

HONG KONG / JUDGMENT

WSSS v. KCKG

COURT

Family Court

DECIDED

4 April 2014

CASE / FILE NUMBER

FCMC118/2013

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bjbj FCMC 118 / 2013 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION MATRIMONIAL CAUSES NUMBER 118 OF 2013

BETWEEN WSSS Petitioner and KCKG Respondent

Coram : Deputy District Judge A. N. Tse Ching in Chambers (Not Open to Public) Date of
Hearing :19 March 2014 Date of Judgment : 4 April 2014

J U D G M E N T (Variation of Order for Interim Maintenance Pending Suit)

Introduction

AUTONUMOUT On 30 July 2013, the Court made an order for the Respondent (Husband) to pay the Petitioner (Wife) \$1,500 per month as interim maintenance for the child of the family (the Child). This is an application by the Petitioner (Wife) for variation of that pursuant to s.11 of the Matrimonial Proceedings and Property Ordinance Cap 192 (MPPO) and for legal costs contribution. At the hearing, the Wife indicated that she would withdraw the application for legal cost contribution for the time being and that a separate application would be made in due course. The Main Issues AUTONUMOUT The main issues are whether the Husband was under any obligation to contribute towards the maintenance of the child and if so, the amount of the maintenance. The Wife seeks \$15,000 per month. Originally, the Husband alleged that he was unable to make any contribution towards the Child s maintenance (see paragraph 13 of his Affirmation filed on 10 January 2014). At the hearing, he made an offer of \$3,500 per month.

Background

AUTONUMOUT The parties married in Hong Kong on 22 October 2010. The Child was born on 11 February 2011. The Wife moved out of the matrimonial home with the Child on 11 February 2012. The Petition based on unreasonable behavior was issued by the Wife on 4 January 2013. The Husband did not file a Form 4 or an Answer and a Decree Nisi was granted on 9 September 2013. At the 1st Appointment hearing on 30 July 2013, the Court made an order for the Respondent (Husband) to pay the Petitioner (Wife) \$1,500 per month as interim maintenance for the child of the family (the Child). AUTONUMOUT The Wife was born in Nanjing, China. Her parents were divorced. In 2001, her mother emigrated to Hong Kong and the Wife came to live in Hong Kong 2 years later. After completing Form 5, the Wife went to study languages in Canada. She returned to Hong Kong 1 year later without completing that course. She worked as a secretary for 2 years before she met the Husband, became pregnant and got married. She stopped working after her marriage to look after the Child with the assistance of a domestic helper.

AUTONUMOUT The Husband was born in Hong Kong. He was educated in both Hong Kong and the United Kingdom. He returned to Hong Kong after he completed his secondary education and worked in a computer company for 2 years before he went to work for a condiment business called TTHFL (the Company) started by his parents. The Husband is now one of the 2 directors and the owner of 40% of the shares in the Company. The remaining shares in the Company are registered in the name of the Husband's mother. The Law AUTONUMOUT The present

application is made under section 11 of the MPPO. Under that section, the court has unfettered discretion to deal with the situation, and has to have regard to all the circumstances of the case, including a regard to the circumstances de novo. AUTONUMOUT The law in relation to maintenance pending suit for the children of the family is well known. Applications by a spouse for maintenance pending suit are made under section 3 of the MPPO, Cap.192, whilst applications for maintenance pending suit for a child of the family are made under section 5 of the same Ordinance. Applications under both sections are dealt with in exactly the same way.

AUTONUMOUT Under section 5 of the MPPO Cap 192, the Court may make orders requiring one party in a marriage to pay maintenance to the other party for the maintenance of the children of the marriage for such term as may be specified. The main governing principle is that the Court shall make such order as it considers reasonable in all the circumstances of the case. In view of such application being interim in nature, the Court will not conduct detailed investigation of the financial position of the parties but approach the matter on a broad-brush basis (See Rayden 18th edn Vol 1(1) paras 16.17-16.18 and LAML v TCCY CACV 75/2004). AUTONUMOUT The principles relevant to the determination of an application for maintenance pending suit include: The sole criterion to be applied in determining the application is reasonableness, which is synonymous with fairness. A very important factor in determining fairness is the marital standard of living. This is not to say that the exercise is merely to replicate that standard. In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long term expenditure, more aptly to be considered on a final hearing. That budget should be examined critically in every case to exclude forensic exaggeration. Where the affidavit or Form E disclosure by the payer is obviously deficient, the court should not hesitate to

make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation, the court should err in favour of the payee . where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed, but where the position of the outsider is ambiguous or unclear, then the Court is justified in assuming that the third party will continue to supply the bounty, at least until final trial. (See *TL v ML and Others (Ancillary Relief: Claim against Assets of Extended Family)* [2006] 1 FLR 1263 at 1289 and *HJFC v KCY CACV 127/2011*). The Parties Standard of Living AUTONUMOUT The Wife says that prior to the separation, the parties had a fairly high standard of living. The Husband alleges that the Wife s description of their standard of living was grossly exaggerated. AUTONUMOUT Since this is an application for variation of interim maintenance, the Court will not conduct a detailed investigation of the financial position of the parties but approach the matter on a broad-brush basis. There was no dispute that they lived in private housing throughout the marriage. They have always had the use of a domestic helper in the matrimonial home. The Wife was given a credit card and cash for her personal expenses. The Husband had 2 classic cars, one of which was a Honda Civic Sir Saloon imported from Japan (the Honda). The Husband spent over \$200,000 on the refurbishment of the Honda. He bought a brand new Alfa Romeo at \$330,000 for the Wife s exclusive use prior to the separation. All three cars had special license plates. Apart from the cost of the cars, there were other incidental expenses such as insurance, license fees, parking and fuel. The family had the benefit of private health care. The Wife gave birth to the Child at the St. Theresa Hospital and the Child was admitted to the Hong Kong Sanatorium for 2 days when she was ill in October 2011. There was a dispute about the cost of such medical care. However, even taking the Husband s lower figures, the delivery of the Child cost about \$50,000 and the Child s admission cost about \$7,000. The Child went to live with the Wife s mother for 10 months. During that period, not only did the Husband employ another domestic helper to look after the Child, he paid the monthly mortgage (\$15,000) for his mother-in-law s flat in lieu of reimbursement for the Child s expenses. The Husband flew over to Singapore to watch the Formula One race. He gave luxurious presents to the Wife. They include 2 Hermes Birkin handbags (\$110,000), a Chanel watch (\$40,000), a diamond bracelet (\$20,000), a diamond ring (\$70,000) and a Panerai watch (\$60,000). The Husband also had a number of luxurious watches, including Rolex, Panerai, Bell, Breitling, Girard-Perregaux, Jaguar, Grantham etc. The total value of jewelry and watches kept in the matrimonial home was in the tune of \$915,000. It is apparent that the parties had a very comfortable standard of living prior to their separation. The Child s Needs AUTONUMOUT The Wife says that the Child s present monthly needs are as follows:- School Fees \$ 4,620.00 School books and stationery \$ 500.00 Medical/Dental Expenses \$ 500.00 Entertainment/Presents \$ 2,000.00 Clothing/Shoes \$ 2,000.00 Insurance Premia \$ 4,800.00 Domestic helper \$ 3,920.00 Total \$18,340.00 AUTONUMOUT Most of the Child s expenses are not in dispute. The Husband argues that \$1,000 would be sufficient for the Child s formula milk, clothing and toys. In the light of the family s previous standard of living, a sum of \$2,000 per month for entertainment, present, clothing and shoes is reasonable. One third of the cost of the domestic helper should be accorded to the Child. In addition, there are the usual expenses for food and transport. Taking all those expenses into account, the reasonable needs of the Child are at least \$15,000 per month. The

Wife's Assets and Resources AUTONUMOUT The Wife says that she was a housewife and has been totally reliant on the Husband financially prior to their separation. There was no dispute that until the Order for interim maintenance, the Husband has not paid the Wife or the Child any maintenance since the parties separated. AUTONUMOUT The Wife admits that she was the registered owner of a property in Shenzhen but alleges that that property was held on trust for a person named HJ. That property was purchased on 12 October 2010 for a consideration of RMB 490,000 and was sold on 17 July 2012 for RMB1,500,000. The Wife says that she has no assets apart from a bank account with the Hong Kong and Shanghai Banking Corporation and a bank account with the Bank of China. The balance in the Hong Kong Bank account in January 2014 was \$3,068.58 and the balance in the Bank of China account as at 31 December 2013 was RMB 2,070.11. AUTONUMOUT According to the Wife, she and the Child have been living on loans from her mother and she now owes her mother \$60,000. Recently, she has acquired the qualifications of an insurance agent and is now working as a Career Representative at an insurance company. Her average monthly income is \$8,000. AUTONUMOUT The Husband does not accept the Wife was only holding the property in Shenzhen on trust. He also argued that it would not be possible for the Wife to employ a domestic helper if she only had a basic monthly income of \$8,000. He further suggested that the Wife could sell some of her jewelry and watches to support the Child. His solicitor also suggested that if the Wife has some assets, the Husband would be absolved from contributing towards the support of the Child. AUTONUMOUT The Wife's bank passbook demonstrates that the total amount deposited into her Hong Kong Bank account from February 2012 to January 2014 was \$257,499.84. Nothing was deposited into her Bank of China account during 2013. That means an average monthly deposit of \$10,729.16 in the last 24 months. The Wife's income over the last 24 months is wholly insufficient to support the lifestyle she had prior to the separation, much less the Child. In addition, she would be liable for tax and has the added burden of the legal costs in these proceedings. The Husband's Assets and Resources AUTONUMOUT The Husband's case on his assets and resources is highly inconsistent. In his Form E and his Answer to the Petitioner's Questionnaire, the Husband alleged that apart from the rental of the matrimonial home and the salary of the domestic helper, his only income was his salary of \$9,000 from the Company. However, in his Affirmation, he admitted that his mother is the majority shareholder in the Company and apart from his own share in the profits, his mother has given permission for him to withdraw her share of the profits. In other words, he has access to all the profits of the Company. The Husband further deposed that his mother would make up for any shortfall in his expenses if the Company's profits were insufficient. AUTONUMOUT It is quite clear from the undisputed evidence that the lifestyle of the family prior to separation was far in excess of a family with an income of \$9,000. The Husband has failed to make full and frank disclosure of his resources. He has refused to provide any financial statements of the Company, his prospective interest in the shares of the Company held by his mother, his control of the Company and his credit card statements. The bank statements of the Company show that the monthly cash withdrawal via the automatic teller machine alone ranged from \$85,000 to \$277,000. All these withdrawals were in round figures. There was no explanation from the Husband as to what amount represented his withdrawal of the profits. When the possibility of an adjournment and leave to file a further Affirmation to explain the withdrawals and Company

accounts was raised, the Husband refused. In those circumstances, the Court is entitled to make robust assumptions and infer that the Company and the Husband's mother would continue to support the Husband's expenses at least until final trial and that all cash withdrawals were paid to the Husband. All in all, I am satisfied that the Husband has the financial resources available to him to make these interim payments. Order AUTONUMOUT Consequently, I shall make an order as follows: The Respondent shall pay interim maintenance to the Petitioner for the Child in the sum of HK\$15,000 per month, the first payment to be made on 5th April 2014 and thereafter on the 1st day of each month until further order; The Respondent shall pay the Petitioner's costs of this application to be taxed on a party and party basis if not agreed. (A.N. Tse Ching) Deputy District Judge Mr. Patrick Wong, Counsel for the Petitioner instructed by Messrs LCP Mr. T.K Cheng, Solicitor for the Respondent of Messrs Wong & Wong, Lawyers 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 A B C D E F G H I J K L M N O P Q R S T U V h9?q hoAQ gd!q gdCc hPII hO\ d gdDQ gdDQ gdDQ gdnt gdnt &`#\$ gdDQ [Content\_Types].xml Iw}, \$yi} \_rels/.rels theme/theme/ themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v )I`n 3Vq%#q x}r :T'ZaG I u3 L+M2 e\O* \$*c?)6-r IqBJ#x ,AGm T[XF64 E)`# R>QD =(K& =al- 4vfa 0%M0 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"/> V=ghq & 6" CACV Judiciary English.dot Judiciary Microsoft Office Word Judiciary CACV CACV Title Microsoft Office Word 97-2003 Document MSWordDoc Word.Document.8

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