

Wong Wai Leng Laura alias Yow Wai Leng Laura v Yap Thiam Nguan
[2001] SGHC 86

Case Number : D 202/1999, RAS 720068/2000
Decision Date : 04 May 2001
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Ann Tan with Veronica Joseph (Ann Tan & Associates) for the petitioner/respondent; Koh Geok Jen (Koh Ong & Partners) for the respondent/appellant
Parties : Wong Wai Leng Laura alias Yow Wai Leng Laura — Yap Thiam Nguan

JUDGMENT:

Cur Adv Vult

1. Mr Yap Thiam Nguan (the husband) married Ms Wong Wai Leng Laura (the wife) at the Registry of Marriages, Singapore, on 2 November 1985. In November 1988, their son, Nathanael, the only child of the marriage, was born.
2. In December 1994, the parties were living in a house in Taman Bedok together with the wife's parents. The house was owned jointly by the husband, the wife and the wife's mother. A quarrel took place on 5 December and following that the husband left the matrimonial home. His position was that the wife and her family forced him out. The parties did not cohabit thereafter and various legal proceedings ensued.
3. First, proceedings were taken in relation to the custody and maintenance of the child. In June 1996, an order was made by the High Court granting the parties joint custody of Nathanael with care and control to the wife and access to the husband. In addition, the husband was ordered to pay monthly maintenance of \$900 for Nathanael with effect from June 1996.
4. In early 1998, the husband took out an originating summons procedure in this court to obtain the court's determination of the various shares held by himself, the wife and her mother in Taman Bedok. In February 1999, the wife presented a petition for divorce on the ground of their having lived separately and apart for at least the previous four years. The husband did not contest the proceedings and a decree nisi was granted in April 1999. Meanwhile, the husband had filed an application in March 1999 seeking a variation (and reduction) of the original order for maintenance of the son. When this matter came on for hearing in May 1999 in the High Court, it was remitted for hearing before the District Judge hearing the ancillary matters.
5. The hearing of the ancillary matters was somewhat delayed due to the dispute over Taman Bedok. Finally, the parties were able to resolve this dispute in February 2000. A consent order was made whereby the property was to be sold and each of the parties was to be reimbursed his/her actual financial contribution to its purchase from the sale proceeds and the balance thereafter was to be divided equally among them.
6. The ancillary matters finally came up for hearing in August 2000. The wife was granted sole custody of Nathanael with reasonable access to the husband. He was ordered to pay \$1,100 per month as maintenance for Nathanael and a lump sum maintenance of \$85,000 to the wife. The lump sum maintenance was to be paid from his share of the proceeds of sale of Taman Bedok. The husband was also ordered to transfer to the wife all his right, title and interest in a flat at The Bayshore upon payment by her of the sum of \$22,396.22. Finally, the husband was ordered to transfer the membership of the Singapore Swimming Club to the wife.
7. The husband is dissatisfied with four aspects of the decision below. First, he wants the maintenance payment for Nathanael reduced to \$345 per month. Secondly, he contests the lump sum maintenance order in favour of the wife on the basis that she is not entitled to maintenance. Thirdly, in respect of the Singapore Swimming Club membership, he wants an order for the wife to reimburse him the sum of \$10,218.52 being the expenses which he incurred in connection with this membership and also for her

to bear the cost of the transfer. Finally, the husband wants the wife to be ordered to pay him the sum of \$25,505.98 being a half share of the sale proceeds realised from the sale of a flat in AVA Towers, Singapore which was jointly owned by the parties.

Maintenance for Nathanael

8. Nathanael was aged 11 at the date of the hearing. He is now 12 and in his first year of secondary school. According to the wife, Nathanael's expenses last year amounted to \$2,929.96 per month. At that time the wife herself was earning \$2,449 per month as the principal of a Before and After School Student-care Centre run by a church.

9. She itemised Nathanael's expenses as follows:

1. Student Aftercare	\$400
2. Chinese tuition (Qualified IE teacher: \$35 per hour x 1.5 hours x 8 lessons)	\$420
3. Pocket money (\$3.50 per day x 5 days x	\$90
4. Assessment book, CD-Rom aids, other stationery	\$200
5. Uniform & school shoes 2 sets per year (approximately \$360 per year)	\$30
6. Medical/dental	\$120
7. Transport (includes \$80 alone for school transport)	\$150
8. Vitamins	\$150
9. Outings on weekends (approximately \$50 each outing)	\$200
10. School and supplementary fees	\$15
11. Domestic maid (\$675 3 people in household)	\$225
12. Insurance	\$155.20
13. Toys	\$50

14. Clothing and other apparel	\$80
15. Toiletries	\$25
16. Spectacles (\$110 x 2 per annum)	\$18.30
17. Marketing/food (approximately \$100 per week x 4 divided among 3 persons in household)	\$133.33
18. Supermarket, groceries and household toiletries (approximately \$100 \$75 per week x 4 divided among 3 persons in household)	
19. Water, electricity and gas (divided among 3 persons in household)	\$83.33
20. Newspapers (\$45 divided among 3 persons in the household)	\$15
21. Internet	\$20
22. Vacation (\$3,000 per annum)	\$250
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Total	\$2,929.96

10. The husband on the other hand considered that these expenses were exaggerated and that it would be reasonable for a sum of only \$690 per month to be spent on Nathanael. He was willing to contribute half that amount. As the Judge pointed out, he failed to factor into account not only the tuition fees and the fees for student after care but also the costs which the wife incurred in providing a home for the son. Before me, his counsel submitted that they should be worked out as follows:

1. Tuition	\$300
2. Pocket money	\$90
3. Assessment books, CD roms etc	\$30
4. Uniforms and school shoes (two sets per annum each)	\$30

5. Medical/Dental	\$30
6. Transport (school bus \$80 plus weekends)	\$100
7. Vitamins	\$30
8. Outings	\$80
9. School fees	\$15
10. Maid (in lieu of student care)	\$225
11. Toys	\$20
12. Clothes	\$30
13. Toiletries	\$10
14. Spectacles	\$18.30
15. Food	\$133.33
16. Groceries	\$20
17. Water, utilities	\$15
18. Newspapers	\$15
19. Internet	\$20
Total	\$1,211.63

I note here that the husband had revised his figures from those presented below and that the total figure of \$1,211.63 is some \$500 higher than the estimate that he originally put forward before the Judge.

11. The Judge observed that the wife had inflated the sons expenses to some extent but also that the husbands estimate (at that stage) that he required only \$690 per month was unrealistic and totally unreasonable for the child. She stated that the husband had been content with the High Court order to pay the sum of \$900 per month for the son but was now quibbling over maintenance. The Judge also considered that the husbands claim to be unemployed was difficult to believe and that for the purposes of determining his income, the husband had to be considered as having an earning capacity of \$5,000 a month as that was his approximate salary in 1998 before he resigned from his employment with Pidemco Land Ltd (Pidemco). The Judge having

taken this into account and bearing in mind the factors set out in the Womens Charter decided that it was fair and reasonable to order the husband to pay \$1,100 per month as maintenance for the son.

12. Before me, it was submitted that although the husband had originally been content with the original maintenance order, after he lost his paid employment he had taken steps to reduce the amount payable by making the necessary variation application. It was unfortunate that although the application was filed in March 1999, it was not heard but remitted by the High Court to the Family Court to be heard together with the ancillary matters and, as a result, was not considered until more than a year later. It was therefore incorrect to conclude that the husband had been content all along with the maintenance order.

13. It was also submitted that the husbands unemployment was a material change in circumstances justifying his application for variation as well as his appeal. The observation below that when the husband resigned from his employment with Pidemco he must have been confident of obtaining alternative employment at least \$5,000 per month was criticised and it was also pointed out that the Judge did not give sufficient consideration to his parlous financial circumstances as shown by his reliance on loans from his siblings and his several debts and overdraft facilities.

14. I must first state that I consider the sons expenses to be greatly exaggerated and unreasonable. The wifes position was that she was earning only \$2,449 a month as at the date of the hearing of the ancillary matters. That being the case, I do not think that she could have maintained an expenditure of \$2,929.96 per month on Nathanael alone, even taking into account the \$900 paid by the husband. If in fact she was spending that much on Nathanael she either had substantial savings which could support the expenditure or was acting extravagantly. When the wife earned \$10,000 a month as she had prior to the end of 1998, expenditure at this level may have been justified. Unfortunately, the familys financial situation is now much reduced and whilst every parent wants the best for her offspring, she must adjust the expenses to suit the familys income.

15. In the circumstances of this case, I consider that the husbands estimate of Nathanaels expenses to be, on the whole, more reasonable. I think he has underestimated the amount that his son eats and that therefore the amount for groceries should be increased from his figure of \$20 to \$100 as claimed by the wife. This increase of some \$80 would bring Nathanaels total expenses each month to \$1,291.63 which could be rounded off at \$1,300.

16. The next question is how much of these expenses should be borne by the husband. In this regard, I have to consider the husbands income and his earning capacity, property and other financial resources. The Judge treated the husband as having the capacity to earn \$5,000 a month since that was his last drawn salary at Pidemco. Unfortunately, it appears that the husband has not been able to achieve anything like that level since leaving that company.

17. According to the husbands affidavits, at the time the original order was made, he was employed as a manager by Pidemco and was seconded to China. Unfortunately, around July 1998, Pidemco decided to restructure its China operations and its regional office in Beijing took over the management of the projects in Xiamen that the husband had had charge of. He was made redundant and posted back to Singapore where he was told to report to the marketing and sales division. About a week later, however, management informed him that he was redundant in Singapore as there was no available position here for someone who had his qualifications and experience in real estate management. He was asked whether he wanted to resign and was told that the alternative was that the company would give him notice. The husband then chose to resign. I should state here that, unlike the Judge, I accept the husbands explanation of the circumstances in which he lost his employment and that it was not his choice to leave his job but that the situation made resignation the only face saving course open to him. It appeared to me to be a coherent and credible account particularly bearing in mind the economic climate that existed in 1998. It is significant here that the wife too, although in a completely different industry, was retrenched in October 1998.

18. After resigning, the husband attempted to find employment in the property business in China. He produced a number of application letters which he had written in 1999 applying to be a business development manager or an operations manager of property developments in China. He was not successful in any of them. According to the husband, he had also travelled to China in order to secure employment since he had worked there for four years and was more familiar with the Chinese property market than the Singapore market. At the time of the hearing below, he had made contact with a manager of a construction project in Xiamen, China and had just been given the opportunity to market some of the units of this development on a

commission basis. The husband asserted that between August 1998 and May 2000 he had had no paid employment and had lived off his savings and loans from banks, credit cards and his siblings.

19. There was a great deal of evidence in the affidavits regarding the husbands indebtedness. The wife was not convinced of this or of his claim to have been unable to find a job since being forced to resign. She even doubted that he had been forced to resign. She was not, however, able to produce any direct evidence to rebut the husbands assertions. She relied instead on inference and suspicion. The wife herself should, however, have appreciated the difficult economic situation which was faced by the husband, particularly since he was seeking employment in the property segment of the economy. She herself was retrenched at the end of 1998 from a well paying job with Levi Strauss Asia Pacific Division (Levi Strauss). She subsequently tried to work as a consultant. Even though by this means she was able to earn \$3,000 to \$4,000 per month, the uncertainty and difficulty of working for herself eventually persuaded her to take on employment at only \$2,449 per month.

20. In my judgment, it was not correct in all the circumstances of this case, for the Judge to treat the husband as being able to command an income of \$5,000 a month. This would only have been the case had jobs in the area in which the husband had expertise been available ie property developments in China. Unfortunately, that area was affected by the economic down turn of the period. On the other hand, it would not be correct to treat the husband as being incapable of earning any income at all. He is obviously a competent man who has a number of business friends and other contacts. Further, he has no health problems or other disabilities. He should therefore be able to earn a living if he is willing to change the nature of his employment. He probably has to move out of the property sector but I see no reason why he should not be able to earn at least \$2,500 a month in an administrative or marketing position. The wife was able to find a job at that level and the husband should be equally employable if he would lower his expectations.

21. The husband should therefore be able to contribute to half of Nathanaels expenses at the current level of \$1,300. I therefore allow the husbands appeal in relation to maintenance and set aside the order below. Instead, the husband should pay the wife \$650 a month as maintenance for Nathanael. The varied maintenance amount shall take effect from June 1999 ie just after the High Court remitted the husbands application for variation of the maintenance order to the Family Court.

Maintenance for the wife

22. In the court below, the wife asked for lump sum maintenance calculated at \$2,000 per month for a period of ten years which would amount to \$240,000. The husband was not prepared to make any offer of maintenance for the wife since he was of the view that the wifes income far exceeded his and also asserted that he did not have the financial means to pay her anything. The Judge considered that although the wife was gainfully employed, the husband was under a duty to maintain her and the fact of her employment only had an impact on the quantum.

23. Where the quantum was concerned, the Judge found that the wife had exaggerated her expenses and that the figure of \$2,000 per month sought by her was excessive. The Judge considered that the wife should scale down her expenses and live within her means. The Judge found \$700 a month to be a reasonable figure for the wifes maintenance. She also considered that this was an appropriate case for a lump sum maintenance award and that the husband would have the means to satisfy such a lump sum order from the \$200,000 he would receive from the sale of 61 Taman Bedok. The Judge considered that the period of ten years maintenance sought by the wife was fair. That would have meant \$84,000 in maintenance but the Judge rounded up this figure to \$85,000 and ordered the husband to pay it from his share of the net proceeds of sale of Taman Bedok.

24. The husband contended that the wifes income had always surpassed his, that her expenses were wildly exaggerated and that she had had various financial resources and advantages that were not available to him. He pointed out that despite the order of court made in February 2000 for the sale of Taman Bedok, at the date of the appeal, it had still not been sold and the wife had occupied it, to his exclusion, since December 1994. Further, since the decision below, it was clear that the wife would have other valuable assets from the marriage: she would be the one retaining the membership of the Singapore Swimming Club, she would not be accounting for any part of the sum of \$51,011.97 realised from the sale of AVA Towers, she would be the sole owner of

The Bayshore property (having refunded to the husband only his direct financial contribution so that any gain from the increased value of the property would be hers alone), and she would also receive about \$376,000 from the sale of Taman Bedok (inclusive of a \$200,000 refund to her CPF account). Additionally, the wife clearly had the potential to earn a high income. Before her retrenchment in 1998, she earned \$10,909 a month and even as a freelance consultant she was able to earn \$3,000 to \$4,000 a month by charging \$200 an hour for her services.

25. On the other hand, the husband argued that his financial resources and income were far below those of the wife. Although he would gain about \$281,000 from the sale of Taman Bedok, about \$105,000 would go back to CPF leaving him with cash of \$176,000 out of which he would have to settle his outstanding loans and liabilities amounting to \$163,166.24. His only other assets would be the sum of \$22,396.22 which the wife would have to pay him in respect of his interest in The Bayshore property and the sum of \$23,167.18 from the sale of a flat at Tanjong Pagar Plaza after the grant of the decree nisi. In respect of the latter amount, the husband stated that he had used \$7,000 to repay part of a loan made by his brother Yap Kah Hoon and another \$12,000 to reduce an overdraft extended by HSBC. He therefore contended that he did not have the resources to pay the wife the \$85,000 lump sum that had been ordered.

26. The wife's assertion was that subsequent to the parties' separation in December 1994, the husband did not maintain her. In 1995, she filed an originating summons asking for custody of Nathanael and for the husband to maintain him. She did not at that stage or later ask for any maintenance for herself. Her explanation for not applying for maintenance between 1995 and June 1999 when she filed her first affidavit in relation to the ancillary matters, was that she was working and earning a good salary. She decided to apply for maintenance after she was retrenched in October 1998 from Levi Strauss. She stated that her savings were fast depleting and that in the light of the then current economic downturn and her family situation, she had not been able to find suitable permanent employment in her area of speciality that would pay her the salary she was earning before.

27. There is no doubt that the wife is as able as, if not more able than, the husband, to make a good living. As she herself said, in 1992 when the husband decided to take up a job in Taiwan, she gave up a position with a leading oil company to join him even though at the time she was drawing a much bigger salary than he was. In total, on an annual basis including bonuses, she thought that she was earning twice as much as the husband at that time. The position was similar in early 1998. The wife earned \$10,000 a month and the husband earned \$5,000 a month. At the moment, the wife's income is much reduced. This is partly the result of the economic situation and partly the reason of a deliberate choice made by her. She could, if she wished, do consultancy work or look for a better paying job in a more high level position than the one she currently occupies as the principal of the church Studentcare Centre.

28. I also agree with the Judges' assessment of the wife's expenses as being exaggerated. In June 1999, the wife's affidavit stated that her then current monthly expenses amounted to \$6,648.25 inclusive of a sum of \$3,103 paid towards the mortgage of The Bayshore property. In April 2000, the wife filed a further affidavit. By then her expenses had gone up to \$8,147.74 per month which she explained as being due to an increase in her income tax liability arising from the income she had earned from Levi Strauss. It should be noted that in 1999, her income tax return showed an income of \$198,657. This amounted to \$16,554.75 per month which means that Levi Strauss gave her a very generous retrenchment benefit and/or bonuses.

29. Going by the wife's affidavits, her total expenses each month were \$11,077.70 when the child's expenses were taken into account. Her income, taking into account maintenance for the child paid by the husband, was \$3,349 monthly. There was therefore a discrepancy of \$7,728.70 a month. The wife did not explain exactly how she managed this discrepancy. She did allege that her savings were being depleted but whilst this sounds a reasonable explanation, the wife did not produce any bank accounts to show what savings she had and to what extent these had been depleted by her expenses. The wife also did not make full disclosure of the rental income received in respect of The Bayshore property.

30. Under s 114 of the Women's Charter (Cap 353), among the factors which the court has to take into account in determining the amount of maintenance to be paid by a man to his former wife are the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future and their financial needs, obligations and responsibilities. It appears to me that this is one of those rare cases where the earning capacity of the wife equals if not exceeds those of the husband. It is also a case where the wife has greater assets than the husband both in terms of

CPF savings as well as in real property. Further, she has expectations which he does not in the sense that she is the only child of the family and as such likely to inherit her mothers property (presently represented by a 1/3 share in Taman Bedok). The wife has high expenses which cannot be met by her present income but she has not shown any evidence of being in debt now or of any likelihood that she will go into debt in the foreseeable future. The husband, however, is clearly in a much more difficult financial position with existing debts which he must repay.

31. In any case, the husband has not got the resources to pay the wife any lump sum maintenance. To require him to do so from his share of Taman Bedok would be to prevent him from settling his debts and putting his finances back on a stable footing. I do not think, therefore, that this is an appropriate case for a lump sum maintenance. I do not think either that it is an appropriate case to make a monthly maintenance order against the husband in favour of the wife. At present, there is no evidence that he is capable of earning, or is actually earning, more than she is and, for the time being at least, he will be stretched by having to pay towards the sons maintenance. If in future the husbands income increases, he can be asked to make a greater contribution towards the cost of maintaining the son and the wife can then retain more of her income to meet her own expenses.

32. I therefore allow the husbands appeal in respect to the award of maintenance. I set aside the order below and hold that the wife, in this case, is not entitled to either lump sum or periodical maintenance.

Singapore Swimming Club membership

33. The Judge found that this membership had been given to the wife by her late father. Upon her marriage, the membership had been vested in the name of the husband since the by-laws of the club provided that she was to become a lady member and the husband ordinary member. She then paid a sum of \$5,803.02 towards the husbands entrance fees. The Judge noted the wifes assertion that since 1985, she had paid the monthly subscriptions and club bills and that her total payments to the club including the entrance fees had come up to \$26,786.99. The wife wanted the membership transferred to her absolutely.

34. The Judge noted that the husband did not challenge the wifes calculation of the amount she had paid or her version of how the membership had been acquired. He merely stated that he had paid \$10,218.52 towards the fees and expenses. The Judge found that the husband had not contributed towards the acquisition of the asset and that he should not be repaid the \$10,218.52 paid by him towards expenses incurred in the club. Further, since the wife had paid the club more than double what the husband had, the Judge did not consider that it would be just and equitable for the wife to pay anything to the husband for taking over the membership. In making this decision, the Judge was also influenced by the fact that no order was being made to give the wife a share in the \$23,167.18 which the husband had received from the sale of the Tanjong Pagar Plaza flat.

35. The husbands appeal was for reimbursement of the said sum of \$10,218.52. He said that upon marriage, he had become the principal club member and thereby been responsible for club due and expenses. Further, these expenses had been incurred by the wife after the parties had separated and during the time when the husband had been paying maintenance for the son. The facilities had been enjoyed by the wife and son and not by the husband.

36. The bills exhibited by the husband in his affidavit showed that he had made payment of some of the subscription fees and expenses incurred over the years. I do not think that the husband is entitled to reimbursement of the expenses met by him as, insofar as these represented payment for meals and other facilities enjoyed at the club by the wife and the son, they were payments in the nature of maintenance which cannot be reclaimed. The wife too met some bills for subscriptions and expenses since after the separation the husband was sometimes irregular in payment. If neither of them had paid the bills, then the membership would have been lost. Whilst the wifes contribution to the membership exceeded that of the husband, I think it correct to recognise that his action in paying subscription fees after the separation helped preserved the membership which she now enjoys.

37. The clubs rules provide that once a married couple who are members divorce, only one of them can retain the membership. The other would need to apply for a new membership if he or she wished to use the clubs facilities as well. From other

matrimonial appeals I have heard where membership of the Singapore Swimming Club has been an issue, it appears that currently a new member would have to pay the club an entrance fee of \$40,000. As the wife has been awarded this membership, she will not have to incur such a charge. This is a benefit to her and I think that the husband should be compensated in some way for this benefit which he does not enjoy. Taking into account the discrepancy in the amounts paid for subscription and entrance fees by the husband and the wife over the years, I award the husband \$5,000 in respect of his interest in the club which is being transferred to the wife. The cost of transfer, if any, should, as the Judge observed (though no specific order was made in this regard) be borne by the wife.

AVA Towers

38. The parties purchased an apartment at AVA Towers in late 1991 and sold it in February 1993. The net proceeds of sale which amounted to \$51,011.97 were paid into the wife's account and she did not thereafter pay any part of them to the husband. The Judge did not allow the husband's claim for a share in those monies. He thus sought to have that decision reversed.

39. The wife had admitted that she had retained the money but asserted that she had used it towards living expenses for Nathanael and herself during the period of one and a half years that they were in Singapore and the husband was in Taipei. She asserted that the husband had not given her any maintenance during that period and, whilst the husband disputed this, he was not able to produce any evidence that he had remitted money to her whether from Taipei or otherwise to maintain her and Nathanael during that period. He argued that she had not been able to show how she utilised the sum (ie she did not produce documentary evidence showing how each dollar of that \$51,000 was spent) and that its retention could not be tied to the issue of maintenance during his absence from Singapore.

40. The Judge held that at the hearing of the ancillaries, the husband had to satisfy the court that the amount was still with the wife. She accepted the wife's explanation as to how the money had been utilised and observed as follows:

Taking into account the fact that some 6 years have passed from the receipt of the monies and the date of the divorce, it would be incredible if the said sum is still available for division between the parties. If it was the intention of the husband, that the wife is only entitled to use half of the sum of \$51,011.97, then he should not have, in the first place, credited the entire sum to her account, and in the second place, he should have not have waited until the divorce proceedings to pursue his claim for the other half. There was nothing wrong for the wife to assume that she could use the said sum of \$51,011.97 towards living expenses and the payment of bills. She was under no obligation to preserve half of the sum on the off-chance that one day, it must be returned to the husband. At that time, the parties were still together and had not separated. That being the case, I did not make any order on the division of the sale proceeds of \$51,011.97 received by the parties some 6 years before the divorce.

With respect, I entirely agree that the wife was entitled to use the money for the maintenance of herself and her son during the period when the husband sent them nothing else. If the husband had been making regular maintenance payments, the position would have been different. As no other maintenance was being paid, she was entitled to draw the inference that she could use the husband's share of the sale proceeds to meet the family's needs. It is also significant that the husband did not allege that he had given her any specific instruction with regard to the use of the money. In the circumstances, I see no merit in the husband's appeal on this point.

Conclusion

41. The husband has succeeded wholly in respect of two of his grounds of appeal and partially in respect of the third ground. Accordingly, I award the husband costs of the appeal. I will hear the parties on the quantum of costs.

Judith Prakash

Judge

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