

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 41

District Court Appeal No 36 of 2024

Between

WZN

... Appellant

And

WZM

... Respondent

GROUND OF DECISION

[Family Law — Maintenance — Child — Whether an issue estoppel arises out of enforcement orders made in maintenance summonses]
[Family Law — Maintenance — Child — Whether there was a material change of circumstances]
[Family Law — Maintenance — Whether variation or rescission orders should be backdated]

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**WZN
v
WZM**

[2024] SGHCF 41

General Division of the High Court (Family Division) — District Court
Appeal No 36 of 2024
Kwek Mean Luck J
17 October 2024

6 November 2024

Kwek Mean Luck J:

Introduction

1 This is an appeal against the learned District Judge's ("DJ") decision in FC/D 3276/2018 FC/SUM 2582/20 ("SUM 2582"). There, the DJ rescinded the Respondent mother's ("Mother") spousal maintenance but made no changes to the quantum of the child's ("Child") maintenance order. At the appeal, the appellant father ("Father") submitted that the DJ's rescission of the Mother's maintenance should be backdated, and that the Child's maintenance should be varied and similarly backdated. One of the key issues in this appeal, is whether the Father is barred by issue estoppel from seeking a variation of the Child's maintenance quantum, because of enforcement orders for maintenance arrears that were made earlier by the court.

2 At the end of the hearing, I found that the Father is not barred by issue estoppel and reduced the quantum of the Child’s maintenance order. I also backdated the rescission of the Mother’s maintenance order and the variation of the Child’s maintenance order to the date on which SUM 2582 was filed. I gave my brief grounds of decision in delivering my judgment, and now set out my full reasons below.

Father’s Grounds of Appeal

3 The Father raised four issues, namely that the DJ erred:

- (a) in finding that the Father sought to be relieved of his obligations in the Order of Court dated 29 August 2018;
- (b) in finding that Child maintenance cannot be varied because of issue estoppel;
- (c) in finding that there was no material change in circumstances that warranted re-apportioning the share of the contribution to the Child’s maintenance order; and
- (d) in not backdating the rescission of the Mother’s maintenance order.

Issue 1: DJ’s understanding of Father’s request

4 The first issue was whether the DJ erred in finding that the Father sought to be relieved of his Child maintenance obligations as prescribed in the interim consent judgment made in divorce proceedings (FC/IJ 3930/2018 or “IJ 3930”). IJ 3930 recorded that the Father would, by consent, provide monthly maintenance of \$300 for the Mother and \$1,200 for the Child.

5 The Father objected to the DJ stating at [7] of *WZM v WZN* [2024] SGFC 50 (“GD”), that “the [Father] sought to be relieved of his obligations in the Consent Judgment to maintain [the Mother] in the monthly sum of \$300 and the [C]hild in the monthly sum of \$1,200.” This is because what the Father was seeking was only a variation of the Child’s maintenance orders, not a rescission of the same.

Decision

6 I found this submission to be without merit. Since the Father was seeking to vary the existing Child maintenance order, the DJ was factually correct in saying that the Father sought to be relieved of his obligations in the Consent Judgment to maintain the Child “in the *monthly sum of \$1,200* [emphasis added]”. The Notes of Evidence indicate that the DJ was cognisant that the Father was, amongst other things, seeking a variation of the Child maintenance order.¹

7 In any event, this point had no bearing on the substance of the grounds of appeal. It is hornbook law that “an appellate court will seldom interfere in the orders made by the court below unless it can be demonstrated that it has ... failed to appreciate certain material facts”; *ANJ v ANK* [2015] 4 SLR 1043 (CA) (“*ANJ*”) at [42]. This submission did not relate to any “material facts” relevant to the issues on appeal.

Issue 2: Issue Estoppel

8 The second issue was whether the DJ erred in finding that the Child maintenance order could not be varied because of issue estoppel.

¹ Notes of Evidence dated 4 April 2024 (“**NE 4 April**”) at p 58 ln 5–24, p 62 ln 6–11, p 64 ln 3–5, in Appellant’s Record of Appeal (“**ROA**”) at pp 81, 85, 87.

9 The DJ found that there was issue estoppel arising from two maintenance enforcement orders.

- (a) In June 2020, the Mother filed Maintenance Summons MSS 1613/2020 (“MSS 1613”) to enforce maintenance arrears that had accrued. In October 2020, through consent order EMO 1054/2020 (“EMO 1054”), the Father acknowledged that the arrears totalled \$37,500 and agreed to pay them in instalments of \$500 per month.
- (b) The Father fell behind on his payments of the maintenance arrears owing under EMO 1054, as well as his ongoing maintenance obligations under IJ 3930. In December 2021, the Mother filed a second Maintenance Summons, MSS 2680/2021 (“MSS 2680”) to enforce these arrears. In April 2022, an adjudicated enforcement order, EMO 284/2022 (“EMO 284”) was made. The court found that the arrears totalled \$60,500 and ordered the Father to pay them in instalments of \$1,000 per month.
- (c) Both EMO 1054 and EMO 284 clarified that the monthly maintenance payments of \$300 for the Mother and \$1,200 for the Child would continue.²

10 The DJ found that the determinations in EMO 1054 and EMO 284 crystallised the quantum of arrears as at the time when the orders were made.³ Relying on *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 (CA) (“*Lee Tat*”) at [14]–[15], the DJ

² *WZM v WZN* [2024] SGFC 50 (“**GD**”) at [3]–[4].

³ **GD** at [8].

ruled that unless these determinations were disturbed, whether on appeal or otherwise, they were final and conclusive judgments on the merits which created an issue estoppel between the spouses.⁴ As a result, and in relation to Issue 3, the DJ was confined to considering circumstances arising after October 2020 and April 2022 when deciding whether a material change in circumstances had arisen.⁵

11 The Father made two main submissions on this issue. First, the Father contended that the DJ did not raise issue estoppel to his attention in the proceedings below and thus the Father had no opportunity to respond. Second, the Father submitted that the Court has the power to vary the orders on evidence of a material change in circumstances, pursuant to s 72 of the Women’s Charter 1961 (2020 Rev Ed) (“WC”).⁶

12 The Mother submitted that the DJ had pointed out to counsel for the Father, that he “[could not] look behind the order” of court.⁷

Decision

13 It did not appear from the Notes of the Evidence, that the issue and impact of issue estoppel was specifically raised to counsel for the Father.

14 An issue estoppel arises in situations where a litigant seeks to re-argue points which have already been the subject of a previous judicial decision; *The Royal Bank of Scotland NV v TT International Ltd* [2015] 5 SLR 1104 (CA)

⁴ GD at [8].

⁵ GD at [21].

⁶ Appellant’s Case dated 19 August 2024 (“AC”) at [28].

⁷ NE 4 April at p 58 ln 19–20, in ROA at p 83.

(“*TT International*”) at [100]–[101]. For issue estoppel to arise, “it is a requirement that the issue was referred to and was the subject of argument”; *Ten Leu Jiun Jeanne-Marie v National University of Singapore* [2023] 4 SLR 1362 (HC) (“*NUS*”) at [39]. It is also a requirement that there is identity of subject matter in the two proceedings; *Lee Tat* at [15].

15 SUM 2582, out of which this appeal arises, was the first instance in which the Father sought to vary his Child maintenance obligations. The Notes of Evidence for MSS 1613 and MSS 2680 do not indicate that the Father had raised there, any arguments relating to his financial impecuniosity, inability to pay or the appropriate quantum of the Child maintenance orders. Thus, the question of whether the Child’s maintenance order should be varied, was *not* considered previously in those enforcement proceedings.

16 As the issue of variation of the quantum of Child maintenance was not raised in MSS 1613 and MSS 2680, I found that the Father is not barred by issue estoppel from raising the issue in this appeal.

17 While IJ 3930 was a consent order and the Father agreed to the continuation of the Child maintenance order in EMO 1054, s 73 WC provides that the “court may, at any time and from time to time, vary the terms of any agreement relating to the maintenance of a child ... where it is satisfied that it is reasonable and for the welfare of the child to do so”. This provision has been held by the Court of Appeal in *AYM v AYL* [2014] 4 SLR 559 (CA) to be “wide enough to encompass a material change in the circumstances of the parents as a basis for varying the maintenance for the child” (at [16]).

18 Following from the above, the relevant question was whether there is evidence of a material change in circumstances. This leads to the third issue

raised by the Father, namely whether the DJ should have, on the evidence, varied the Child maintenance order.

Issue 3: Material change of circumstances

19 The DJ held that issue estoppel precluded the Father from challenging the Child maintenance amount of \$1,200 determined in EMO 1054 and EMO 284, since these orders recorded the Child's maintenance as continuing to be \$1,200. The DJ hence considered only circumstances occurring after these orders were made (in October 2020 and April 2022) and found no material change of circumstances.⁸ The Father has been earning \$3,000 since November 2021.⁹ The Mother confirmed her monthly income as between \$2,780 and \$4,500. There was little change in the monthly expenses of the Father, the Mother, and the Child since April 2022. The Father adduced no evidence on the monthly expenses of the Child after April 2022, and the Mother had deposed that those expenses amounted to about \$1,476.¹⁰

20 The Father submitted that there has been a material change in circumstances from the time IJ 3930 was made, taking into account the following:

- (a) The Father's income has dropped. He was earning a monthly salary of \$4,800 in 2018 and is now earning \$3,000. His own expenses have also increased.¹¹

⁸ GD at [21].

⁹ Father's Affidavit dated 16 August 2023 at [43].

¹⁰ Mother's Affidavit dated 1 March 2024 at [91].

¹¹ Father's Affidavit dated 16 August 2023 at [51(i)]–[51(ii)].

- (b) The Child's expenses have reduced. The Child's expenses have also been hardly substantiated by the Mother.¹²
- (c) The Mother's salary has increased from about \$3,000 to about \$6,597.22.¹³

21 The Mother submitted that it is pertinent that the Father has been earning \$3,000 since November 2021. He could have raised the issue of his reduced income when MS 2680 was filed in December 2021. He did not do so. This suggests that the Father is not in financial difficulties as claimed, but that he only took out SUM 2582 to avoid paying his maintenance arrears.

Decision

Relevant timeframe for considering material change of circumstances

22 In *BZD v BZE* [2020] SGCA 1 (“*BZD*”), the Court of Appeal held at [10] that for a variation of a maintenance order to be allowed, the material change alleged must relate to the circumstances prevailing at the time where the maintenance order was made. The court would thus examine whether: (a) such change being alleged is a change from circumstances prevailing during the ancillary matters hearing; (b) such change arose after the ancillary matters hearing; and (c) such change is sufficient enough to satisfy the court that a variation of maintenance is necessitated.

23 In making its ruling at [10], the Court of Appeal in *BZD* cited *ATS v ATT* [2016] SGHC 196 (“*ATS*”), which held at [12]:

¹² Father's Affidavit dated 16 August 2023 at [51(iii)].

¹³ AC at [57].

A variation application under s 72 and s 118 is not a *de novo* application; the variation court decides from the vantage point that presumes the final maintenance order to be appropriate (when made at that time) and examines whether the evidence demonstrates a change in circumstances has occurred since then to justify a variation or rescission of the final maintenance order made at the ancillary hearing. If the requisite condition relied upon is established on the evidence, the variation court should itself make an appropriate *variation* in light of the requisite change's impact on the final maintenance order; it should not approach the issue as if it were making a final maintenance order.

[emphasis in original]

24 It is thus clear that any variation application under s 72 WC must consider the circumstances arising after the original maintenance order was made.

25 Therefore, the relevant timeframe for considering if there is a material change in circumstances, is between the making of IJ 3930 and the date of SUM 2582. It should not be from the date of the more recent enforcement orders in EMO 1054 and 284 onwards, which was the timeframe relied on by the DJ. This also follows from my finding that no issue estoppel arose in relation to the issue of variation of the ongoing Child maintenance order.

Evidence before the court

26 The evidence before the court, regarding the Father's income and expenses, the Mother's income and expenses and the Child's expenses, during the relevant timeframe, include the following:

- (a) The Father's monthly salary was \$4,800 at the time when IJ 3930 was made. His take home monthly salary since November 2021 is lower,

at around \$3,000.¹⁴ This is undisputed. On the other hand, the Father's claims that his expenses have increased, are not well supported by evidence. For example, he states that there is a housing loan with an outstanding balance,¹⁵ which was taken out by his father and that he is helping to service.¹⁶ However, there is no supporting documentary evidence to show that he is the one making the payments. In addition, the Father has testified that when IJ 3930 was entered into in 2018, he had then several existing financial commitments, including "shouldering the mortgage repayment" for his father's flat.¹⁷ By the Father's own testimony, this does not constitute an increase in expenses since the time at which IJ 3930 was made.

(b) The Mother stated her monthly gross income as \$3,000 when she filed MSS 2680 in December 2021.¹⁸ Based on her pay statement for the year 2023, her average monthly take home salary, including bonuses and commission, is about \$5,265. The Mother testified that her current expenses are around \$3,973.54, including the Child's expenses of \$1,475.52. She collated some receipts to support this number.¹⁹

(c) The Child's monthly expenses at the time of MSS 1613 at around June 2020, was stated by the Mother to be around \$1,079.²⁰ This

¹⁴ Father's Affidavit dated 16 August 2023 at [43] and [45].

¹⁵ ROA at pp 399–400.

¹⁶ Father's Affidavit dated 18 March 2024 at [29].

¹⁷ Father's Affidavit for MSS 1097 dated 4 April 2024 at [33]-[34].

¹⁸ ROA at p 121.

¹⁹ Mother's Affidavit dated 1 March 2024 at [91].

²⁰ ROA at p 116.

decreased to \$435 by the time of MSS 2680 around December 2021.²¹ The Mother recently testified that the monthly expenses for the Child are around \$1,475.52.²² The Father does not have any evidence to refute the Mother's evidence on the Child's expenses. The Father stated that he is unaware of his Child's expenses.²³

27 In summary, on the evidence, the main material change in circumstances, from the time of IJ 3930 till now, lies in the parties' salaries. In *ANJ*, the Court of Appeal did not interfere with the lower court's finding that the relativities of parties' income was a relevant factor in assessing the apportionment between the parents for bearing the children's expenses (at [43]).

Assessment of relativities of parties' income and contributions

28 The Father's monthly salary was \$4,800 when IJ 3930 was made. The Child's monthly maintenance of \$1,200 was thus 25% of the Father's monthly salary at that point. The Father's monthly salary since November 2021 is \$3,000. A monthly Child maintenance of \$1,200 would draw 40% of his current monthly income.

29 While the Mother points out that the Father's monthly salary was already at the lower sum of \$3,000 in November 2021, and that he did not raise this earlier when MSS 2680 was filed, this does not preclude him from raising this now. As explained earlier, there is no issue estoppel precluding the Father from doing so. Section 73 of the WC allows the court to take into consideration

²¹ ROA at p 121.

²² Mother's Affidavit dated 1 March 2024 at [91].

²³ Father's Affidavit dated 16 August 2023 at [34].

changes in material circumstances that have arisen since the initial order was made.

30 The Mother's gross monthly salary was \$3,000 at the time of MSS 2680 in December 2021. She also had monthly spousal maintenance of \$300. Her effective monthly income then was around \$3,300. Her take home monthly income is now much higher. In 2023, it was about \$5,265. The DJ did not appear to consider whether the increase in the Mother's monthly salary contributed to a material change in circumstances.

31 Based on the Child's expenses of \$1,475.52 and the Father's existing monthly Child maintenance of \$1,200:

- (a) The Father currently contributes about 81% of the Child's expenses, while the Mother contributes about 19%.
- (b) The Father currently contributes about 40% of his monthly income to the Child's expenses, compared to the Mother who contributes about 5% of her monthly income.

32 Thus, the Father's relative share of the Child's expenses, and the relative percentage of his income contribution to the Child's expenses, are currently much higher than that of the Mother. Given the stark disparity in their financial income and contributions, I considered that there was basis for revisiting their relative share of the Child's maintenance.

33 The ratio of the Father's income (\$3,000) to that of the Mother (\$5,265) is approximately 36.3:63:7. If this ratio is applied to the Child's expenses of \$1,475.52, this would derive a split of \$535.61 (H): \$939.91 (W).

34 However, additional considerations attach where maintenance orders have been entered into by consent. As was held in *AUA v ATZ* [2016] 4 SLR 674 (CA) (“*AUA*”) at [31]–[33], courts generally attach significant weight to an agreement relating to financial matters in a divorce. Consequently, as observed in *UNC v UND* [2018] SGFC 62 (“*UNC*”) at [24(b)–(e)], the court should be more circumspect in granting variations to this agreement.

35 There is evidence that as of MSS 1613, at around June 2020, the Child’s expenses as testified to by the Mother is \$1,079. There is however no evidence of what the Child’s expenses were when IJ 3930 was entered into at around 30 August 2018. There is hence no evidential foundation for examining the ratio of the parties’ contribution to the Child’s expenses at the time of IJ 3930 and using it as a point of reference.

36 However, what was agreed in IJ 3930 was that the Father would contribute \$1,200 to the Child’s maintenance. Based on his monthly salary of about \$4,800 then, the Father agreed to contribute about 25% of his monthly income.

37 As held in *AUA* and *UNC*, weight should be attached to the agreement entered into by the parties. Thus, while I accepted that the financial circumstances had changed materially, in that the Father’s income had sizeably decreased while the Mother’s salary had increased sizeably, I found that in view of the parties’ earlier agreement, the Father should still be held to his underlying agreement to contribute 25% of his monthly income to the child’s expenses. This would work out to about \$750 of monthly child maintenance, given his current monthly income of \$3,000. This is higher than the figure of \$535.61, which is derived from a straightforward ratio apportionment of their incomes,

as it also reflects the weight attached to their earlier agreement on the maintenance orders.

38 A contribution of \$750 by the Father to Child maintenance, would mean that the Mother contributes about \$750 to the same. This is about 14% of her take home monthly income of \$5,265. The Mother confirmed at the hearing that she did not have financial issues with making this contribution.

39 In summary, taking into account the material change in circumstances and considerations as reflected above, I considered it fair in the circumstances to vary the Father's monthly Child maintenance obligations from \$1,200 to \$750.

Issue 4: Backdating the rescission and variation orders

40 The fourth issue relates to the backdating of the rescission of the Mother's maintenance order and the variation of the Child's maintenance. The Father sought to backdate the rescission of the Mother's maintenance order (awarded in FC/D 3276/2018) and any variation of the Child maintenance order, to the start date of SUM 2582, that is 16 August 2023.

41 The Father's main ground for backdating was that he had financial difficulties paying the existing higher maintenance quantum, given his reduced salary. He relied on *TYA v TYB* [2018] 3 SLR 1170 (HC(F)) ("*TYA*") to submit that a court varying a maintenance order has the power to backdate the variation and give it retrospective effect.

42 The Mother submitted that in *TYA*, the court found that backdating would fulfil the policy set out in s 69(5) WC, which states that the court should not order a parent to make payment towards maintenance of his child if the child

has attained the age of 21 years. Here, the Father has not shown a proper legal basis for backdating.

Decision

43 While *TYA* did proceed on the basis of different considerations, the court's power to backdate is not limited to those particular circumstance. As ss 72 and 118 of WC allow the court to vary the maintenance orders taking into consideration the financial circumstances of the parties (see *BZD* at [14]), financial circumstances would also be a relevant consideration in assessing the appropriateness of backdating. In *AJE v AJF* [2011] 3 SLR 1177 (HC) ("*AJE*"), the court in assessing the operative date for the maintenance order to take effect, considered factors relating to financial impecuniosity; at [27]. This approach would, in my view, be equally applicable to assessing whether and how far back to backdate a variation of maintenance order.

44 The DJ had found that backdating was not necessary since the backdating period sought for, August 2023 to April 2024, was short and largely spent on mediation. With respect, I was unable to agree. In my view, there was no basis to consider those nine months as short, bearing in mind that during this time, the Father had to bear the existing maintenance sums with his reduced salary. In any event, the time from August 2023 to the date of this appeal hearing, in October 2024, cannot be said to be short.

45 In *UGM v UGN* [2017] SGFC 123 ("*UGM*"), the court stated that the decision on backdating would depend on the facts of each case, including the income and expenses of parties in the past, whether there is prejudice, and whether the arrears of maintenance might be too sudden and too large a sum. While the mother in *UGM* applied for backdating to when she moved out of the

matrimonial home, the court instead backdated the increase in maintenance to the month commencing after the mother filed her variation application; at [47].

46 In the same vein as was held in *UGM*, I found that in principle, the Father's proposed start date for the backdating, is fair in that this was the time when he put the Mother on notice of his intention to vary the maintenance orders. As the Father's submission is for backdating to take effect from the date of the application, that is 16 August 2023, it would not infringe the enforcement orders made earlier in respect of the maintenance arrears.

47 In view of the above, I backdated the rescission of the spousal maintenance and the reduction of the Child's monthly maintenance to \$750, to the date when this application, SUM 2582, was first filed, that is 16 August 2023.

Conclusion

48 For the above reasons, the appeal was allowed in part. The Father's contribution to the Child's monthly maintenance was reduced from \$1,200 to \$750. In addition, the rescission of the Mother's maintenance and the reduction of the Child's monthly maintenance to \$750, were backdated to when SUM 2582 was first filed, that is 16 August 2023.

Kwek Mean Luck
Judge of the High Court

WZN v WZM

[2024] SGHCF 41

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