

HONG KONG / JUDGMENT

SRW nee R v. WHF

[2022] HKFC 99

COURT

Family Court

DECIDED

6 May 2022

CASE / FILE NUMBER

FCMC6750/2021

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[2022] HKFC 99 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NO. 6750 OF 2021

BETWEEN SRW nee R Petitioner and WHF Respondent

Coram: Deputy District Judge Peter Barnes in Chambers (Not open to public) Date of Judgment: 6
May 2022 (paper disposal)

J U D G M E N T (Maintenance Pending Suit / Interim Child Maintenance)

The Application On 10 December 2021 the Respondent/Husband applied by Summons (the MPS Summons) for maintenance pending suit for himself in the sum of HK\$9,100 per month and interim child maintenance of HK\$7,900 per month for the two children of his marriage with the Petitioner/Wife: B, a girl born in August 2016 who is now 5 and P, a girl born in May 2019 who is 3, nearly 4 years of age (the Children). At the time of the MPS Summons the Court were spending most of their time with the Husband at the flat where he lives with his parents. On 13 December 2021 an order was made granting joint custody of the Children to the parties and (to reflect the then child-care arrangement) interim care and control to the Father and reasonable access to the Wife to include weekday access each Monday and Wednesday and staying access on Friday nights through to Saturday evenings. On 12 April 2022 the CDR took place in which alternative arrangements were discussed, and following further discussions the parties agreed that this interim arrangement should be substantially changed with the immediate implementation of a week on/ week off care arrangement. A Consent Summons was lodged with the Court s approval

and on 26 April 2022 an order was made in its terms. A short ruling was given on 29 April 2022 resolving a minor point of difference in respect of the Husband's daytime access during the Wife's term-time week. Subject to further order, all matters relating to the care arrangement for the Children going forward are therefore now resolved. During term time, the Children will be dividing their time between the parties' respective flats on a week on/week off basis. Further, during the Wife's week, the Husband has additional weekday access on a daily basis with varying hours. Provision has been made in the Consent Summons for the sharing of holidays, including the long summer break and special dates, birthdays etc. At the return date of the MPS Summons on 13 December 2021 an interim order was made for the Wife to pay to the Husband for the benefit of the Children interim maintenance in the sum of \$1,000 (\$500 per child). A direction was given for the Summons to be adjourned to a callover on 12 April 2022 (the date of the CDR) with directions for the filing of affirmations. Forms E had already by then been filed/exchanged, and the Court granted leave for the adducing of Questionnaires on the respective Forms E and the filing of Answers thereto. Having taken into account the significant change in the care arrangements to one of shared care, the Father is no longer pursuing further interim maintenance for the Children. The order for interim child maintenance of HK\$1,000/month is discharged with effect from the date of this Judgment. The focus of the Summons is therefore narrowed to the question of MPS. The Court may make an order on an interim basis for periodical payments of maintenance to a party as the Court considers to be reasonable : s. 3, Matrimonial Proceedings and Property Ordinance (Cap. 192). The issue is clear: having regard to their respective circumstances and applying the well-known legal principles, should the Wife be ordered to pay to the Husband an amount of maintenance pending suit, and if so in what sum?

Background

The Wife (27) was born in the USA in 1994 and works as a Native-speaking English Teacher for a local school. She holds a Bachelor of Arts in Teaching English to Speakers of Other Languages. The Husband (33) is from Hong Kong. He holds a Bachelor's Degree in Communications with a minor in Music from a US University. Until recent months was not working and was devoting his time to taking care of the Children. The parties met in about 2014 at the US University where they obtained their respective tertiary qualifications. They were married in April 2015. B was born in the USA in August 2016 and a few months later the family moved to Hong Kong, a mutual decision which enabled the Husband to return home and the Wife to take up work as a teacher here. P was born in May 2019. Marital difficulties began in around October 2020. One source of the conflict, at least from the Wife's point of view, was that since arrival in Hong Kong the Husband had not made any real efforts to obtain gainful employment. The Wife moved out of the FMH in April 2021 and these proceedings were commenced by her Petition filed July 2021. The Wife's work provides her with a monthly salary of HK\$35,040, housing allowance of HK\$20,989 and a retention incentive of HK\$1,752 total HK\$57,781 per month. The Husband previously worked as a ticket-sales agent in the US, earning (says the Wife) the equivalent of between HK\$20,000 - \$23,000/month. The Husband says his income from this work was less than this: around HK\$16,000/month. Since coming to Hong Kong, the Husband has not worked for a

number of years as noted this has been a source of friction between him and the Wife. He has now found work: in October 2021 he signed a contract with a music education centre with multiple branches throughout Hong Kong including several in the New Territories. He says his current income from this teaching is minimal: HK\$1,000 per month and explains that this is because, since he was the primary carer of the Children, he could only work part-time. Now that the arrangements for the Children have been adjusted significantly, the Husband can be expected to move towards significantly more work or even full-time employment, possibly with a local school. The Wife says the Court should find the Husband has, at least, the capacity to earn HK\$15,000 per month. Needs In their Forms E dated August 2021 the parties listed their expenses as follows: s expenses s expenses GENERAL Rent 4,500 Utilities Management fees Food 2,671 1,000 Household expenses 1,221 Car expenses Insurance premia Domestic helper 2,000 Others (phone) Subtotal 11,061 1,200 PERSONAL Meals out of home 3,346 Transport 1,852 Clothing/shoes 2,019 Personal grooming Entertainment/presents Holiday 3,707 Medical/Dental [HYPERLINK "http://www.austlii.edu.au/cgi-bin/LawCite?cit=500%20Tax%200"](http://www.austlii.edu.au/cgi-bin/LawCite?cit=500%20Tax%200) \t "_top" \o "View LawCiteRecord" Insurance Premia 155.60 Interim maintenance Contribution to parents Dependent family members Others (specify) Subtotal 12,217.60 1,900 CHILDREN School fees N/A (Unsure of value as the Respondent pays with the Petitioner s money) Extra tuition fees School books and stationery Transport to school Medical/Dental Extra curricular activities Entertainment/Presents Holiday 1,000 Clothing/Shoes 1,000 Insurance Premia Lunches and pocket money Other transport Child-minding fees Uniform N/A (Unsure of value as the Respondent pays with the Petitioner s money) Others (specify) Subtotal 2,700 1,900 TOTAL 25,978.60 5,000 In his affirmation filed in support of the MPS Summons, the Father revised his list of monthly expenses:

- a) Medical expense \$300
- b) Utilities \$1,000
- c) Food \$1,000
- d) Clothing and personal grooming \$700
- e) Holiday \$1,000
- f) Entertainment/Gift \$1,000
- g) Telecommunication fee \$300
- h) Transportation fee \$800
- i) Contribution to family \$3,000 Total \$9,100 In addition, he affirmed that he had regular expenses for the Children, namely:
 - a) Medical expense \$600
 - b) Food \$2,000

- c) Clothing and grooming \$1,000
- d) Holiday \$2,000
- e) Entertainment/Gift \$2,000
- f) Transportation fees \$300 Total \$7,900 In her responding affirmation (her 3rd) to the MPS Summons, the Wife took issue with some of the items in the Husband's revised list of personal expenses, saying Medical expenses that H very rarely consulted doctors, only one or twice during the marriage Utilities that although H's parents may require him to contribute to the utilities cost, his share would be at most \$350/m Clothing/personal grooming that this would at most be \$200/m, again based on her past experience of H's habits during the marriage, and that this in any event should be paid by H from his income as a music tutor Entertainment/gift that H had never asked before for W to pay him money for such and this should not start now Telecommunication fee that to her knowledge, H's mobile cost is less than \$100/m Contribution to family that it would be unreasonable to expect W to pay \$ to H so that he can pay it to his parents The Husband's response (in his 2nd Affirmation in reply) to these specific criticisms was somewhat general, saying that I do not intend to respond at length to what the Petitioner believes to be my expenses though I do wish to point out that my previous marital standard of living was much higher than what it is now 5). In support of his claim he further referred to the fact that for a period of about 10 months from July 2020 to April 2021 the Wife was making substantial payments to the Husband of between \$20,000 and \$50,000 per month pursuant to an alleged agreement between the two of them that the Wife would deduct a small amount from her wage packet (to settle her credit card debt) and then transfer the balance to the Husband (10). In the Husband's solicitors Note for the hearing on 12 April 2022 the Husband put forward an offer to settle his claim for MPS in the sum of HK\$3,000 per month. It was expressed that this would lapse at the end of the hearing on 12 April 2022. The concern the Court has is that very few of the expenses of the Husband were verified by reference to receipts, or bank statement entries. I have considered the Husband's disclosed bank statements, and have noted the minimal use of his credit card. Doing the best I can, I would allow the following personal expenses:
 - a) Medical expenses \$150
 - b) Utilities \$300
 - c) Food \$1,000
 - d) Clothing and personal grooming \$250
 - e) Holidays \$1,000
 - f) Entertainment/Gift \$500
 - g) Telecommunication fee \$150

- h) Transportation fee \$350
- i) Contribution to family \$1,000 Total \$4,700 I allow the last item on the basis that this will help the Husband's parents defray some of the costs of accommodating the Husband and (when they are with him) the Children. Concerning the Husband's earnings/earning capacity the Wife was particularly critical of the Husband's failure in particular to provide documents to substantiate his claim that at present he only earns HK\$1,000 per month from his part-time teaching. She noted that the contract with the music company entitles him to 50% of the course fees for one-on-one classes, a further hourly rate for group classes and sales commissions on any sales services he provides to the company. As noted, it is her assertion that he can earn substantially more than this from his current position, or in the alternative seek a position as a music teacher with a local school which would command at least \$15,000 per month and probably considerably more. There is some force in this criticism. That these applications are to be approached on a broad brush basis without minute forensic examination, it remains necessary for the Court to be satisfied with the level of disclosure both in relation to the financial resources of the parties and the regular expenditure they incur. The Wife has twice (in her 1st and 2nd Questionnaire) invited the Husband to provide details of his attempts to find work, and in both sets of Answers the Husband has been content with vague and responses unsupported by documentation, save and except in respect of the music school, where the contract was provided with his first set of Answers. At the times he supplied his two sets of Answers (October 2021 and January 2022) he was the primary carer of the Children but that has now changed. As part of the Order the Court will expect him to keep the Wife informed of his attempts to pursue further paid employment or obtain more classes with the music school. The Wife, as noted, is earning a reasonable level of income but since her Form E her expenses (then estimated to be HK\$25,978 per month) have, she says, increased significantly. This includes finding more suitable child-friendly accommodation: Expenditure Amount (HK\$) per month As at Form E As at today Rent \$4,500 \$12,600 Utilities \$500 \$1,200 Helper \$2,000 \$5,200 Medical Expenses \$1,000 School fees Unsure of amount as the Respondent used to pay with my money \$450 Entertainment/ Gifts for the Children \$500 \$1,000 Holidays with the Children \$1,000 \$2,000 Total increase \$14,950 I note the following:
- (a) In her Form E, the Wife estimated her personal holiday expenses at \$3,707 and with the increase, she says she is spending on average \$5,707 on holidays including those with the Children. While not excessive in normal times, this Judgment is written during times when international travel is very much curtailed.
- (b) I note the expenses for the helper have increased significantly from \$2,000 to \$5,200 per month. However, I also take note of the current difficult position with obtaining and retaining the services of domestic helpers in Hong Kong, and I consider this to be a reasonable sum per month.

- (c) The other items of expenditure do not seem to be exaggerated, given the Petitioner/Wife's income. I further note that they have not been the subject of any criticism by the Husband. Capacity Having regard to the evidence and submissions of the parties, I am of the view that the Wife is in the position to pay the amount I have assessed as reasonable expenses of the Husband. I am also mindful of (a) the fact that the Wife was previously making substantial payments to the Husband on a monthly basis and that (b) there is at present a significant difference in the income of the parties and that this is likely to remain the case even if the Husband re-doubles his efforts to maximise his income with the music school or seeks alternative employment e.g. with a local school. I bear in mind that she has moved to more expensive accommodation and that her spending for and costs of caring for the Children will have increased now that the week on/ week off arrangement is in place.

Conclusion

I therefore make the following Order: The Petitioner do pay maintenance pending suit to the Respondent in the sum of \$4,700 per month on the 1st day of each calendar month commencing 1st June 2022 to be paid into the Respondent's HSBC account. Paragraph 3 of the Order dated 13th December 2021 is discharged.

- (3) Pending further Order, the Respondent is to keep the Petitioner informed on at least a monthly basis of his work activities including any change in his employment and income. As to costs, neither party has been entirely successful, and circumstances have significantly shifted since the Summons was filed. I make an order nisi that there be no order as to costs to be made absolute 14 days after this judgment is handed down. The Respondent's own costs are to be taxed in accordance with Legal Aid Regulations. (Peter Barnes) Deputy District Court Judge Ms Tanie Toh instructed by Messrs H Y Leung & Co LLP for the Petitioner Messrs Lo Wong & Tsui for the Respondent 5, Respondent/Father's Submissions, confirmed by letter from his solicitors dated 4 May 2022 HJFC v KCY [2012] 1 HKLRD 95, 37-38 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 ZPF9 yncn[nLnA hN6Q h .E uke_W h_zb hFR? hjfz hFR? hFR? mfmWK hX=I hX=I hjfz hFR? hIMI hX=I hX=I kdr kd& kdZ! h"XN kd<\$ kda& &`#\$ :p<i mH <sH <tH mH <sH <tH mH <sH <tH ph`^ \ [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 [Content_Types].xmlPK _rels/.relsPK theme/ theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> "Te*& 1(n 2&-~ BY@; BY@; & 6" CACV Judiciary English.dot Windows User Microsoft Office Word Judiciary CACV CACV Title _PID_HLINKS p"\$p p"\$p <?xml version="1.0"

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