

HONG KONG / JUDGMENT

WRW v. MW

COURT

Family Court

DECIDED

20 November 2007

CASE / FILE NUMBER

FCMC8252/2005

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bjbj FCMC8252/2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MATRIMONIAL CAUSES NO. 8252 OF 2005 BETWEEN WRW Petitioner and MW Respondent Coram: Deputy District Judge A. Kot in Chambers (Not open to public) Date of Hearing: 20 November 2007 Date of Ruling: 20 November 2007

R U L I N G

The issue in this case is for the court to determine is whether the child named K is a child who had been treated as a child of the family by the parties in this case.

Background

On 14 February 1996 the parties got married. According to the petitioner, the parties separated in September 2004 whilst according to the respondent, the parties separated in November 2004. On 29 July 2005 the petitioner husband filed a petition for divorce stating in the petition itself that there was no child of the family. There had been no response from the respondent since the filing of the petition, even though she had been validly served with all the documents. A decree nisi was granted on 7 February 2006, and it was only until 29 November 2006 at a court hearing concerning the ancillary relief claim by the petitioner husband that the respondent showed up, claiming that K was in fact a child of the family. And subsequent to that hearing, a Form 25 was being taken out by the respondent, lodging ancillary relief claim for herself and K as well. Since there is a dispute as to whether K had been treated as a child of the family, the case was being adjourned for trial. And today I am satisfied that the respondent had been served with the notice of the hearing as well as the last order of the court. I have decided to proceed with the case in her absence. The Law According to section 2 of the Matrimonial Proceedings and Property Ordinance, a child of the family means a child of both parties or the child being treated by both parties as a child of the family. Child of the parties Even though the respondent had in her affidavit dated 6 February 2007 exhibited a birth certificate of K, naming the parties being the

parents of her, the respondent had also in her affidavit filed on 6 February 2007 referred to K as our adopted baby girl . There is no further evidence filed by the respondent even though opportunities had been given to her to file further affirmation in reply. The petitioner on the other hand says that K in fact was a child born to the sister of the respondent with the identity of the father unknown. I found from the evidence before the court that there is nothing to support that the child K is a natural child of the parties, so she is clearly not a child of the parties. Whether the child had been treated as a child of the family The petitioner denied ever treating K as the child of the family. According to him, even before K was born, he had all along been rendering financial support to the extended family of the respondent by giving her a sum of money for their living expenses each month. And this practice carried on even after K was born without any extra provision made for K. And the petitioner had never been consulted nor did he know that he had been named as the father of K on the birth certificate. He only came to know this fact after it was done but he had not raised any objection since according to him, the relationship at that time was still good. And after K was born in May 2004, she and her natural mother had in fact stayed at the respondent s home together with other siblings of the respondent and their families as well. According to the petitioner, even before K was born, the children of the respondent s siblings had been staying at their home all the time. And the petitioner, if he were staying at the house, would assist in the care of the children by feeding them and playing with them. So with K, there is no difference in treatment and that explains the photos produced by the respondent showing him involved in feeding K. From the two affidavits filed by the respondent, there is nothing mentioned in support of her allegation that K was being treated by the petitioner as the child of the family, nor had she filed anything in reply to the petitioner s latest affirmation. So, having heard the evidence of the petitioner and considered the affidavit filed by the respondent, I accept the petitioner s evidence on a balance of probabilities. Even though the petitioner s name had appeared on the birth certificate as the father, I accept his explanation that he had not been consulted and he just acquiesced after that had been done. Given the fact that the parties were still in good relationship then, the petitioner s reaction is not unreasonable. In any event, he is trying to help out with the respondent s sibling and also a child with no father. I found this fact cannot be treated as conclusive evidence to show that the child had been treated by the petitioner as a child of the family. And the fact that the petitioner had all along been supporting the respondent s extended family financially tends to point to the finding that there had not been any specific financial provision for K on top of what he had all along been doing. If K had been treated as a child of the family, I do not think this should be the scenario. And the way the petitioner treated K is no different from the other children of the respondent s extended family is again another scenario which explains the photos produced by the respondent which may just be a selected shot involving K and the petitioner. So having considered all the above, I found there is no evidence to show that the petitioner had treated K as a child of the family and I make a declaration that the child is not a child of the family. Where costs are in the discretion of the court and the starting principle is costs should follow the event, I see no exceptional circumstances in here not to follow the principle. I order for costs be to the petitioner. The first appointment be restored and adjourned to 31 March 2008 at 3 pm, back to this court with one-hour be reserved for the hearing. This order is to be served on the respondent

by post as well. I also order for the respondent to attend personally. Leave is granted for the decree absolute to be issued. (A. Kot) Deputy District Judge Representation: Mr Erving of Messrs Erving Brettell, for the Petitioner Respondent, in person, absent PAGE - PAGE CRT1/20.11.2007/SY FCMC8252/2005/Ruling 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 Title Microsoft Word Document MSWordDoc Word.Document.8

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