

USR v USS
[2019] SGFC 19

Case Number : Divorce Suit No. D2241 of 2018
Decision Date : 15 February 2019
Tribunal/Court : Family Court
Coram : Goh Zhuo Neng
Counsel Name(s) : Rina Kalpanath (Kalco Law LLC) for the Plaintiff; Gan Guo Bin (Winston Quek & Co) for the Defendant.
Parties : USR — USS

Contested Divorce – Unreasonable Behavior

15 February 2019

District Judge Goh Zhuo Neng:

A. Introduction

1 In D2241 of 2018, the Plaintiff Wife ("**Wife**") sought to dissolve her marriage with the Defendant Husband ("**Husband**") on the basis that the marriage had broken down irretrievably due to the Husband's unreasonable behaviour.

2 Parties were married on 21 July 2001. At the time the writ for divorce was filed on 17 May 2018, the parties had been married for nearly 17 years. There was one child born to the marriage (the "**Child**"), who was 11 years of age at the time of hearing.

3 On 2 November 2018, I heard the parties in an open trial of the matter and dismissed the Wife's claim, awarding costs of \$2,000.00 to the Husband. On 16 November 2018, the Wife filed an appeal against my decision.

4 The full grounds of my decision are set out below.

B. THE LAW

The Women's Charter

5 The Women's Charter (Cap. 353) (the "**Act**"). provides that :

- a) A party may file a writ of divorce on the ground that the marriage has irretrievably broken down. Section 95(1) of the Act.
- b) A marriage is considered to have broken down irretrievably if the defendant has behaved in such a way that the plaintiff cannot reasonably be expected to live with the defendant. Section 95(3)(b) of the Act.
- c) The Court hearing such proceedings shall, so far as it reasonably can, inquire into the facts alleged as causing or leading to the breakdown of the marriage and, if satisfied that the circumstances make it just and reasonable to do so, grant a judgment for its dissolution. Section 95(2) of the Act.
- d) In considering whether it would be just and reasonable to grant a judgment, the Court shall consider all the circumstances, including the conduct of the parties and how the interests of any child or children of the marriage or of either party may be affected if the marriage is dissolved, and it may make an interim judgment subject to such conditions as the Court may think fit to attach; but if it should appear to the Court that in all the circumstances it would be wrong to dissolve the marriage, the Court shall dismiss the proceedings. Section 95(4) of the Act.

Caselaw

6 In *Wong Siew Boey v Lee Boon Fatt* [1994] 1 SLR(R) 323, the then Honourable Judicial Commissioner KS Rajah laid down the following principles:

(a) Whether the defendant's behaviour has been such that the plaintiff can no longer reasonably be expected to live with him is essentially a finding of fact, and the Courts have avoided categorising conduct as guilty or blameless in the abstract [at (8)];

(b) the test is whether this petitioner, with his or her character and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, can reasonably be expected to live with this respondent: Bagnall J in *Ash v Ash* [1972] 1 All ER 582 at 585 (at [10]); and

(c) the particulars taken together must amount to more than a complaint that the parties are incompatible, that they no longer have anything in common and cannot communicate or that one of them is bored with the marriage. Behaviour in this context must, as Baker P put it in *Katz v Katz* [1972] 3 All ER 219 at 223 be: "... something more than a mere state of affairs or a state of mind, for example, a repugnance to sexual intercourse, or the feeling that the wife is not reciprocating the husband's love or not being as demonstrative as he thinks she should be. Behaviour in this context is action or conduct which affects the other. Such conduct either take the form of acts and omissions or may be a course of conduct and, in my view, it must have some reference to the marriage" (at [12]).

C. APPLICATION OF THE LAW TO THE FACTS

(SOP paragraph 1(c)) - An alleged martial affair that the Husband had with a woman in 2002

7 The Wife alleged that in 2002, the Husband had gone on a biking trip to Hatyai, Thailand. When he returned, he showed her photographs taken during the trip. These photographs revealed that the Husband was sitting very closely to a lady and even had his arm around her in certain photos. There were also photographs where the Husband was lifting the lady up with another male.

8 When confronted with the allegation of why he was so close to the lady, the Husband got angry, claiming they were only friends. This caused the parties to argue, and resulted in the Husband moving out of the matrimonial home for more than 6 months. The Wife claimed that she was informed by the Husband's friend that the Husband travelled to Penang as he was in a relationship with a lady there.

9 The Husband denied that he had an affair, and that he had deserted the Wife.

10 I note that there was no evidence adduced in support of the Wife's allegation. The pictures were not produced. The Husband's friend who had made the allegation of the affair was never named. I accept there was probably an argument between the parties after the Wife saw certain pictures of her Husband during this trip, but without sight of those pictures, it is impossible to assume that the Husband had behaved inappropriately with another woman. If he had behaved inappropriately, then there would not have been any good reason for him to share the pictures with his Wife.

11 In context, this argument occurred in the beginning of the marriage (2002), and notwithstanding that, they continued to remain together, and even had a Child together (2007). It would not be sufficient to classify the Husband's behaviour as being sufficiently unreasonable.

(SOP paragraph 1(d)) - The Husband's throwing of a fax cable at the Wife and smashing of a home phone in 2007

12 The Wife alleged that the Husband had thrown a fax cable at her and smashed the home phone. The Husband denied this had happened.

13 There was no evidence produced by the Wife to prove this allegation other than her bare statement. I took the view that there was insufficient evidence to prove that this had occurred.

(SOP paragraph 1(e)) - The Husband's throwing of a plate of noodles on the floor in front of the Child in 2007

14 The Wife alleged that the Husband had thrown a plate of noodles on the floor in the presence of the Child when the Child was only 4 months old. This caused the Child to suffer from shock and cry as a result. The Husband admitted that this had taken place, but that this arose out of his frustration with the Wife over the use of the baby bonus. The Husband also added that the Child was not put into distress.

15 I took the view that the Wife's allegation was made out. However it must be put in context. This was an incident that happened in 2007, more than 10 years before the filing of the writ. If this was an ongoing and current course of conduct, I would have taken a different view. However, in the course of married life, parties may say or do things on the spur of the moment that they would regret. A single incident like this cannot amount to "unreasonable behaviour" justifying a divorce.

(SOP paragraph 1(f)). The Husband's throwing of a pot cover at the Wife during an argument in 17 March 2017

16 The Wife alleged that on 17 March 2017, the parties were having an argument over the Husband's failure to wash a pot overnight. During this argument, the Wife was in the kitchen and the Husband was in the living room. The Wife picked up the pot cover and threw it on the stove, asking the Husband to clean up after himself. The Husband then walked into the kitchen, picked up the cover and threw it at the Wife, causing the pot cover to shatter. It is noted that the pot did not hit the Wife.

17 The Husband claimed that the Wife was actually the one who threw the cover at him first, and he picked up the pot cover and threw it at the floor instead.

18 In cross examination, the Wife clarified that the pot cover had been thrown at her, and that she had to step aside to avoid being hit. This caused the pot to land behind her. At this point, the Husband was 10m away from her.

19 I took the view that if the Husband had intended to hurt the Wife by throwing the pot cover at her, it was quite unlikely that he would have missed from 10m out. He had thrown the cover, but not at her. This also took place in the context of an argument between the parties, and it was one single incident in 2017.

SOP Paragraph 1(g) – That the Husband was verbally abusive towards the Wife and Child

20 The Wife's allegations in this regard were that that Husband would scold the Wife and Child vulgarities. He allegedly told the Child that "*Daddy hate you more and more*" and "*Shut up and go away*" when he was angry. This was denied by the Husband who claimed that apart from scolding the Child to discipline him, he had never used any foul language or vulgarities towards the Child, much less the Wife.

21 It was difficult to give credibility to the Wife's allegations. There was no objective evidence tendered to the Court which would have supported this allegation. In her Reply to the Defence (paragraph 10), she claimed that she had recorded a video of the Husband's "*violent outburst*" towards the Child. This video was never tendered to Court.

22 The Wife also did not provide the date of the incident on which the Father had allegedly said to the Child - *Daddy hate you more and more*" and "*Shut up and go away*". The full context in which this incident occurred was also not provided.

23 Neither did the Wife provide any copies of communications between the Husband and herself to show evidence that the Husband was pre-disposed to using vulgarities in his conversations with her during the marriage and prior to the filing of the writ.

a) In text messages between the parties dated 2 May 2016 and 4 January 2017, the parties were arguing over how the Husband had left some of his things lying around at home. The Husband told the Wife repeatedly and firmly not to touch his things without resorting to the use of vulgarity. I failed to see how this could be construed as an example of vulgar behaviour on the Husband's part.

b) She had provided a text message which was dated June 2018 where the Husband had, with the intention of reconciliation stated "*Recently we have been hard on each other, I admit my words were rather harsh and have hurt you...sorry*". I disregarded this as it had taken place after the writ was filed on 17 May 2018. It was also not clear what these "harsh" words were.

24 Therefore, I took the view there was insufficient evidence to show that the allegations in SOP Paragraph 1(g) were made out.

(SOP paragraph 1(h)).- The Husband's failure to show care or concern to the Wife when she suffered financial problems.

25 In 22 March 2007, the Wife who was working as a remisier, was asked to take responsibility for the financial losses suffered by her clients. She claims that the Husband was not emotionally supportive of her during this period, and in 23 January 2016 sent her a series of messages asking her to settle her problems herself.

"You have to stop dreaming and come back to reality.

What you have done cannot be undone, admit and face your own mistakes,

don't drag your family to suffer with you.

Don't be selfish.

Don't you have thoughts that I'll swallow our flat, I'm protecting our

family FYI.

Don't attempt to argue with me. Have some thoughts of what I've just said."

26 The Husband claimed that the Wife had extravagant habits and had proposed that the matrimonial home be sold to pay off her debts. He refused to do so as he did not want the family to lose their home. The Wife disagreed with this, and claimed that the bulk of her debts were settled by the clients eventually.

27 It was not clear to me whether the Wife had suffered financial problems in 2007. There was no documentary evidence of these problems. What was clear was that as of 5 February 2016, the Wife owed a considerable debt to her creditor - about \$295,620.54 as set out in a letter from the creditor's lawyer dated 5 February 2016.

28 As parties did not refer to any other matrimonial assets, I presumed that the only significant asset they had which could repay such a debt would be through the sale of the matrimonial flat.

29 This gives more credulity to the Husband's position that the sale of the matrimonial flat had been broached as a possible solution for the repayment of the Wife's debts. This appears to be supported by the series of messages sent by the Husband, which ask the Wife to take responsibility for her problems, and that the Husband would not be "swallow(ing)" the flat.

30 I did not see anything callous in the Husband's tone. While it was not perhaps what the Wife wanted to hear, it was a frank and honest assessment of the Husband's sentiment that they should not allow the Wife's financial problems to jeopardise the family's welfare. I did not consider it to be unreasonable behaviour.

(SOP paragraph 1(i)) - The Husband's refusal to visit the Wife's relatives

31 In this regard, the Wife claimed that the Husband had not participated in events involving the rest of her family since 2008. The Husband agreed, but he claimed that he was busy working as a taxi driver.

32 I did not regard this as unreasonable behaviour on the part of the Husband. If there was any unhappiness expressed towards him by the Wife about this even up to the filing of the Writ, this was never put into evidence.

(SOP paragraph 1(j)) - That the Husband went to Thailand for a holiday without informing the Wife, intending to leave the Child at home (January 2018)

33 The Wife claimed that the Husband had gone to Thailand for a holiday without informing her in January 2018. He had intended to do so while leaving the Child at home alone. The Husband admitted that he had gone on the trip. However, he had informed the Wife about this, and he had also given the Child money for his expenses while he was away on the trip.

34 It was difficult here to determine if the Husband had acted unreasonably. It was not clear at all from the Wife's evidence how the trip had come as a surprise to her. If she had belatedly realised the Husband was gone on a trip after he had left, then why did she not contact him and ask where he was? Any communications between the parties on this subject were conspicuously absent from the evidence placed before the Court.

35 Therefore, I took the view there was insufficient evidence to show that the Husband had gone on holiday without notifying the Wife.

(SOP paragraph 1(j)) - That the Husband went to Batam with the Child without informing the Wife (March 2018)

36 The Wife claimed that the Husband had taken the Child to Batam for a holiday in March 2018 without informing her. This was discovered only on the morning of the holiday when the Wife realised that the Child had packed a bag and was acting very awkwardly. When the Wife asked the Child where he was going, the Child asked the Husband the same question, and he replied that they were going to Batam.

37 The Husband denied that he did not inform the Wife about this, and stated that he had even asked the Wife to come along for the trip but was rejected by her.

38 As with the case in SOP paragraph 1(j), there was precious little evidence disclosed by the parties. The evidence did not include communications between them referring to the Batam trip, or whether the Wife had disagreed with the Husband taking the Child to Batam.

39 Therefore, I took the view that there was insufficient evidence to show that the Husband had not notified the Wife about the trip to Batam with the Child.

(SOP paragraph 1(k)) - The Husband's moving out of the master bedroom to sleep in the living room

40 There was some disagreement on when this had taken place. The Husband claimed this had taken place since 2017, and the Wife claimed this had taken place since 2015, providing pictures dated 2016 of the Husband sleeping in the living room.

41 I took the view that the Husband had been sleeping in the living room since 2016. However, what was the reason for doing so. Had he deliberately done so as a rejection of matrimonial life?

42 While the Wife was on the stand, she confirmed that she had asked the Husband to move out of the master bedroom to sleep in the living room, as he had a snoring problem. This was also consistent with the Husband's position. Therefore I could not treat this as an example of unreasonable behaviour by the Husband as he was only complying with a request from his Wife.

(SOP paragraph 1(l)) - The Husband's frequent travel to Johor Bahru Malaysia which he did not account to the Wife for.

43 The Husband had a motorcycle which he rode up frequently to Malaysia. He confirmed during the trial that he had been driving up to Johor Bahru since 2008 to pump petrol and spend time with his friends. The evidence showed that these trips were made on a fortnightly basis at the least.

44 The Wife claimed that this was always done without her knowledge, and without informing her. The Husband claimed that he had let her know and there had been no issue with this.

45 I took the view that the Husband's frequent travel to Johor Bahru had taken place with the knowledge of the Wife. If there was any unhappiness expressed towards him about this even up to the filing of the Writ, this was not put into evidence. I did not regard it as unreasonable behaviour.

(SOP paragraph 1(m)) - That in the months preceding the filing of the writ, the Husband had started to exert control over the Child with the intention to alienate the Wife from the Child.

46 The Wife cited two examples of how the Husband was allegedly alienating the Child from her and exerting control over the movements of the Child:

a) The Child was now being directed to go straight home from school every day. Previously, the Child would remain in student care, or go straight to his maternal grandmother's home. This was depriving the Child of an environment where the maternal grandmother would tend to his needs.

b) The Child was being forced to sleep in his own room. Previously the Child had slept with the Wife in the master bedroom. Doing so was causing a lot of stress to the Child, who was afraid to do so. On this point, the Wife also added that the Husband had on 13 June 2018, moved into the Child's bedroom with him. I had to disregard this particular allegation as these were facts that arose after the filing of the writ on 17 May 2018.

47 The Husband claimed that the above was true. However, the Child had asked to go home straight from school so that he could play with his friends in the neighbourhood. As for being made to sleep in his own room, that was being done in the best interests of the Child to build independence.

48 I took the view that this was merely an example of two parenting styles clashing. The Child was already 11 years of age, and the Husband's decision to have him sleep in his own room were well-intentioned. Also, I doubt that the Husband was able to compel the Child to go straight home after school. It was not alleged by the Wife that the Husband was fetching the Child from school to home every day.

49 Therefore I did not regard this conduct as amounting to unreasonable behaviour.

Unpleaded Incidents

50 The Wife also referred to two other incidents in her supporting affidavit which had not been set out in the SOP.

a) On 15 April 2016, the Husband damaged the washing machine cable plug as the Wife had forgotten to turn off the power switch. A picture of a broken power switch was provided as evidence.

b) On 26 November 2017, the Husband broke the home phone and threw it in the dustbin after an argument between the parties. A picture of the home phone in the dustbin was set out as evidence.

51 During the trial, the Husband was cross-examined on these allegations and denied that he had done so. He explained that it was the Wife who had damaged the switch, and that he had actually tried to fix the phone.

52 Having considered the above, I found that it was not clear how the switch or the phone had been damaged. Therefore, I was unable to reach the conclusion that the Husband was responsible for damaging the switch and the phone.

D. CONCLUSION AND COSTS

53 In the circumstances, it was clear to me that the Wife wished to leave the marriage. She was unhappy with how things were and in my view, free to hold that view. However, in order to grant a divorce, I had to be satisfied that the Husband had acted unreasonably, and as explained above, there was insufficient basis to make such a finding, especially on SOP paragraphs 1(c),(d),(g) and the unpleaded incidents which were simply not made out factually.

54 Where the allegations of the Husband's violence were concerned, there were only two incidents (SOP paragraphs 1(e) and (f)) which I found had occurred between 2007 and 2017, and in both cases, there was no violence directed at the Wife. I did not condone this behaviour but all the circumstances must be considered, and over the course of a 17 year marriage (to date) this in my view did not amount to a course of conduct that would be regarded as sufficiently unreasonable for the Wife to live with the Husband.

55 There were also isolated incidents under SOP paragraphs 1(h),(m) where I took the view that there was nothing unreasonable in the Husband's behaviour, which had been misconstrued by the Wife.

56 As for the long standing conduct of the Husband in respect of SOP paragraphs 1(i)(k)(l), and the overseas trips referred to in SOP paragraph 1(j) I believe that the Wife had accepted this conduct and did not regard it as being unreasonable. While there is an element of subjectivity in what one party to a marriage should be expected to tolerate, communication in a marriage is a two-way street. If the Wife was not happy with the Husband's behaviour all these years, she should have notified him of how she felt. There was no documentary evidence produced to prove that she had done so.

57 Therefore, I dismissed the Wife's application for divorce and ordered that the Wife pay the Husband costs of \$2,000.00.

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