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(2) Redaction HAS/~~HAS NOT~~ been done.

Clement Yong
District Judge
23 June 2021

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGFC 71

Maintenance Summons No 2717 of 2020
HCF/DCA 46 of 2020

Between

VSP

... Complainant

And

VSQ

... Respondent

JUDGMENT / GROUNDS OF DECISION

[Maintenance] — [Enforcement]

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**VSP
v
VSQ**

[2021] SGFC 71

Family Justice Courts - MSS 2717 of 2020
District Judge Clement Yong
31 March 2021

23 June 2021

District Judge Clement Yong:

Introduction

1 With the onset of the Covid-19 pandemic last year, the world entered uncharted waters as a public health crisis erupted and international borders closed, and domestic lockdowns were imposed in many countries around the world. As the effects of these reverberated globally, millions of people were adversely affected, a significant number of whom lost loved ones, businesses, health, and/or their employment.

2 Given our interconnectivity with the world, Singapore was unfortunately, hit very quickly by the pandemic and its externalities. The effects of Covid-19 were felt by all in Singapore. For some, these manifested as mere inconveniences, such as the inability to travel for annual vacations. For others,

the consequences were far more dire as they lost jobs upon which their very livelihoods depended. The Respondent was one such person, and it is against this backdrop that I consider the Complainant's application to enforce the payment of maintenance arrears against him.

3 Having heard parties and their submissions after a half day trial, I found that the Respondent had successfully showed some cause as to why the full amount of arrears should not be enforced against him. I therefore reduced the arrears amount from \$16,550 to \$11,150 and ordered the Respondent to pay off these arrears in instalments of \$200 a month to the Complainant. This is on top of existing maintenance which the Respondent remains liable to pay. I also ordered the Respondent to go for financial counselling so that he can pick up better money management skills.

4 The Complainant has now filed an appeal against the whole of my decision. I set out below the reasons for my decision.

Facts

5 The Complainant is 44 years old. At the time of the hearing, she was unemployed.

6 The Respondent is 45 years old and currently works as a parcel delivery man.

7 Prior to their divorce, the parties had three children together, all of whom are now still minors. Following the divorce in 2016, the Respondent was ordered (in FC/ORC XXX/2016) to pay \$1,200 per month to the Complainant for the maintenance of the three children. These payments were to start from December 2016.

8 Over the years, the Respondent had missed out on a number of maintenance payments for the children, and the Complainant was compelled to take out these proceedings in MSS 2717/2020 to recover the arrears from the Respondent. The details of the missed payments and arrears will be set out in full below. It will suffice to say for now that as at the hearing before me on 31 March 2021, parties agreed that the total amount of arrears stood at \$16,550.

The calculation of arrears

9 The Complainant had helpfully set out the full details of the maintenance payments that the Respondent had made, and the ones that he had missed. Her records go back as early as November 2016, which was even before the Court's orders in FC/ORC XXX/2016 took effect in December 2016.

10 The Respondent did not dispute the accuracy of the information provided by the Complainant and agreed that the arrears stood at \$16,550 as at the time of the hearing. I set out below the calculations, which I accept to be correct. For ease of reading, I have grouped the data by year.

<u>Month / Year</u>	<u>Amount Paid (in \$)</u>	<u>Arrears for the month (in \$)</u>	<u>Cumulative arrears (in \$)</u>
Nov 2016	1,200	-	-
Dec 2016	1,200	-	-
Information for 2017			
Jan 2017	1,200	-	-
Feb 2017	1,200	-	-
Mar 2017	1,200	-	-
Apr 2017	1,200	-	-
May 2017	1,200	-	-
Jun 2017	1,200	-	-
Jul 2017	800	400	400
Aug 2017	1,000	200	600
Sep 2017	1,200	-	600
Oct 2017	1,600	-	0 *

Nov 2017	1,200	-	-
Dec 2017	1,200	-	-
Information for 2018			
Jan 2018	1,200	-	-
Feb 2018	1,200	-	-
Mar 2018	1,200	-	-
Apr 2018	1,200	-	-
May 2018	1,200	-	-
Jun 2018	1,200	-	-
Jul 2018	1,200	-	-
Aug 2018	300	900	900
Sep 2018	1,200	-	900
Oct 2018	1,200	-	900
Nov 2018	1,200	-	900
Dec 2018	1,200	-	900
Information for 2019			
Jan 2019	1,200	-	900
Feb 2019	1,200	-	900
Mar 2019	800	400	1,300
Apr 2019	1,200	-	1,300
May 2019	1,200	-	1,300
Jun 2019	0	1,200	2,500
Jul 2019	1,300	-	2,400
Aug 2019	1,200	-	2,400
Sep 2019	1,200	-	2,400
Oct 2019	850	350	2,750
Nov 2019	1,300	-	2,650
Dec 2019	900	300	2,950
Information for 2020			
Jan 2020	600	600	3,550
Feb 2020	0	1,200	4,750
Mar 2020**	1,200	-	4,750
Apr 2020	600	600	5,350
May 2020	0	1,200	6,550
Jun 2020	0	1,200	7,750
Jul 2020	1,000	200	7,950
Aug 2020	500	700	8,650
Sep 2020	500	700	9,350
Oct 2020	0	1,200	10,550
Nov 2020	0	1,200	11,750
Dec 2020	0	1,200	12,950
Information for 2021			

Jan 2021	0	1,200	14,150
Feb 2021	0	1,200	15,350
Mar 2021	0	1,200	<u>16,550</u>
Notes:			
<p>* - As at October 2017, the cumulative arrears should have stood at \$200. Instead, the Complainant produced a figure of \$0. As parties did not dispute this, I was minded to accept the Complainant's figure as stated.</p> <p>** - In March 2020, as the arrears started to increase, the Complainant took out enforcement proceedings, and the Court (in EMO XXX/2020) ordered the Respondent to pay the then-arrears in instalments of \$1,000 per month. To date, the Respondent has not made any such payments, as reflected in the table above.</p>			

The parties' cases

The complaint form

11 As per her complaint form dated 29 October 2020, the Complainant sought to enforce the maintenance order against the Respondent. At trial, the Complainant confirmed in her evidence-in-chief that there was no mutual agreement¹ between the parties that they would not follow the terms of the Court order in FC/ORC XXX/2016 (which required the Respondent to pay maintenance of \$1,200 per month for the children). She also stated that since EMO XXX/2020 was made, the Respondent had made no substantial efforts² towards paying off the arrears in accordance with that Court order.

The Respondent's evidence

12 The Respondent did not tender an affidavit in this matter. I therefore gave him a chance to show cause at trial as to why I should not enforce the full

¹ NE, Day 1, Page 4, Line 7

² NE, Day 1, Page 4, Line 19

sum of arrears against him. The Respondent explained that at present, he earns approximately \$2,000+ to \$3,000 per month³. However, after paying his expenses, most of which are car-related⁴, the Respondent was not left with much and sometimes did not even have any monies left over⁵.

13 The Respondent stated that the car was previously used for his work as a Grab driver⁶. However, he had no customers during the 'lockdown' in 2020⁷, and by extension, had no income during that period until November 2020 when the Respondent started a new job as a parcel delivery man⁸ and re-purposed his car for this use⁹.

14 When asked what he intended to do regarding the arrears, the Respondent replied that the Covid-19 pandemic has caused the work which he used to do previously in media production¹⁰ to become unavailable¹¹, and because his education level is not high, it is not easy for him to earn money¹² in the current pandemic-induced climate.

³ NE, Day 1, Page 6, Line 23

⁴ NE, Day 1, Page 6, Line 28

⁵ NE, Day 1, Page 1, Line 11

⁶ NE, Day 1, Page 6, Line 32

⁷ NE, Day 1, Page 7, Line 1

⁸ NE, Day 1, Page 7, Line 3

⁹ NE, Day 1, Page 7, Line 5

¹⁰ NE, Day 1, Page 15, Line 23

¹¹ NE, Day 1, Page 8, Line 24

¹² NE, Day 1, Page 7, Line 28

15 The Respondent also informed that during the divorce, he gave the matrimonial flat to the Complainant for no consideration¹³ as he did not want her to undergo anymore hardships. This was even though he had contributed tens of thousands¹⁴ towards the house via his CPF.

The Complainant's evidence in reply

16 After the Respondent had finished giving evidence-in-chief, the Complainant indicated that she wished to give further evidence. In deciding whether to allow this, I considered that the Respondent did not file an affidavit and that the Complainant was only hearing his evidence for the first time on the stand. Out of fairness to the Complainant, I re-called her to the stand so that she may give her evidence in reply.

17 The Complainant did not dispute the Respondent's current income, the quantum of his expenses, his employment status, and the use of his car for his job as a parcel delivery man. She also did not deny that she had received the matrimonial flat from the Respondent post-divorce free of consideration.

18 However, the Complainant took the opportunity to add that prior to losing her job in November 2020, she herself had been suffering a 20% to 40% pay cut¹⁵, in what seemed like a response to the Respondent's earlier evidence that he had no income during the 'lockdown' period in 2020.

¹³ NE, Day 1, Page 8, Line 16

¹⁴ NE, Day 1, Page 7, Line 22

¹⁵ NE, Day 1, Page 11, Line 2

19 In relation to the Respondent's car, the Complainant claimed that he also uses the car for leisure¹⁶, in addition to work. She also suggested that instead of making deliveries with his car, the Respondent could do the same with a 2-wheel vehicle as the Respondent currently holds a motorbike license¹⁷.

The Complainant's submissions

20 In submissions, the Complainant highlighted that as the children are growing older, their expenses are increasing as well¹⁸. She would like for the arrears to be settled and reset to zero¹⁹ so that the Respondent will be able to make healthy payments for the children.

The Respondent's submissions

21 The Respondent submitted that he had taken on jobs to satisfy his maintenance payment obligations²⁰. This included working as a taxi driver or a Grab driver. When the latter became too competitive, which presumably led to a lower income, the Respondent changed jobs to his current one of delivering parcels²¹. He had not made empty promises to the Complainant as he had taken the Complainant's suggestions very seriously²² in relation to the types of jobs which he could do.

¹⁶ NE, Day 1, Page 11, Line 12

¹⁷ NE, Day 1, Page 13, Line 31

¹⁸ NE, Day 1, Page 15, Line 2

¹⁹ NE, Day 1, Page 15, Line 12

²⁰ NE, Day 1, Page 15, Line 26

²¹ NE, Day 1, Page 16, Line 1

²² NE, Day 1, Page 16, Line 3

22 The Respondent also highlighted that as he is not very highly educated, he had already tried doing all the kinds of work which he could do, but this still seems insufficient as he keeps having to return to Court to deal with these maintenance matters²³.

Application of law to facts

23 In my view, enforcement proceedings cannot be conducted as a straightforward mechanical exercise. Ultimately, the Court has a duty to consider all relevant factors to arrive at a fair and just outcome, and in doing so may exercise its discretion not to enforce the arrears in full or in part where good cause is shown by the Respondent.

24 My assessment stems from the following passage extracted from *Lai Ching Kin v Ng Chin Chye* [2001] SGDC 228, where the Court noted:

“[10] ... That the quintessential characteristic of enforcement proceedings is the opportunity that is made available to the Respondent to "show cause" (which is the term found in the summons that is served on Respondents generally and on the Respondent in this case) or in simple language, "show reason" why the maintenance in arrears should not be enforced in full or as in this case, in part. As much as it is necessary to ensure that wives, ex-wives and more importantly, children of the union between man and wife, are provided reasonable maintenance, this right cannot be blindly enforced in the face of legitimate reasons for the failure of husbands and fathers to make payment.”

²³ NE, Day 1, Page 16, Line 9

25 I agree completely with the approach taken by the Court as set out in the passage above. It is in this context that I consider whether the Respondent had sufficiently showed cause as to why I should not enforce the full arrears against him.

26 First, I note that the Respondent has had a good track record of making maintenance payments pursuant to FC/ORC XXX/2016 which was made in December 2016. Since then, apart from some sporadic months, the Respondent had been steadily making payments to the Complainant until late 2019 without fail. Some credit must be given to the him for this.

27 Second, I consider whether there is some genuine reason that might have caused the Respondent to fall behind in his payments and accumulate the arrears. I note that the months from March to November 2020 were the months that the Respondent was not able to generate any income due to the ‘lockdown’ period brought about by the Covid-19 pandemic, and the Respondent only found a job as a parcel delivery man in November 2020. Whilst the Complainant had two opportunities to challenge this, once during cross-examination of the Respondent, and once when I re-called her to the stand to give evidence, she did not do so. I therefore found that the Respondent was without income from March to November 2020.

28 Third, in view of my finding above, I must consider whether it remains fair for a father to have to pay maintenance for his children under such circumstances. During the same period that the Respondent had no income, the Complainant herself was gainfully employed, albeit on a reduced salary by 20\$ to 40%. As the premise for the maintenance of children rests largely on the child’s needs and the payor’s ability to pay, the latter factor must play a substantial role in my decision here. I therefore decided that for the period where

one parent has no income and the other is on a reduced income, it will be fair in this case to reduce the maintenance payable by the Respondent during these months by half given the genuine hardship that he was undergoing.

29 Fourth, I note that this reduction does not completely absolve the Respondent of his duty to pay maintenance as he still has to find means to cough up the remaining \$600 per month for the months that he had no income. As a balancing exercise, expecting the Respondent to pay the full arrears of \$1,200 per month for this period would be crushing on him, given his current expenses and the fact that he remains liable to pay \$1,200 per month going forward. However, I was encouraged that the Complainant was cognisant that \$16,550 was a huge sum to pay, and she herself had hoped that the arrears could be *reset to zero*²⁴. It was in this spirit that I ordered a reduction in the maintenance arrears, in the hope that the Respondent will be incentivised to be more accountable and pay off these arrears in a timely manner, and not be overwhelmed by an avalanche of debt that snowballs every month. The outstanding arrears of \$16,550 is thus reduced to \$11,150, the difference being \$5,400 (comprising \$600 per month for nine months).

30 Fifth, I did not want to make an enforcement order that the Respondent had no hope of keeping up with. In view that the ongoing monthly maintenance of \$1,200 remains payable until such time that FC/ORC XXX/2016 is varied or set aside, I ordered that the outstanding arrears amount of \$11,150 be paid in instalments of \$200 per month. This means that going forward, the Respondent needs to pay \$1,400 to the Complainant. I am satisfied that this is achievable, given the Respondent's monthly income of approximately \$2,500 to \$3,000, provided he cuts down on some of his expenses, like his car-related expenses.

²⁴ NE, Day 1, Page 15, Line 12

It does not make economic sense for the Respondent to be trapped in a loop of earning all that income only to spend most of it on the car, which is then used in turn to earn the income.

31 This brings me to my sixth point. It is clear to me that the Respondent has fallen behind in maintenance payments not for the want of trying or effort. I accept that he genuinely tries his best to make the payments, as evidenced by his good track record in 2016, 2017, 2018, and for a good part of 2019. What is apparent is that the Respondent seems to have poor money management skills, evidenced by the manner in which he seems trapped in an earnings loop. I therefore ordered the Respondent to undergo financial counselling, in the hope that this will solve the root of his financial problems, so that he can make better financial decisions going forward without prejudicing the needs and welfare of his children.

32 Finally, I address the issue of accountability by the Respondent, which I had alluded to earlier. I recognise that reducing the outstanding arrears to encourage the Respondent to make payment cannot be an end unto itself. It is merely one of the means. Ultimately, the Respondent must be held accountable for the situation he finds himself in today and show that he is prepared to fulfil his maintenance obligations. To this end, I ordered the Respondent to show payment of \$1,400 for the months of April, May, and June 2020. In default of any show payment, I ordered that the Respondent serve a default sentence of 2 days' imprisonment, in the hope that the Respondent will take his obligations seriously on pain of imprisonment.

33 Thereafter, if the Respondent breaches his maintenance payments in future (including the arrears), the full amount of arrears will become payable immediately and it will be open to the Complainant to take out further

enforcement proceedings. Whilst there are cases of persons who persistently breach maintenance orders, I find that the Respondent is not such a person today, although he is running the risk of becoming one if he does not take control of his situation. If he does become one, then I shall state categorically that the Court may avail itself to the wide array of options available under section 71 of the Women's Charter (Cap. 353), the most extreme of which is sentencing the Respondent to imprisonment for a term up to one month for each month's allowance that remains unpaid.

34 For completeness, I note that reducing the arrears payable by \$5,400 may appear generous in favour of the Respondent. However, even if I had not calculated this amount by multiplying \$600 per month (reflecting a 50% reduction) by nine months, I would have still reached the same figure, in view of my finding that the Respondent had shown cause as to why the full arrears should not be enforced against him. The reduction of \$5,400 reflects a fair and just outcome, in view of the matters I had considered in paragraphs [26] to [33] above. For

Conclusion

35 This is essentially a case where the Respondent has everything to gain by complying with my order, and a lot of lose if he does not. He should therefore cherish and make full use of the opportunities this Court has given to him, and make prompt payments towards (i) the monthly maintenance for his children and (ii) the monthly instalments of the outstanding arrears to the best of his ability.



Clement Yong
District Judge



The Complainant in Person
The Respondent in Person