

Morris Richard Neil v Morris Carolina Hernandez
[2012] SGHC 177

Case Number : Divorce No 464 of 2004 (Registrar's Appeal No 30 of 2012)
Decision Date : 30 August 2012
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Leslie Yeo Choon Hsien (Sterling Law Corporation) for the petitioner; Adriene Cheong Yen Lin (Harry Elias Partnership LLP) for the respondent.
Parties : Morris Richard Neil — Morris Carolina Hernandez

Family Law – Maintenance

30 August 2012

Lai Siu Chiu J:

1 This was an appeal in Registrar's Appeal No 30 of 2012 ("the Appeal") against the decision of District Judge Angelina Hing ("DJ Hing") given on 23 February 2012.

2 The Appeal related to the amount of maintenance to be paid by Richard Neil Morris ("the Husband") to Carolina Hernandez Morris ("the Wife"). I heard and allowed the Appeal only to the extent of reducing the Wife's maintenance from \$866 to \$500 per month with effect from June 2012 and reducing the costs awarded to the Wife below from \$1,500 to \$1,000. The Husband is dissatisfied with my decision and has filed a notice of appeal (in Civil Appeal No 69 of 2012) against the orders that I made.

Background

3 The parties were married in Hong Kong on 1 June 1991 and have a son, Nathan Daniel Morris ("Nathan"), who is now 20 years of age. On 11 May 2004, the Family Court granted a decree *nisi* dissolving the marriage on a petition presented by the Husband. The Husband has since remarried and has a child by his present wife.

4 By an Order of the Family Court dated 5 May 2005 ("the 2005 Orders"), the Husband was to pay maintenance of \$6,210 per month to the Wife and Nathan of which \$5,710 was for the Wife's and Nathan's combined expenses (according to the Husband's affidavit filed on 26 July 2004) with an additional \$500. On the husband's appeal, the sum of \$6,210 was reduced to \$5,910. The sum of \$5,910 comprised \$2,100 for Nathan's bus and school fees at Tanglin Trust School (to be paid directly to the bus company and school respectively) and the balance \$3,810 was to the Wife for utilities, groceries, household expenses and Nathan's allowance.

5 On 27 December 2010 the Husband filed Summons No 22159 of 2010 ("Summons No 22159") in the court below seeking a variation of the 2005 Orders in the light of a material change of circumstances, namely, Nathan's graduation from Tanglin Trust School and his commencement of a three-year degree course at the Marketing Institute of Singapore ("MIS"), and the Wife's relocation to Koh Samui (following the expiry of her long term social visit pass from the Singapore immigration authorities) after Nathan turned 18 years of age in June 2010. The Husband prayed *inter alia*, for the

sum of \$781 to be paid to the Wife as her maintenance ("Prayer 5"). This sum represented the net balance after subtracting from the \$3,810 (which had previously been ordered to cover the Wife's and Nathan's expenses), the sum of \$1,585.21 for Nathan's new rented accommodation following the Wife's relocation out of Singapore, and a further \$1,444.13 for Nathan's expenses. The Husband stated on affidavit that \$781 was more than sufficient to cover the Wife's much lower cost of living in Koh Samui, especially since she would be able to work and earn an income there. Previously, as a long term social visit pass holder, the Wife had not been permitted to work in Singapore.

6 On 12 May 2011, DJ Hing granted the variation save that \$866 instead of \$781 was ordered as maintenance for the Wife ("the 2011 Orders"). In so ordering, DJ Hing adopted the Husband's "principles" of apportionment, deducting Nathan's expenses from the sum of \$3,810 in order to arrive at the maintenance amount for the Wife.

7 The Husband then appealed against only the maintenance aspect of DJ Hing's order. At the hearing of his Registrar's Appeal on 31 August 2011, Tay Yong Kwang J granted the Husband leave to file an affidavit to adduce fresh evidence relating to the Wife's employment status in Koh Samui, where she currently resides.

8 On 12 September 2011, the Husband filed Summons No 15856 of 2011 ("Summons No 15856") to delete Prayer 5 of Summons No 22159 and replace it with a prayer to pay nominal maintenance of \$1.00 per month to the Wife instead. In the light of Summons No 15856 and the new evidence raised, Tay J remitted the matter to the District Court for hearing.

9 The new evidence was exhibited in the Husband's affidavits filed on 1 March 2011 and 12 September 2011. It consisted of a printout from the networking website, LinkedIn, reflecting that one Carolina Morris was a Supervisor at Namcha Samui, a restaurant located in Koh Samui, various online searches reflecting that Namcha Samui had been opened in or around December 2010 by one Michelle Ho-Lloyd (who the Husband claimed is a long-time friend of the Wife), and a printout from the online travel review website, Tripadvisor, containing a review posted on 1 August 2011 which commended an establishment known as Namcha Samui as being "a very classy teashop with excellent choice and extraordinary service of Carol and Michelle, who are both from the Philippines".

10 The Wife asserted that the "Carol" named in the Tripadvisor review was another Filipino with the same name, and that she had not been given the job at Namcha Samui because she had to travel back to Singapore frequently to visit Nathan. She stated that she was currently unemployed due to the disruption caused by the ongoing matrimonial litigation, and that instead she relied on her friend Michelle for food and accommodation in Koh Samui. She also exhibited a sworn declaration from Namcha Samui's Thai lawyers stating that she was not an employee of Namcha Samui.

11 On 23 February 2012, DJ Hing, upon considering the new evidence, granted the prayer to amend Prayer 5 of Summons No 22159 but ordered that the 2011 Orders should stand. She found that the new evidence was "at best equivocal". More pertinently, it was her view that the sum of \$781 reflected the Husband's original intention when he filed Summons No. 22159, notwithstanding that he already knew at that time that the Wife would be working and earning an income in Koh Samui. She cited the Husband's counsel's submissions at the hearing before her on 12 May 2011 that "[the Wife's] amount should be \$781. She is capable of working and capable of earning a living". The fact that the Wife was earning an income was hence taken into account in ordering the sum of \$781 to be paid to her as maintenance on 12 May 2011.

12 The Husband then appealed against DJ Hing's refusal to grant the prayer for nominal maintenance arguing that he had singlehandedly covered Nathan's rising education and other

expenses for the past six years, and that with the Wife's relocation to Koh Samui the impediment to her seeking employment in Singapore by virtue of her being a social pass holder no longer existed. It was submitted that the real issue was not whether the Wife was proven to be employed, but whether she was capable of being gainfully employed.

The decision

13 I accepted that the court below should have relooked the amended prayers afresh since leave had been granted for the Husband's amendment and the matter was remitted back to the District Court for rehearing. I also accepted the submission of counsel for the Husband that the offer to pay the sum of \$781 for the Wife's maintenance under Prayer 5 of Summons No 22159 was not mathematically calculated according to the Wife's needs, but rather a balance obtained by subtracting Nathan's current expenses from the \$3,810 ordered in May 2005 to cover the combined expenses of the Wife and Nathan.

14 The court requires sufficient evidence of a material change to be adduced to justify the variation of a maintenance order under s 118 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Women's Charter") (see *David Charles Awcock v Lynette Nora Riches & Anor* [1998] SGHC 323 at [14]; *Chua Chwee Thiam v Lim Annie* [1989] 1 SLR(R) 426 at [6]). It was appropriate to apply the same principle here given that the Husband was asking for the amended application for variation of the 2005 May Orders to be considered as a fresh application for variation. It was my view that the Husband should have obtained better than hearsay evidence of the Wife's current employment status. As the Wife claimed that she was only helping out at her friend's restaurant and the Husband failed to produce clear contradicting evidence, I accepted the Wife's explanation.

15 Counsel for the Husband had cited the case of *Koh Mui Noi v Tan Tian Seong* [2006] SGHC 14, in which Woo Bih Li J, in ordering a sum of \$350 to be paid for the Wife's maintenance, opined that "it was immaterial that the Husband did not have more information about the Wife's past employment" and that "the wife had a capacity to earn income of between \$1,000 and \$2,000" and was able to support herself (at [31]). However, it is significant that Woo J then decided against ordering a nominal maintenance of \$1.00 and instead ordered \$350 as maintenance for the wife based on the consideration that the husband had at one time offered this sum as maintenance for the wife.

16 In our case, although the Husband similarly lacked information on the details of the Wife's employment, the fact remained that he had previously offered to pay her the sum of \$781 even though it might not have been based on an exact mathematical calculation. The Husband did not at any point dispute his financial ability to pay such an amount as maintenance for the Wife, and did not mention any change to/reduction in his income (which he had stated to be \$11,334 per month in 2004). Even so, having regard to the factors governing the award of maintenance under s 114 of the Women's Charter such as the now unimpeded earning capacity of the Wife, her lower cost of living in Koh Samui as compared with Singapore, the financial needs of the Husband and his new family, and the relatively high standard of living previously enjoyed by the family during the subsistence of the marriage, I found that \$500 per month would be reasonable for the Wife's maintenance.

17 In my view, the Husband was capable of paying more than nominal maintenance of \$1.00 to the Wife on his current income notwithstanding his remarriage and new family. Hence, I refused to order nominal maintenance for the Wife. Instead, I ordered that the Wife's maintenance be reduced to \$500 per month with effect from June 2012 and that it should continue to be paid into the Wife's OCBC bank account. Costs awarded below to the Wife were also reduced.