IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 27

Originating Summons – New Legislation No 7 of 2022

In the matter of Section 824 of the Family Justice Rules 2014 (S 813/2014)

And

In the matter of HCF/DCA 52/2022

Between

WFT

… *Applicant*

And

WFS

… *Respondent*

GROUNDS OF DECISION

[Civil procedure – Striking out]

WFT
v
WFS

[2022] SGHCF 27

General Division of the High Court (Family Division) — Originating Summons – New Legislation No 7 of 2022
Choo Han Teck J
2 November 2022

7 November 2022

Choo Han Teck J:

1 The applicant (husband) and the respondent (wife) are in the process of divorce. Interim judgment has been given on 13 April 2022, and the parties are waiting to complete the ancillary matters. The applicant, however, decided to appeal against the interim judgment. He therefore filed a Notice of Appeal on 22 April 2022 in HCF/DCA 52/2022 ("DCA 52"). At the time, he was given provisional legal aid and was thus exempted from having to pay the $3,000 deposit as security for the costs of appeal.

2 Legal aid was finally refused on 21 June 2022, and the applicant was directed to pay the security for costs by 6 July 2022. As he did not make payment by that date, he was reminded again on 13 July 2022 to make payment by 22 July 2022 and was told that if he did not, his Notice of Appeal would be

struck out. He did not pay, and on 28 July 2022, he was notified that DCA 52 had been struck off.

3 Three days later, the applicant instructed his counsel, Ms Grace Tan ("Ms Tan"), who filed the present application in HCF/OSN 7/2022 ("OSN 7"). In OSN 7, the applicant applied for an order that DCA 52 be "reinstated and that the Applicant be granted an extension of time to furnish the Security for Costs." After hearing counsel, I dismissed the application.

4 Ms Tan argued that the relevant provision pertaining to security for costs in an appeal is s 824 of the Family Justice Rules 2014 ("Family Justice Rules"). That section provides as follows:

> **Security for costs**
>
> 824.—(1) The appellant must at the time of filing the notice of appeal provide security for the respondent's costs of the appeal in the sum of $3,000 or such sum as may be fixed from time to time by the Chief Justice.
>
> (2) The appellant must provide security referred to in paragraph (1) by —
>
> > (a) depositing the sum with the Accountant-General and obtaining a certificate in Form 166; or
> >
> > (b) procuring an undertaking in Form 167 from his solicitor and filing a certificate in Form 168.
>
> (3) The Family Division of the High Court may at any time, in any case where it thinks fit, order further security for costs to be given.

5 On the basis of s 824 of the Family Justice Rules, Ms Tan submitted that the court below had no power to strike out the applicant's notice of appeal. The order striking out the notice of appeal in this case was made in HCF/ORC 276/2022 ("ORC 276") by Assistant Registrar Adriene Cheong. ORC 276 inadvertently stated that the "the appeal HCF/DCA 52/2022 be struck

off" when what had in fact been struck off is the notice. It therefore should have stated, "the notice of appeal". An appeal is either allowed, varied, or dismissed. In this case, there was no appeal as the notice of appeal was defective. The security for costs was not provided, and therefore, it was the notice that was struck out.

6 Ms Tan is correct in that, so far as I know, there is no express provision for the court to strike out a notice of appeal, but some things are axiomatic. If a condition is prerequisite to the filing of an application or appeal, and that condition is not met, that application is null and has no effect. Striking it out from the court record is like clearing debris. There is no need to even resort to legalistic arguments on the inherent powers of the court.

7 It also transpired at the hearing that the applicant had applied for a Personal Protection Order against the respondent, but he had to withdraw it because he was an undischarged bankrupt, or had been adjudged a bankrupt — Ms Tan was not clear. Ms Tan said that she had notified the Official Assignee (the "OA") about the application in OSN 7 and that the OA "had no objections". The exact information that she provided to the OA and the OA's response is not found in the affidavit. It is important information and should not come dribbling from the mouth of counsel in the course of making arguments. In any event, this is not a matter of crucial importance in my decision.

8 I will now return to the application itself. The Notice of Appeal in this case was struck out by an order of court, in ORC 276. It is gone. The correct recourse for an applicant is to apply to have that order set aside if it had been made without hearing the merits, or to apply for leave to appeal out of time if the matter had been decided on the merits, but this is not the case here.

9 Filing an application to "reinstate the notice of appeal" is a loose and therefore, inappropriate application. It requires the court to insert the blank in the elliptical text, the blank being that the order of court below be set aside. It must be set aside before the applicant can ask to reinstate the notice of appeal. Furthermore, even if the court sets aside the order of court below, this does not necessarily allow the original notice of appeal to be reinstated. The court may order that the order below be set aside with liberty to the applicant to file a fresh appeal out of time. Ms Tan's argument on the absence of express legislative provisions work more strongly in this situation than in the way she formulated it. There is nothing in s 824 of the Family Justice Rules that allows the reinstatement of a notice of appeal. Yet, it is clear that a notice without the requisite payment of security for costs cannot proceed, whether struck out or not. Hence, the proper application is for the order of court below to be set aside, and to apply for leave to file a fresh notice of appeal out of time, upon payment of the requisite security.

10 The application as it stands should be dismissed for want of clarity alone, but that is not the sole reason for my dismissal of the application. I asked Ms Tan for the applicant's reasons for appealing against the interim judgment. Ms Tan stated that the applicant wishes to reconcile with the respondent. Mr John Tay, counsel for the respondent, stated emphatically that the respondent would "most certainly not" wish to reconcile with the applicant. I excuse counsel's evidence from the Bar, even though no evidence from either side on this point is on affidavit, because the onus is on the applicant to satisfy the court that there are good grounds for an appeal. In the absence of any such grounds, the court will not exercise its discretion to set aside an order of court.

11 There is no evidence that the applicant intended to reconcile with the respondent, and no evidence that she is amenable to reconciliation. If this was

the true reason why the applicant was appealing against the interim judgment, unless there is some evidence to indicate that the respondent may be amenable to it, an appeal on that ground is doomed to fail. And if the respondent is indeed amenable to reconciliation, there is no need to appeal. The parties may decline to make the interim judgment final.

12 In this case, the only reason seems to be that there was some miscommunication between the applicant and Ms Tan because he had not informed Ms Tan that the court had directed him to pay security for costs by 22 July 2022. He was notified that his notice of appeal had been struck out by a Registrar's Notice on 28 July 2022. It took three days after that for him to consult Ms Tan and to make this application, because he assumed that Ms Tan would have been given the same notices and would have acted on them. How Ms Tan would have acted without his instructions is not clear. Ms Tan would not have known whether he intended to pay the security.

- Sgd -
Choo Han Teck
Judge of the High Court

Grace Tan (G.T. Chambers) for the applicant;
Tay Choon Leng John (John Tay & Co) for the respondent.
