

HONG KONG / JUDGMENT

W v. W

COURT

Family Court

DECIDED

25 June 2007

CASE / FILE NUMBER

FCMC3076/1991

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bjbj FCMC3076/1991 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MATRIMONIAL CAUSES NO. 3076 OF 1991 BETWEEN W Petitioner (Judgment Creditor) and W Respondent (Judgment Debtor) Coram: HH Judge Melloy in Chambers (Not open to public) and in Court Dates of Hearing: 11, 12 and 25 June 2007 Date of Delivery of Judgment: 25 June 2007

J U D G M E N T There are 4 applications before me this afternoon. An application by the petitioner wife, that an order for the children of the family dated 19th November 1991 to be varied upwards. The wife seeks \$12,000 per month, i.e., \$7,000 for the elder daughter and \$5,000 for the younger son. The original order dated 19th November 1991 was that the husband pay \$3,000 per month, i.e., \$1,500 per month per child. The wife s application for a variation is dated 8 June 2006. Secondly, there is an application by the husband dated 31 January 2007 seeking a discharge of the order of 19th November 1991 in its entirety. Thirdly, the wife has also issued a judgment summons for arrears of maintenance since January 2007 in the sum of \$18,000 (that is, 6 months x \$3,000). Fourthly, the husband has also issued a late application, dated 13 June 2007, where he seeks reimbursement for maintenance monies already paid.

Background

The background to this case is set out in the judgment given by Deputy District Judge Remedios, as she then was, on 13 December 2006. The wife and husband were married on 3 January 1984 and divorced eight years later on 21 January 1992. The husband later remarried on 12 March 1994. They have two children, a girl, WLS, who was born on 21 February 1985 and is now 22 years of age and WLK, a boy, who was born on 3 October 1988 and is now 18 years of age. In the court order of 19th November 1991, there was no order either for substantive or nominal maintenance for the wife. The only maintenance provisions related to the children. The wife was granted custody of the children with reasonable access to the respondent. In December 2006, the wife applied for an injunction to restrain the husband from receiving, drawing, disposing or otherwise dealing with, all or part of his contract gratuity and/or pension and/or other accumulated benefits paid or payable by the existing employer and/or the Hong Kong government, pending further direction by the court. The court enjoined part of those funds. Of the \$300,000 odd that the respondent was to receive, he was permitted to keep \$230,000 to pay off outstanding debts.

The remaining \$70,000 odd is still frozen. To quote from Deputy Judge Remedios judgment at paragraph 13, she said: However, in respect of the balance of any monies to be received I propose to restrain him, i.e., the husband, from receiving those monies so that if there should be any basis to which this variation is successful, there may be some funds for the children to be provided for in their education.

10. At the hearing the husband provided further details concerning those funds. He has received no funds since April 2007 and the outstanding HK\$70,000 remains frozen by the court.
11. Since the judgment of Deputy Judge Remedios, dated 13 December 2006, the matter seems to have become dormant with very little of note happening between then and now. The present position of the parties
12. The wife, who is 43, says that she is currently unemployed and that she continues to suffer from ill health and, in particular, she says that she suffers from Meniere s syndrome. The wife also says that she owes approximately \$100,000 to a credit card company and that she has other debts.
13. The husband is 55 and has recently retired from the Hong Kong Police Force. As from August of this year he will receive a pension of \$7,377 per month. The husband also owns two small properties in China jointly with his second wife and he has also made gifts of money to his second wife. Reference to this is made in Deputy Judge Remedios judgment and again I will quote from paragraph 10. The judge says: He has given much money to his wife for the purchase of the property. One was \$260,000 to buy a property in Shenzhen, and in 1999, he purchased another property in Guangzhou and those premises are occupied by his parents-in-law. He then gave his wife \$100,000 when he received as pension in 2001 out of his \$150,000. In June 2004, he received a gratuity of \$140,000 and he also gave his present wife \$100,000. He had given a loan to his ex-wife of \$10,000 for his daughter s enrolment fee. The children
14. WLS is just about to complete the 3rd year of a 4-year degree at a College. She is studying counselling and psychology. Her grades are good and have improved over the last year. She has one more year to go. To date, her university fees have been covered by government grant and she has also received loans which have been utilised by the family as a whole. Last year her fees were \$48,000 and she received a government loan of \$30,000. An application will again be made this year and there is no reason to suspect that her application will not be successful. She has, of course, also continued to receive during that period until January of this year, maintenance from the respondent.
15. WLK is presently 18 years of age and unemployed. He has not studied or worked for the past 2 years. He completed Form 3 schooling and in 2005 he completed a Youth Pre-employment Training Program. He intends to apply to a Institute in August for a computing program course. Apparently he has applied in the past and has not been successful.

16. The wife said that she was not sure if the son's tuition fees would be covered by the government in the same way as the daughter, that is, of course, if he is successful in this application. The wife said that if the son was not successful this year that he would have to find a job. If he wished to study further then he would need to save and then to apply to private colleges and in that way he could further his education. The wife's case
17. The wife's case is that the husband should support the children if they are in full-time education, which she says could be until they reach the age of 25. She says that her daughter may wish to do a MA. She appears to concede that she does not know if the son will be in full time education next year or not but she says that she cannot work and that the husband now needs to pay a higher maintenance amount to meet the children's expenses. The husband's case
18. In contrast, the husband says that he has performed his obligations to his family in that he has paid maintenance until January of this year. By that time his son had already turned 18 years of age and was not working. The daughter was 22 and although studying full time, was receiving substantial support from the government. In this regard, it should be noted that maintenance is generally for children until they reach the age of 18 or until they cease full time education. Full time education is often felt to mean the child's first degree.
19. The husband said that he required the \$70,000 frozen to pay tax of \$26,000 which is due in January 2008, pay any outstanding legal fees and to pay debts accumulated for living expenses since January of this year. It is the husband's case that all other debts are now paid.
20. The husband says that he cannot rely on his second wife for support. He says that his health is questionable and that the only job that he might be able to secure is as a watchman. Insofar as the children are concerned, he says, the son should get a job, he pointed to the fact that the son does not have the minimal qualifications needed to study the Diploma in Business (Information Technology referred to in the wife's affirmation).
21. Insofar as the daughter is concerned, he says that she is now an adult supported by government and that she should take responsibility for her own living. The husband also maintains that the wife has had a significant earning capacity in the past and he believes that that should continue. He does not accept that the Meniere's syndrome condition prevents her from working. The issues
22. There is only really one issue and that is what should be the appropriate amount of maintenance that the husband needs to pay, if at all? Linked to that is the issue of the judgment summons and the husband's application for repayment.

23. Having heard the evidence, it is clear that this is one of those unfortunate cases where there is simply not enough money to go around. Both parties impressed me. The wife says that she has no earning capacity at present. I very much doubt that to be the case. The wife struck me as an erudite and intelligent woman. Certainly, her health condition did not prevent her from doing a very good job in presenting her case as a litigant in person. I am of the view that she does have some earning capacity and that she should be able to support herself.
24. In any event, there is no question of her applying for maintenance from the respondent for herself, as there was no nominal maintenance order made back in 1991. Insofar as the husband is concerned, he also impressed me in the way that he argued his case. Although I accept that he will receive a limited pension from August 2007 of approximately HK\$7,300, I am not convinced that the only way that he could supplement his income is by taking up employment as a watchman.
25. What then, of the children? WLS needs to complete her degree bearing in mind the limited financial resources of the family, a government grant for her fees, together with a loan of some sort should be forthcoming for next year. She will, though, need some financial support as before. The wife seeks \$7,000 per month. In view of the limited resources of the parties, I am of the view that that amount cannot be sustained.
26. Insofar as the son is concerned, I am afraid that I am not inclined to make any order for his maintenance. He is unemployed and has been so for the last two years. He has not, so far, secured a place at any educational institution.
27. I am of the view that the husband was within his legal rights to end payment once the son turned 18 in October 2006. Consequently the husband should receive or should be credited for the two payments that the son received for November and December 2006 in the total sum of \$3,000.
28. Having regard to the general expenses of the petitioner's wife's household, and the children's expenses, I am of the view that \$3,000 per month for the daughter should be sufficient. In addition, she should receive a government loan. I will order that the \$3,000 per month be paid out of the frozen funds as a lump sum to cover the period from 1 July 2007 to 1 September 2008, whereupon she will be expected to have found employment. If she decides to do an MA, that she will then need to make financial provision for that, separate from the respondent.
29. Insofar as the judgment summons is concerned I have indicated my position in relation to the son. I am of the view, however, that the respondent should have continued to maintain his daughter. \$9,000 is outstanding and I will also order that that sum be released from the frozen fund.
30. Therefore, in conclusion, the monies in the frozen account should be utilised as follows: Maintenance for the daughter, WLS, from 1 July 2007 to 1 September 2008, i.e., \$3,000 over 14 months which equates to \$42,000. The outstanding sum due and owing as the daughter's

maintenance in the sum of \$9,000. That makes a total of \$51,000. \$3,000 to be offset as the advanced maintenance paid by the respondent for the son. Consequently, the total sum of \$48,000 shall be released from the funds frozen to the petitioner as maintenance for the daughter.

31. The remaining \$22,000 odd is to be released to the husband as a contribution towards his tax costs and other debts. The judgment summons is to stand discharged upon payment of the amount from the frozen account. (Discussion re costs)
32. I will make an order in the following terms. The petitioner shall receive the sum of \$4,000 per month, from the frozen funds held by the Director of Accounting Services for the Hong Kong Police Force, for the next 12 months as maintenance for the daughter of the family, WLS. The respondent shall receive the sum of \$22,000 from the frozen funds. There shall be no order as to costs, including costs reserved, save that the petitioner's own costs to be taxed in accordance with Legal Aid Regulations up to the date that her Legal Aid Certificate was discharged. (Further discussion)
33. Very well, I will make a direction in the following terms. The Director of Finance for the Hong Kong Police Force is to write to the court to provide a final account in relation to the frozen funds and then the matter of the release of funds can be dealt with by the parties.
34. Liberty to apply as to the implementation of the terms of this order. (S.D. Melloy) District Judge Representation: Petitioner, in person, present Respondent, in person, present PAGE - PAGE CRT41/25.6.2007/SR FCMC3076/1991/Judgment 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 &`#\$ Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong SAR Title Microsoft Word Document MSWordDoc Word.Document.8

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