

HONG KONG / JUDGMENT

CVL v. WMLS**[2024] HKFC 85****COURT**

Family Court

DECIDED

23 April 2024

CASE / FILE NUMBER

FCMC12540/2022

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bjbj FCMC 12540/2022

**[2024] HKFC 85 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 12540 OF 2022**

BETWEEN CVL Petitioner and WMLS Respondent

Coram: HH Judge C.K. Chan in Chambers (Not Open to Public) Date of Hearing: 26 January 2024
Date of Judgment: 23 April 2024

J U D G M E N T (Master s Appeal on Filing of Form E)

This is a hearing of the Respondent Wife (s appeal against the order of Master WY Ho of the Family Court made on 12 December 2023 in which the learned Master ordered the parties to file and exchange their respective Financial Statement (Form E) on or before 6 February 2024. In her Notice of Appeal, W asked for:

- (1) The filing and exchange of Form E be withheld until the final determination of the main suit; or
- (2) Alternatively, the filing and exchange of Form E to be extended to 56 days after the final determination of the main suit. The Petitioner Husband () opposed the appeal. After hearing counsel, I have decided to dismiss the appeal with direction that both parties to file and exchange their Form E within 21 days, i.e. on or before 14 May 2024. These are my reasons.

Background

The parties were married in 1984. They have no children. The present proceedings were begun by H when he filed a Petition for Divorce on 22 December 2022 relying on the ground of 2-year separation as from the year of 2016. The Petition was later amended on 18 August 2023 in which the date of separation was amended to November 2020. On 13 September 2023, W filed her Answer to Petition in which she disputed the fact of separation and asked for the Petition to be dismissed. On 10 March 2023, Deputy Judge WY Ho (as Master WY Ho then was) gave paper directions for the parties to file and exchange their Form E on or before 21 April 2023 with other consequential directions. Both parties did not comply with the order in filing their Form E. At certain stages, it seems to be the parties consensus that filing of Form E could be held over after the conclusion of the main suit. But when the 1st Appointment (2nd Hearing) came before Master WY Ho on 12 December 2023, the learned Master again ordered the parties to file and exchange their Form E on or before 6 February 2024. W, being dissatisfied with the Master's order, filed her Notice of Appeal on 15 December 2023, asking for the Master's Order to be set aside or varied. The appeal is now fixed to be argued before this court. Master's Appeal Master's appeal before a Judge is by way of re-hearing, and the Judge treats the matter as though it came before him for the first time: O.58 r.1 The Rules of the District Court, Cap. 336H and Hong Kong Civil Procedure 2024 58/1/2. W's Submissions W was represented by Mr. Jeff Yau of counsel, who submitted that the filing of Form E should be suspended or stayed for good case management reasons. As matters stand (meaning at the time of hearing on 26 January 2024), the parties were actively liaising for mediation which was expected to take place in early 2024. If mediation was successful, there was no need for the court to deal with the question of ancillary relief and the substantial time and resources used by the parties in filing Form E could be saved. This point can be dealt with shortly. From my experience, very often the filing of Form E will assist the parties in understanding their respective financial position and could thus facilitate a fair financial settlement. In any event, I note that as late as 5 April 2024, the parties did come before this court seeking directions to set down the main suit for trial. A CMH is now fixed on 7 June 2024, after which a trial date will most likely be fixed for the trial of main suit. Obviously, despite all the good intentions of the parties, mediation did not work and the dispute on main suit has to be resolved by trial. Therefore, Mr. Yau's submission on mediation simply falls away. Secondly, Mr. Yau submitted that in the event of a trial on main suit, the question of whether the marriage should be dissolved on the fact of 2-year separation would be extensively canvassed with viva voce evidence. It is expected that a total of 7 witnesses will be called by W, whose case is that the facts pleaded in the Amended Petition do not make out a case of 2-year separation. She would also contend that where husband and wife were sharing the same household, a rejection of a physical relationship is not sufficient to constitute living apart. In short, W is saying that in the event of a successful defence to the main suit, there will be no need for the issue of ancillary relief to be considered and costs for the preparation of Form E would again be saved. My first observation is that Mr. Yau's submission on saving costs is rather disingenuous. The costs of preparing and filing a Form E would certainly be less than lodging an appeal on the Master's decision where counsel have to be instructed on both sides.

17. Furthermore, we have to bear in mind that when the learned Master made the order on Form E, she was exercising her discretion in making a case management direction, which should not be lightly disturbed unless it is clearly wrong.
18. If one should read Practice Direction 15.11, there is clear direction for the filing of Form E not less than 28 days before the 1st Appointment, which was 21 March 2023 in the present case. In other words, the Form E should have been filed in late February 2023, which was 14 months ago. One has to appreciate that the purpose of this arrangement of filing Form E while the main suit is on-going is supposed to be the norm so as to minimise delay in ancillary relief proceeding. In the old days (meaning pre-2003 before the commencement of PD 15.11), parties had to wait for the granting of decree nisi before they could proceed with ancillary relief application. This was deliberately changed by PD 15.11 so that ancillary relief will proceed in tandem with the main suit. There is nothing in the present case which would justify a departure from that norm.
19. Despite the fact that it may be premature to say whether H would be successful in proving a 2-year separation and thus obtain a decree nisi of divorce, one has to appreciate that if one party is determined to end the marital relationship, there is little one could do to stop him or her, and the granting of a divorce is simply a matter of time, after which the issue of ancillary relief has to be dealt with. An early commencement of the discovery process would have the added advantage of minimising the risk of asset dissipations by either party. Therefore, it is my view that there should not be further delay in the filing of Form E in the present case. The matter is now before this court and in exercising my discretion afresh, I have no hesitation in granting the same order for the filing and exchange of Form E by the parties. Conclusion and Order There is no merit in W's appeal, which is hereby dismissed. As the time for filing Form E has already lapsed, I hereby order the parties to file and exchange their Form E within 21 days, i.e. on or before 14 May 2024. Costs Costs to follow event. H should have the costs of this appeal, including all costs reserved, if any, with certificate for counsel. This will be in the form of order nisi to be made absolute upon expiry of 14 days from the handing down of this judgment. Upon the costs order being made absolute, I direct H to lodge and serve a 1-page statement of costs for summary assessment within 7 days and W be at liberty to lodge and serve a 1-page list of objections within 7 days thereafter for the court's consideration. Lastly, I thank counsel for their assistance. C. K. Chan District Judge Ms. Melinda Chiang, Barrister-at-law, instructed by Messrs. Bobby Tse & Co., solicitors for the Petitioner Mr. Jeff Yau, Barrister-at-law, instructed by Messrs. Chiu Liang & Co., solicitors for the Respondent PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V h5=- h5=- gdBW NENA h5=- h5=- |k|^|M|M| gd?o gd?o gd?o hN,M gdY= gdY= gdY= gdY= gdFg gd?o XKX> hxYu gdY= gdY= tgZgZg hC o h2u* hp)S hC o hp)S h2u* h2u* hC o tbQ= h2u* h2u* n[L[&`#\$ [Content\_Types].xml \_rels/rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q\_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /,EE} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1

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