue that the respondent should have to bear more than 25% of the children's expenses. Rather, she disagreed with the district judge's discounting of certain items of expenses. For instance, the district judge found that expenses for Child A's tuition classes was not $1,800 per month, as argued by the appellant, but rather $800. Before me, the appellant argued that the district judge was wrong. Further, she argued, since Child A is now in Secondary School, her classes would cost even more – about $2,000 per month. In sum, she argued that the district judge had failed to take into account "the financial needs of the children and the standard of living enjoyed by the children". These are indeed relevant factors to take into account, but I do not see any ostensible errors in the district judge's account of the appellant's alleged figure. The appellant did not seem to dispute that the respondent was earning $3,000 per month, or that there was indeed a significant disparity between their incomes. Given this disparity, I dismiss the appellant's appeal on maintenance for the children.

6 Third, the appellant argued that she should not have to pay the respondent 25% of the value of the matrimonial home – rather, she should only have to refund the appellant's CPF contribution plus interest. In monetary terms, this is a difference of between $130,126.50 and $2,188.07. The district judge arrived at the (former) figure upon having calculated that the total assets of both parties should have been split with 17% going to the respondent and the remainder to the appellant. To facilitate the practical dividing of assets (and because having the respondent transfer his share to the appellant was the option proposed by the appellant in her first affidavit of assets and means), the district judge equated the respondent's 17% share of the total assets to 25% of the matrimonial flat upon division, and hence made the order that the appellant simply pay the respondent consideration amounting to this 25%, thereby disposing of the entire matter of division of assets. This is depicted below:

No	**Description**	**Amount**	**Calculation/Comment**
1	Respondent's share of total pool of assets	17%	District judge's finding, based on parties' contributions
2	Total pool of assets (net)	$975,867	Based on parties' declared figures
3	Respondent's share of pool of assets	$165,897.40	Fig 2 ($975,867) x Fig 1(17%), rounded up to 1 decimal place
4	Respondent's existing assets (net) in his name	$30,891.60	Based on parties' declared figures
5	Amount of assets to be transferred to Respondent	$135,005.80	Fig 3 ($165,897.40) – Fig 4 ($30,891.60)
6	Net Value of the matrimonial flat	$526,609.70	Based on parties' declared valuation ($800,000) – current outstanding loan ($273,390.29), rounded to 1 decimal place

7	Appellant's percentage share in matrimonial flat	25.6%	Fig 5 ($135,005.80) / Fig 6 ($526,609.70) x 100%, rounded to 1 decimal place

7 The district judge arrived at Figure 1 – the respondent's share of 17% of the total amount of assets – by attributing to the respondent 5.8% in direct contributions to the total pool of assets and 11.2% in indirect (and other) contributions to the marriage. Before this court, the appellant's main dispute was with the district judge's finding as to the respondent's indirect contributions. The district judge arrived at the figure of 11.2% based on his findings that the respondent had contributed in the following ways:

(a) payment of the full amount of the home protection scheme, totalling $8,704.98;

(b) payments of property tax;

(c) taking care of children as house husband – and primary caregiver – with the assistance of the domestic helper, from 2005 to 2012; and

(d) taking care of the appellant during the appellant's maternity confinement periods for the 2nd and 3rd children.

8 The appellant argued before me that the 11.2% figure was too high as the district judge failed to appreciate that "there was a full time maid throughout the duration of the marriage". I disagree, as the district judge had clearly articulated his awareness of the assistance the respondent received from the domestic helper in his grounds of decision (at [27]). The appellant also disputed the extent of the respondent's role as a house husband, arguing that he "did not do anything at home", and "slept until midday every day and was lazing and bumming around the matrimonial home". It is not necessary to refer to all the evidence put forward by the parties (for example, a birthday card given by Child A to the respondent which evinces his taking care of her when she was sick, and a text message from the appellant to the respondent, sent on 30 March 2011, in which she mentioned "[appreciate] you taking the role of a father though our marriage is not working out") to substantiate – or discredit – the extent of the respondent's involvement in the home. There was sufficient evidence to persuade the court below that the respondent did indeed make indirect contributions to the family by taking care of the children and enabling the appellant to excel in her career. I hence dismiss the appellant's appeal on the division of assets (and specifically, the matrimonial home).

9 In conclusion, the appellant's appeal is dismissed. It seemed to me that much of the appellant's case before me arose from a misunderstanding of the district judge's grounds of decision. Also, especially with regard to the dispute over custody, the parties must remember to put the interests of their children before all else. Notwithstanding the importance of education, I reiterate that personal interaction between child and parent can be more crucial than tuition classes in the development of the child. The parties must attempt to reach a sensible balance between the two, failing which, there will be liberty to apply to court.