

HONG KONG / JUDGMENT

KKH v. PKH (Formerly known as PSV)

[2025] HKCA 341**COURT**

Court of Appeal

DECIDED

11 April 2025

CASE / FILE NUMBER

CAMP129/2024

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CAMP 129/2024, [2025] HKCA 341 On Appeal From [2024] HKFC 76 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL MISCELLANEOUS PROCEEDINGS NO. 129 OF 2024 (ON AN INTENDED APPEAL FROM FCMC NO. 8332 OF 2017) BETWEEN KKH Petitioner and PKH (Formerly known as PSV) Respondent Before : Hon Cheung and Chow JJA in Court Date of Decision : 11 April 2025 DECISION Hon Cheung JA (giving the Decision of the Court) : I. Leave to appeal This is a renewed application for leave to appeal by the petitioner husband ('the husband') against the judgment of Deputy District Judge S Allison ('Judge S Allison') dated 15 April 2024. Having considered the documents filed and lodged by the parties, we are of the view that it is appropriate to determine the present application on paper without an oral hearing. II.

Background

On 24 October 2018, H H Judge Melloy ('Judge Melloy') ordered the husband to pay the respondent wife ('the wife') maintenance pending suit ('MPS') and interim payment to B, the child of the family on the following terms : 1) upon the husband's undertaking to continue to pay for B's school fees, extra curricular activities (up to \$2,000 per month) and for her insurance premia together with the wife's insurance premia directly, 2) the husband to pay MPS at \$14,000 per month and interim maintenance ('IM') to the wife for benefit of B at \$38,500 per month. The first of such payment to be on the first day of the month that the wife moved out of the former matrimonial home and thereafter to be paid on the first day of each succeeding month until further order, and that 3) the husband to pay for the costs of the application ('2018 Judgment'). On 11 June 2022, Deputy District Judge Thelma Kwan ('DDJ') (now H H Judge Thelma Kwan) dismissed both the wife's application for litigation funding as well as the husband's application to vary the 2018 Judgment, and made no order as to costs. On 15 April 2024, Judge S Allison varied the 2018 Judgment as follows : 1) upon the husband's undertaking to continue to pay for B's school fees, extra curricular activities (up to \$2,000 per month) and for B and the wife's insurance premia directly, 2) the 2018 Judgment be varied such that the husband to pay the wife MPS at \$10,000 per month and IM for B at \$39,000 per month, to be backdated to 1 September 2023. On 5

July 2024, Judge S Allison refused to grant leave to the husband to appeal against the 2024 Judgment ('2024 Leave Judgment'). The parties are of Indian descent. The husband comes from a well-known wealthy family in Hong Kong. In April 2024, the husband was 41 years old and the wife 46 years old. The parties married in February 2013 and separated in January 2016. It was a short marriage. B was born in October 2015 shortly before the separation. The husband petitioned for divorce in June 2017. The husband works in finance and used to be in paid employment until he set up his own investment business in 2016. The wife used to have her own recruitment business until it closed down in March 2018. At the time of the 2018 Judgment, both parties were not in paid employment. It is the parties' case that since 2023 they were in paid employment. III.

Applicable principles

The relevant approach to determine an application for leave to appeal is well established, namely, whether the applicant can show that he has an arguable case with reasonable chances of success on appeal. As the husband is challenging Judge S Allison's exercise of discretion, he must show that the decision is plainly wrong in accordance with the well-established principles before this Court would intervene. In *S v C* [2021] HKCA 1372, it is held that MPS is an interim measure subject to adjustment in the ancillary relief. This explains the Court's approach in taking a broad brush approach in finances rather than any detailed investigation. Importantly, appeals on MPS should be rare and parties should instead focus on bringing about final resolution. The Court's approach is that leave to appeal will generally not be granted unless there is special reason why the matter cannot be left to ancillary relief, such as serious hardship. IV. Our view We will dismiss the husband's application. Judge S Allison was well aware of the principles on variation of an order for MPS. She summarised the proposed grounds of appeal by the husband that were essentially the same grounds of appeal now advanced by the husband in his renewed application : 1) [Judge S Allison erred in] taking into account and assuming that the Husband could continue to borrow funds to meet the MPS Judgment. 2) [Judge S Allison erred in] ordering the Husband to cover the Wife's shortfall of HK\$10,000 per month. In addition, [she] erred in ordering the Husband to continue to pay for the Wife's dental/medical insurance. In doing so, [she] had failed to assess the Wife's personal expenses, even when the Husband himself did not challenge the Wife's personal expenses. 3) [Judge S Allison erred in] not taking into account the presence of alternative financial resources available to the Wife, and that the MPS Judgment placed upon the Husband the sole responsibility of addressing the Wife's financial deficits and insurance costs. 4) [Judge S Allison erred in] not adequately assessing the reasonableness of certain general expenses claimed by the Wife. Judge S Allison had carefully considered these grounds and held that 'they lack merit and have no reasonable ground of appeal'. We agree with her view and there is nothing we can usefully add to what she has said. V.

Conclusion

For the reasons set out above, we will dismiss the husband's application. As this application is totally without merit, pursuant to Order 59, rule 2A(8) of the Rules of the High Court, we will make an order that no party may request our determination to be reconsidered at an oral hearing inter partes. VI. Costs We order the husband to pay the wife's costs of this application to be summarily assessed. The wife is to file within 28 days her statement of costs, and the husband is to file his objection within 28 days thereafter. (Peter Cheung) Justice of Appeal (Anderson Chow) Justice of Appeal The Petitioner (father) acting in person The Respondent (mother) acting in person

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