

HONG KONG / JUDGMENT

L v. W

COURT

Family Court

DECIDED

15 June 2007

CASE / FILE NUMBER

FCMC9692/2006

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bjbj FCMC 9692 / 2006 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NUMBER 9692 of 2006

BETWEEN L Petitioner and W Respondent

Coram : Deputy Judge T. Chan in Chambers Date of Hearing : 1 & 5 June 2007 Further Written
Submission on behalf of Respondent : 12 June 2007 Date of Judgment : 15 June 2006

R U L I N G

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1. In these proceedings the Petitioner wife () seeks interim maintenance for the two children of the family (the Children) pursuant to section 5 Matrimonial Proceedings and Property Ordinance Cap 192. The summons was issued on 9th October 2006, it was adjourned pending decisions on various other applications. In her summons, she asks for HK\$11,000, but before the hearing, she has revised her claim to seek one half of the direct expenses for the children, which is HK\$23,939.40, and half being HK\$11,969.5; and also one-third of the indirect expenses meaning the general household expenses, total of which is HK\$39,400 and one-third amounts to HK\$13,133.3. Total of her claim is therefore HK\$25,102. W also asks for an order that such interim maintenance be backdated to the time the Children arrived in Hong Kong back in November 2005.
 2. The Respondent husband (s position is that he could not afford to pay what W has asked for and that there should not be an order for backdating the award because whatever had been contributed by W in the mean time would be accounted for when the final assessment on maintenance is to be made.

3. The background of the marriage and history of the proceedings have been set out in my earlier judgment on jurisdiction and forum. I would not repeat myself here except for a few salient points relevant to the issue to be decided at the present hearing.
4. H is now 34, a neurologist working in Cleveland, Ohio at present. W is also 34, a journalist working in Hong Kong on a 2- year contract and is expecting to return to the US in August 2007. The parties were married in September 2002 and they have the Children, two twin boys, born in July 2004. It is W s case that she has been the sole financial support of the Children since their arrival in Hong Kong in November 2005.
5. Parties filed their Form E and affirmations for the purpose of this hearing. I am asked to make a ruling on the affirmations and submissions made on behalf of parties as usually no oral testimony would be heard at this stage. I agree that it is trite law that the court would take a broadbrush approach when deciding the matter. Income of Parties
6. The income of W is not disputed. Her income is in the region of HK\$65,000 a month. Parties have great dispute on the income of H. W challenges his saying that he has been and still is earning HK\$84,701. W says that he has been hiding some income from his speaking engagements. It is suggested by W that his net income should be HK\$88,530 per month.
7. H agrees that his basic salary is \$84,701 and he has some speaking engagements which would generates some income for him. He says that the extra income is about HK\$5,616.00 per month and that would bring his gross monthly income to HK\$90,317.29. From such income he is to pay about HK\$30,991 per month for tax. There might be some additional deductions from his pay cheques for tax at times. Apart from this, there would be further reductions made direct from his pay cheques for miscellaneous items like parking fees, various insurance schemes; the total of such deductions amounted to HK\$1,364. H s take home income is therefore about HK\$55,560.
8. W s main dispute is the income from the speaking engagements. Mrs Heathfield draws my attention to the schedule prepared by H listing out some deposits of funds into his account which, according to H s explanation, are reimbursements made by various organisations, but mainly his employer. Some documents have been produced after the hearing as proof in this regard.
9. After hearing their legal representatives and viewing all relevant documents, I find that on the face of it, H has established to me that those deposits were reimbursements as he says. I find that the income of W is HK\$65,000 after tax and H s net income is HK\$55,560. Net Assets of Parties
10. W had at one time a sum of HK\$1.594m in her bank accounts, stock at the worth of about HK\$0.562m, she has a car in Ohio for HK\$0.17m. She says she has a credit of HK\$0.098m from H. The latest position for W is that she has net assets a sum of HK\$594,181 in her bank accounts and investment accounts. H says he has little assets which includes some stocks at the worth of HK\$8,349, insurance policy at the value of HK\$9,327. H also challenges a

repayment of loan to her father in the sum of HK\$669,000 by W, saying that this has not been disclosed in good time and such transfer was in breach of the injunction order made in Ohio. W says that the reduction in her assets was caused by legal fees and expenditure on the family in Hong Kong. Liabilities

11. W says she has a total liabilities of HK\$340,398. They include the followings :-
 - a. Legal costs \$150,000
 - b. Stand Chart \$ 60,260
 - c. Amex \$ 8,938
 - d. Tax \$ 75,000
 - e. US attorneys \$ 46,200
12. H says that he has over HK\$2.5m in the red. Rough picture is shown as follows : -
 - a. The unpaid legal costs \$1.4m
 - b. Various banks HK\$100,000
 - c. Education fund HK\$845,000
 - d. Tax liabilities HK\$190,000
13. W says that these are not real liabilities which should be allowed to take priority over the needs of the children. Needs of the Children
14. W asks for a total of HK\$25102 from H for his share of the responsibilities over the Children s need. H criticized her expenses as either exaggerated or extravagant. In her submission, Mrs Heathfield guides me through the credit card statements of W to show that the expenditure incurred were either for the Children or reasonable expenses for herself. She submits that there was no clue for extravagant spending by W. On behalf of W, it is submitted that what she now asks for is what they have had in Ohio and nothing more.
15. I have read the revised schedule on expenses for W and the Children at BWSL 12 (p 594). I agree that of course there could be room for adjustment under stringent scrutiny, but I would not say that the list shows an extravagant life styles for the Children nor for W. There might be some reduction in books / toys, clothing, and entertainment. This would help bring the direct expenses down to \$20,000.
16. As to the monthly household expenses, I see that the total as said by W is \$39,400. The rental takes HK\$30,000. Mrs. Heathfield submits on behalf of W that the expenditure on accommodation is high but there was not much alternatives as W had to find a place suitable for the Children. I understand that the cost on accommodation is high in Hong Kong and that the expenses incurred on accommodation in this present case is the reasonable standard for expatriates professionals working in Hong Kong, and in particular when there

are two infants looking for a decent place to live in. W could not be criticised on this. Perhaps, with hindsight, had she realised that parties assets would dwindle at such rate due to legal costs, there should have been reductions on grocery and utilities.

17. A special feature in the present case is that W is about to leave Hong Kong in 2 months time. My order on interim maintenance carries an impact on retrospective effect rather than giving a guideline for future budgeting. I notice that when W first came to Hong Kong, there was no firm plan that their marriage would come to an end here. There might have been disputes on many things including the family budgets but the Petition was only issued in August 2006, 12 months after W arrived in Hong Kong. The standard of living for W and Children here has been set at the time of her arrival and when there was this saddening decision to end the marriage, one would not expect or demand W to take a drastic change in the life style especially when she has only another 12 months to stay.
18. I could understand that H finds it unacceptable to shoulder expenses for the Children up to almost half his net income. This happens to some low-income fathers also and even if that is the case, this only takes a period of less than two years. I would anticipate that the cost for the Children to be lower back in the US as parties would have more options or alternatives. More importantly as the financial situations are more clear and settled to them by that time, they should plan their budgets accordingly.
19. I have considered whether H should be asked to pay W back from November 2005. I understand that he says when he was with the Children alone in Ohio for 4 months, W did not contribute. It is still up to him to make a claim. In my judgment, it is fair if he pays W back from the date the Children arrived. This is more the case that when W does not have a firm offer of employment and may have no income starting from this August for at least a short period of time. One would expect that she might take a few months on job seeking and settling down back in the US.

Conclusion

20. I take a broadbrush approach and I find that H should pay HK\$20,000 as interim maintenance to W for the benefit of the Children for the period from November 2006 to September 2007, ie, from the time the Children joined school until a month after they have returned to the US. For the period from the time of their arrival in Hong Kong up to October 2006, H should pay HK\$10,000, as that was more or less W has asked for in her Summons at that time. As from October 2007, a sum of HK\$15,000 until further order.
21. I order that the back-pay should be made by monthly instalments of HK\$10,000 until H has fully paid all outstanding. I understand that H has started to pay some interim maintenance since May. W has admitted that there were payments of US\$3,000 from H for the Children, I find that sum sums should be accounted for by W also. Order
22. The effect of my judgment is as follows : -

1. H do pay HK\$20,000 to W for the benefit of the Children, 1st payment to be made on 1st July 2007 until September 2007.
2. H do pay HK\$15,000 to W for the benefit of the Children as from October 2007 until further order.
3. H do repay HK\$10,000 to W for expenditure incurred for the benefit of the Children for the period between November 2005 to October 2006; and HK\$20,000 for the period between November 2006 to June 2007.
4. H do make the repayments mentioned in paragraph 3 of my order hereinabove by monthly instalments of HK\$10,000 per month until full payment.
5. Sums paid by H as mentioned in paragraph 21 hereinabove should be accounted for by W towards payments to be made by H. Costs
23. I make no order as to costs. This is a decree nisi and shall become absolute 21 days from today. (Tracy Chan) Deputy District Judge Mrs Heathfield of Messers Boase Cohen & Collins for Petitioner Ms Por of Messers Stevenson Wong & Co for Respondent PAGE - PAGE - &`#\$~! P]j% Td ,f@- sy \$ he~"Td c(#\$ 0kJ\$\$ @P\$\$ 1 #' :L- E{k' XW(\$ s ` ()H/0 -3*\$ 43*\$ c7*+ :p . {^2\ (\$p2\$ 4g3\$ 4QQ4 4lp4 0b50p M|;\$ WNl< wzO?p= H#@\$ 3i@\$ nSDH lEFE 5)GTd kxL\$/eNH S\$O\$ vuWOTd c;R\$ Y CR G%9UT RW!W C:~W x% X\$ x8Y\$ L}YH (Yq[*n\T #b2^\$ Q^f Y6xc\$ e>tD ?Dep= ZJg\$ hx;r N)/h vCip= T{sk TCn\ "hsTd gsTu\$ 4xv\$ xDs\ *'y\$ Yay~_ __z4w | >\$> C? } R\$ ~\$ f!\$- C:~W N)/h E{k' 4QQ4 lEFE C? } wzO? gsTu x% X (\$p2 0kJ\$ #b2^ Y6xc R\$ ~ he~" G%9U (Yq[:p . s ` (vuWO c7*+ Y CR T{sk 1 #' RW!W WNl< @HP LaserJet 1200 Series PCL 6 LPT1: winspool HP LaserJet 1200 Series PCL 6 HP LaserJet 1200 Series PCL 6 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wff B]gT)Yn@{i9Z -9]pVvr) HP LaserJet 1200 Series PCL 6 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wff B]gT)Yn@{i9Z -9]pVvr) Normal.dot setup Microsoft Word 9.0 Lo(Title Microsoft Word Document MSWordDoc Word.Document.8

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