

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGHCF 8

District Court of Appeal No 58 of 2019

Between

UYT

... Appellant

And

UYU

... Respondent

A N D

District Court of Appeal No 63 of 2019

Between

UXF

... Appellant

And

UXG

... Respondent

JUDGMENT

[Family Law] — [Child] — [Maintenance of child]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

UYT
v
UYU and another appeal

[2020] SGHCF 8

High Court (Family Division) — District Court Appeals Nos 58 and 63 of 2019.

Choo Han Teck J

31 January, 3 March 2020; 17 March 2020

24 March 2020

Judgment reserved.

Choo Han Teck J:

1 The respondent was already 22 years old when he applied to the court for an order that his father, the appellant, pay for his university education in Canada. He is 24 years old this year. On 27 February 2019, the judge below ordered the appellant to pay 60% of various expenditures for that education in Canada. The appellant appealed against the order before me.

2 The respondent was 8 years old when his parents divorced on 12 October 2004. The respondent's mother, a housewife, had custody, care and control of the respondent under the ancillary orders, and by consent, there was an order that the appellant pay no maintenance for the respondent. The appellant father subsequently remarried and is stepfather to his second wife's two sons. The appellant says that he has now retired and is supported by his second family. The respondent's mother is presently about 56 years old, and the appellant is

about 60 years old. Both their dates of birth are not disclosed in the present appeal.

3 The respondent completed his GCE O-Level examinations in 2014 and graduated from Republic Polytechnic with a Diploma in IT Service Management in May 2018. He then wanted to pursue a degree in journalism, which he claims to have a passion for. He also felt that his diploma was not good enough for him to get employment. The respondent compared opportunities among different universities but eventually settled on the “Bachelor of Arts in Comparative Literature” in the University of Alberta which requires him to first complete a two-year preparatory course at Columbia College.

4 The judge below found herself bound to determine the respondent’s application by applying s 69(2) and s 69(5)(c) of the Women’s Charter (Cap 353, 2009 Rev Ed) (“WC”). I will set out these provisions for convenience:

Court may order maintenance of...children

69. —

...

(2) The court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his child who is unable to maintain himself, order that parent to pay a monthly allowance or a lump sum for the maintenance of that child.

...

(5) The court shall not make an order under subsection (2) for the benefit of a child who has attained the age of 21 years or for a period that extends beyond the day on which the child will attain that age unless the court is satisfied that the provision of the maintenance is necessary because —

...

(c) the child is or will be or (if an order were made under subsection (2)) would be receiving instruction at an educational establishment or undergoing training for a

trade, profession or vocation, whether or not while in gainful employment...

5 Family Law is a misnomer for a happy family generally has no need for law nor does law need to intrude into a happy family. Decisions such as sending a child of the family for tertiary education, whether at home or abroad, are discussed and settled within the family, sometimes with a tinge of regret, sometimes with great sacrifice, but always with the comforting feel of give and take. By the time the WC is invoked to resolve domestic problems, it usually means that the family can no longer mediate within itself. Section 69 WC directs how such problems are to be resolved, but it is not a complete guide for the court to make these kinds of decisions in a way that a happy family would make them. It is one thing for a family to give and take within itself, and another for a third party to determine how they should do it.

6 The father and son, who are respectively the appellant and respondent here, have reached an impasse. The respondent wants to go to Canada for further studies. The appellant thinks that he should pursue his studies here in Singapore. In happy families, parents might indulge their children when it comes to education and would often be the party to give in should their children appear determined, and the expenses required have been counted. Parents in broken families, on the other hand, may take a more parsimonious attitude towards their children's overseas education since money is often the subject of disagreement. The availability of comparable local courses, therefore, becomes a stronger factor, but again, it would still vary from family to family. The age of the child and the nature of the education add another dimension to the question. If the child is young, one might also say that there are strong grounds to keep him here if the parents are not comfortable sending him to a boarding school overseas.

7 But if the child is older and wishes to pursue an esoteric course like “The Horticulture of Tropical Orchids”, the choice between a local course and an overseas one may be more difficult to make – unlike, for instance, a course leading to a degree in a popular course such as psychology. In this case, father and son have filed affidavits that their counsel submit support their respective positions. The appellant claims that there are at least six local institutions that offer comparable courses in journalism. The respondent disagrees. This leads to another unenviable position for the court – comparing and assessing the different courses. In the absence of an expert educationist or journalist, the court can only compare the different courses in a broad and general way. Mr Magintharan, counsel for the respondent, and Mr Thirumurthy, counsel for the appellant, referred to the respondent’s intended course as a course on “journalism”. “Journalism” is fast becoming an archaic word, not so much because mainstream journalism is losing space to bloggers and vloggers, but because it has come to represent only a segment of a much wider course that goes by different names, depending on the institution in question.

8 The letter dated 14 December 2018 by Helena Chen from Columbia College in Canada where the respondent wishes to enrol, is helpful in two respects. First, Columbia College was offering the respondent a two-year preparatory course. The actual two-year degree course at the University of Alberta will be offered only upon the successful completion of the preparatory course. Second, the course fees for each year at Columbia College is about C\$12,540. Mr Magintharan submitted that the total cost of studying at Columbia College and the University of Alberta would be S\$155,716 for four years (or S\$38,929 a year), while Mr Thirumurthy submitted that it would be S\$400,000 (or S\$100,000 a year).

9 As we can see from Miss Chen's letter and the affidavit of the respondent, there is not much to distinguish one institution from the other, not only because they emphasise different aspects of the modern study of what used to be plain journalism, but also because the institutions named are not in the top-tiered universities. The respondent stated in his affidavit that in any case, the entry requirements for the National University of Singapore and the Nanyang Technological University are too high for him to qualify. The other local institutions cited by the appellant may accept the respondent but he has not applied to any of them because he had set his mind on joining Columbia College. The appellant produced email replies from these local institutions to show that the tuition fees for local courses range from about S\$15,000 to S\$69,000 in total.

10 I now turn to the question of the appellant's ability to pay. The court below took the view that the appellant had more money than he cared to admit. Other than drawing an adverse inference against the appellant and finding that the appellant appeared to earn about S\$2,000 per month at the time, the court below did not, for want of evidence, find exactly the total wealth that the appellant has. During another hearing on 13 August 2019 regarding the respondent's application to enforce the original maintenance order, the court below did not accept that the appellant had really retired two months prior to the said hearing. Nothing conclusive has emerged on appeal before me. While the court below found that the appellant had S\$378,138 in various bank accounts at the start of 2018, the appellant says that much of that money has since been used to pay off his housing loan, and has produced his housing loan statements as evidence. Based on the appellant's bank statements, there appears to be very little now left in his bank accounts. The respondent says that the appellant has not fully disclosed his means, and also refers to the fact that the appellant has a

balance of \$132,875.75 across his Central Provident Fund accounts as at 31 December 2019. Even on the respondent's quantification of the costs of his overseas tertiary education, however, 60% of S\$38,929 a year is still S\$23,357.40 a year. That would be clearly excessive and burdensome if the appellant only earns S\$2,000 a month. Here, even if the court also takes into account the fact that the appellant might still have some savings accumulated over his many years and does not accept that he is now retired, I do not think that it is sufficient to conclude that he has the means of paying this sum for four years (adding up to S\$93,429.60 in total). We cannot ignore the uncontested fact that the appellant has also to maintain his present wife even though his stepsons have, like the respondent, reached the age of majority and can look after themselves.

11 When it comes to the education of children whose parents are getting a divorce, the decision is usually made by both parties jointly where custody is joint, or where the court determines that one of the parents shall have the authority to decide for the child, by that parent. In those instances, the child concerned is usually a minor, and issues regarding tertiary education (first degree) are often considered as a way of looking forward when the child has reached adulthood but is still dependent on the parents for payment of his or her tertiary education. Section 69 WC is not intended to be used by a child after he has reached adult status and is independent.

12 Furthermore, s 69(5)(c) WC, which the court below relied upon, does not create a specific obligation on the parent to pay for the tertiary education of the child. Section 69(5)(c) is to be read with s 69(2) WC, and that is a provision for the duty of a parent to provide maintenance. Maintenance, as we know, does not mean maintaining fully or of an unreasonable amount. To say that a parent

has a duty to maintain a child is not the same as saying he must pay for all the expenses of the child's education.

13 When the education is basic such as that required for the GCE A-Levels, the courts would be more generous to the child, but in those cases, as I have said, the child is usually a minor. In the present case, the respondent is an adult. He made this application after he had attained the age of 21. When his mother divorced the appellant, the respondent was only 8 years old. She had custody, care and control of him, and in the final orders made, the parties agreed that the appellant would not pay any maintenance for the respondent.

14 It is true that sometimes, when a consent order is made, one of the parties might have agreed or accepted it in the hour of his or her greatest vulnerability. In this case, the respondent's mother accepted the consent order about 16 years ago, and had watched it age in tandem with the respondent. Thus, the only person whom the respondent should have sought maintenance from today is his mother. In the present case, the appellant consented and fulfilled his part of the order. He had paid forward, in a consent order that was intended to let each party go on with their lives undisturbed by legal proceedings if both sides complied with the orders. The respondent's mother too had kept her part of the bargain under the consent order.

15 The respondent graduated from the Republic Polytechnic in 2018. He is now an independent adult and not receiving education at the moment. If he desires to study in Canada or anywhere else, he has to find his own means. He could, of course, ask his parents, but their obligations, if any, to him are now limited. This case is an example for everyone concerned in family disputes, to encourage both parents to have access and bonding with their children. If the respondent at 8 years old had maintained a strong bond with the appellant this

matter would probably not have reached this court. I am not here apportioning blame but stating what I believed to be a truism that a parent who has a bond with his or her child would very unlikely appear in court in opposition to each other.

16 For the reasons above, I am of the view that in this case, the appellant is not obliged to pay any contribution to the respondent's further education in Canada. The appellant's appeal in District Court Appeal No 58 of 2019 is allowed but I will make no order as to costs.

17 Consequently, the appellant's appeal in District Court Appeal No 63 of 2019 against the order of the court below dated 23 May 2019 (enforcing the order of court dated 27 February 2019) is also allowed. There will similarly be no order on costs. I note, however, that the appellant has already made part-payment of S\$3,000 to the respondent, pursuant to the order of court dated 23 May 2019. I will not order the respondent to repay that S\$3,000 so that both father and son can henceforth go their own ways without further ado.

- Sgd -
Choo Han Teck
Judge

Thirumurthy Ayernaar Pambayan (Murthy & Co) for the appellant;
S Maginathan and Benedict Tan Yixun (Essex LCC) for the
respondent.