

HONG KONG / JUDGMENT

HWK v. TCWP

COURT

Family Court

DECIDED

26 August 2008

CASE / FILE NUMBER

FCMC15424/2006

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bjbj FCMC 15424 / 2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 15424 OF 2006

BETWEEN HWK Petitioner and TCWP Respondent

Coram: Her Honour Judge Sharon D Melloy in Chambers (Not Open to Public) Dates of Hearing:
20 and 21 August 2008 Date of Judgment: 26 August 2008

JUDGMENT

Introduction

AUTONUMOUT This is an application by a petitioner wife for ancillary relief. In particular she applies for periodical payments for herself and the child of the family. She wishes to reserve her right, quite properly, in relation to her claim for capital ancillary relief.

Background

AUTONUMOUT The matter first came before me last year and on the 29 November 2007 I gave a Ruling in relation to maintenance pending suit for the wife and interim maintenance for the child of the family, a boy born on the 15 July 2000. Much of the background to the case is set out in that Ruling. I do not intend to repeat the same here. AUTONUMOUT Suffice it to say that despite delivering the Ruling orally, in the presence of the husband, he has not complied with it. He was ordered to pay HK\$3,000 per month to the wife for her own support and HK\$3,000 per month for the son, commencing on the 1 December 2007. He has failed to do so, despite the fact that a penal notice was endorsed to the order. He has failed to file replies to the wife's questionnaires of the 13 and 20 June 2007. He failed to attend the adjourned First Appointment

Hearing on the 20 January 2008. He sent a message on that occasion to say that he was in hospital and could not attend. He likewise sent a similar message on the morning of the 20 August 2008. The matter was stood down until 11:30 am he still did not attend. The husband's behaviour has been nothing short of reprehensible. AUTONUMOUT The wife is now 39 years of age and she continues to receive psychiatric treatment. CSSA recently reassessed her position. She gave evidence that there was no change. She still suffers from a form of neurosis and is unable to work. AUTONUMOUT The husband is 38 years of age and he works as an Immigration Assistant for the Hong Kong Immigration Department. Previously he was said to also suffer from poor health. It was said previously that The Immigration Department was in the process of appointing a medical board to ascertain his fitness for work. No further evidence has been produced in that respect. A letter from The Treasury dated the 19 August 2008 states that he is earning HK\$19,150 and that he is entitled to benefits under the New Pension Scheme. Thus I accept that the husband is currently in receipt of an income in that amount. I also accept that he may be entitled to other benefits such as housing. The wife gave evidence that early on in their marriage they lived in Government quarters. He will be entitled to a pension in due course, although that will of course be dependent on the number of years served with the Immigration Department. The issues AUTONUMOUT In broad terms there remains only one issue - how much should the husband pay the wife as maintenance for herself and the parties son? The law AUTONUMOUT Mrs Casewell for the wife referred me to the s.7 factors, to be found in the Matrimonial Proceedings and Property Ordinance, Cap 192. For ease of reference I have set them out again here. I have taken all of these sections into account when coming to my decision.

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 4, 6 or 6A in relation to a party to the marriage and, if so, in what manner, to have regard to the conduct of the parties and all the circumstances of the case including the following matters, that is to say-
 - (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;
 - (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring. Discussion AUTONUMOUT I must now turn to consider the only issue in the case and the s.7 factors,

together with the available evidence from both parties . The wife also gave oral evidence. How much should the husband pay the wife as maintenance for herself and the parties son? AUTONUMOUT In general my findings as set out in my original Ruling remain unchanged. The husband is earning a reasonable salary. He has a duty to ensure that his financial affairs are arranged in such a way that he can make a proper contribution to the maintenance of his son and the wife. AUTONUMOUT The wife said originally that she required HK\$8,815 per month. At the maintenance pending suit hearing she said she required HK\$11,650 per month plus her rent. She now claims, in total HK\$12,800 per month. Mrs Casewell accepts that this is putting her clients case at its highest, but leaves it to the court s discretion otherwise. the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; AUTONUMOUT I accept that the wife has no earning capacity in the short to medium term. I also accept that the husband is earning HK\$19,150 per month. There was the suggestion that the husband may have other resources at his disposal including a property in Nathan Road, which was rented out and other property in Tsuen Wan and China. Unfortunately the wife was not able to produce any evidence in support of her claim. Therefore I intend to discount it for the purpose of this hearing. the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; AUTONUMOUT The wife needs to be able to provide for herself and her son. She has produced a detailed list of expenses. Current monthly expenses AUTONUMOUT I will allow all of these save for food in the sum of HK\$4,000 and household expenses in the sum of HK\$1,000. Given that the wife has also claimed under a separate head for the sons school lunches and snacks and a further HK\$300 per month for meals out of the home, this seems a little on the high side for a household of two people. I will allow HK\$3,000 for food and HK\$500 for household expenses. Thus general household expenses will be allowed as follows: Utilities - 700 Food 3,000 Household expenses 500 Total 4,200 This amount to HK\$2,100 each. Wife s personal expenses AUTONUMOUT The wife claims HK\$1,100 for her personal expenses. These do not appear to be in any way remarkable and I will allow them. AUTONUMOUT I will allow HK\$780 for rent. Thus the wife s expenses amount to HK\$3,980 say HK\$4,000 (i.e. HK\$2,100 + HK\$1,100 + HK\$780 = HK\$3,980). The son s expenses AUTONUMOUT In addition the wife seeks an additional HK\$5,216.50 for the son. She produced some evidence in support of her claim. I do not accept all of her figures. AUTONUMOUT In particular I do not accept that it is necessary to spend HK\$500 per month on schoolbooks and stationery. I accept that she will need to buy text books (c HK\$1,750 per annum) and some stationery and other supplemental exercise books from time to time. But it is possible for reading materials and other items to be borrowed from our excellent library facilities. I also do not accept that it is necessary for an 8-year-old child to subscribe to a newspaper. I will allow the wife HK\$250 per month under this head. AUTONUMOUT The wife also gave evidence that although she was entitled to free medical care that this was only the case if she took the son to a Jockey Club Dr between 9:00 am 5:00 pm and that that was not always convenient. With respect she should avail herself, in these straightened circumstances, of the free service available to her. I will not allow the sum claimed for

medical expenses. I will allow HK\$200 for entertainment/presents, HK\$200 for holidays and HK\$200 for clothes and shoes. Thus the son's expenses, without the extra tuition fees, amount to HK\$2,164.50 per month. AUTONUMOUT In addition the wife seeks HK\$2,100 per month for extra tuition. Although in an ideal world I would allow this sum, it seems to me that in the circumstances of this case this is a luxury that the parties cannot afford. I will allow HK\$500 per month. Thus the son's expenses amount to approximately HK\$4,800 (i.e. $\text{HK\$2,100} + \text{HK\$2,165} + 500 = 4,764.50$). the standard of living enjoyed by the family before the breakdown of the marriage; AUTONUMOUT The wife gave evidence that the parties had enjoyed a more comfortable lifestyle in the past. I accept that to be the case. Unfortunately when a marriage breaks down, a reduction in both parties standard of living is often inevitable. the age of each party to the marriage and the duration of the marriage; AUTONUMOUT The parties are relatively young. They have been married for approximately 6 years. any physical or mental disability of either of the parties to the marriage; AUTONUMOUT I accept that the wife is suffering from a mental disability at the present time and that she is unable to work. the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; AUTONUMOUT I accept that the wife has contributed fully to the marriage in her role as wife and mother. She has been a housewife throughout.

Conclusion

AUTONUMOUT In coming to my decision I have taken into account the s.7 factors and the evidence on file, together with the wife's oral evidence. I will make an order that the husband pay the wife periodical payments for herself in the sum of HK\$4,000 per month and an additional HK\$4,800 as periodical payments for the child of the family. AUTONUMOUT I should add that given the circumstances here and that the fact that the husband has not paid any maintenance to date, I will, of my own motion, make an attachment of income order. The husband works for the government so there should be no difficulty in this respect. AUTONUMOUT In so far as costs are concerned, given the fact that the Petitioner had no alternative but to make this application and given that she is legally aided I will make a costs order in her favour. AUTONUMOUT Consequently having read each party's respective Form E's and the other evidence produced and having heard from the wife, I will make an order in the following terms:

- 1) The Respondent do pay the Petitioner periodical payments for herself in the sum of HK\$4,000 per month, first payment to be made on the 1st September 2008 and thereafter on the first day of each succeeding month during the joint lives of the parties or until the Petitioner's remarriage, whichever is the shorter and periodical payments for the child of the family in the sum of HK\$4,800 per month, first payment to be made on the 1st September 2008 and thereafter on the first day of each succeeding month until the child reaches the age of 18 or finishes full time education whichever is the later. Such payments to be attached to the husband's salary with the Hong Kong Government. There shall be an order nisi to be made absolute in 14 days that the Respondent shall pay the Petitioner's costs, to be taxed if not agreed on a party and party basis. The Petitioner's own costs to be

taxed in accordance with Legal Aid Regulations. A s.18 declaration to issue. (Sharon D
MELLOY) District Judge For the Petitioner, Mrs. Casewell of Messrs Boase, Cohen & Collins
The Respondent acting in person was absent PAGE - PAGE - PAGE &`#\$ &`#\$ D)U"lv
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