“REASONABLE PROVISION” OF MAINTENANCE UNDER THE INHERITANCE (FAMILY PROVISION) ACT

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The Inheritance (Family Provision) Act (Cap. 138, 1985 Rev. Ed.) ("IFPA") has been the subject of noteworthy litigation in recent years. In 2009, the Court of Appeal dismissed an application for maintenance for two illegitimate children, making it clear that illegitimate children are not entitled to a claim for maintenance under the IFPA. Further, the High Court reiterated in 2011 that "the purpose of the IFPA is limited to the provision of reasonable maintenance; the legislation is not for the purpose of obtaining legacies out of the testator's estate."

This update examines the recent decision of the Court of Appeal in AOS v Estate of AOT, deceased SGCA 30 ("AOS"), where the Court was asked to consider the interplay between the concept of just and equitable division of matrimonial assets under Section 112 of the Women's Charter (Cap. 353, 2009 Rev. Ed.), and "reasonable provision" of maintenance under section 3 of the IFPA.

AOS v Estate of AOT, deceased – "the unusual factual backdrop"

The appellant and the deceased ("the Testator") married in India on 12 May 1975, and they had three adult children – B, F and E. B is married to G and they have a son, H, born in 2003.

The parties did not dispute that there was "intense intra-family conflict" in the household from 2004. As a result of which, the appellant commenced divorce proceedings on 29 March 2005. The divorce eventually proceeded on an uncontested basis, and the interim judgment of divorce was granted on 26 January 2006. Before the hearing of the division of matrimonial assets and the interim judgment made final, the Testator passed away on 22 August 2006 in India. An order was made on 24 January 2007 to rescind the interim judgment, and the appellant was granted leave to withdraw her divorce petition.

Shortly before his death, the Testator executed a Will on 3 April 2006 making no provision for the appellant or his three children. Instead, the Testator's grandson, H, was named the sole beneficiary. As such, the appellant was effectively shut out from a share of the Testator's assets. If the parties had proceeded with the hearing of the division of the matrimonial assets, the appellant could well have received half of the matrimonial assets.

In the circumstance, the appellant commenced an action under section 3(1) of the IFPA to seek the reasonable provision of maintenance for herself and B. B suffered from cerebral palsy and obsessive-compulsive disorder and was receiving medical treatment in India at the time of the proceedings. After the Testator's death, the appellant continued to reside with G and H at the appellant's matrimonial home.

The main issue before the Court of Appeal was whether the court ought to take into account the impending division of matrimonial assets as a relevant factor in quantifying the reasonable provision of maintenance.

The genesis of the IFPA

The Court traced Singapore's IFPA to the Inheritance (Family Provision) Act 1938 (c45) (UK) ("1938 Act"), which was enacted as a "direct consequence of total testamentary freedom and the enduring moral obligation which was deemed by Parliament to be owed to one's dependants." The 1938 Act allowed dependants to apply to the court on the ground that the disposition of the deceased's estate (whether by will, by the law relating to intestacy, or a combination of both regimes) did not make reasonable provision for them.

The 1938 Act was adopted in Singapore in 1966 by way of Inheritance (Family Provision) Act 1966 (Act 28 of 1966) ("the 1966 Act"). The legislative intent was similar – for the limited purpose of providing reasonable maintenance for dependants if necessary.

"Reasonable provision" of maintenance under the IFPA

The Court stated that the appellant must satisfy two pre-conditions before the court can exercise its discretion to order maintenance under the IFPA:

- The applicant must be a "dependant" under section 3(1) of the IFPA;
- The testator must have failed, objectively, to have made "reasonable provision for the maintenance of that dependant".

While the appellant had no difficulty satisfying the first pre-condition, the question that arose with respect to the second pre-condition is this – what would have constituted "reasonable provision" for the appellant? The Court noted that it will only exercise its discretion to order maintenance if the testator had failed to provide reasonable maintenance for the dependant.

Here, the Court paused to note that in England, the 1938 Act underwent substantial amendments in 1975. The Inheritance (Provision for Family and Dependants) Act 1975 (c 63) (UK) ("the 1975 Act) introduced a different standard of provision for a surviving spouse (termed "the surviving spouse standard" by the Court). In England, the previous standard under the 1938 Act continues to apply for the other dependants ("the reasonable maintenance standard"). In this regard, the Court made it clear that there the Singapore's IFPA did not adopt any of the amendments, and there remains only one standard under the IFPA – ie "the reasonable maintenance standard".

What would have constituted "reasonable provision" under "the reasonable maintenance standard"?

In this determination, the Court noted that it has to take into account "any past, present or future capital or income from any source of the dependent" (as stated in the IFPA).

The Court considered several English authorities on this point, and the following principles can be distilled:

- What amounts to "reasonable" maintenance depends largely on the circumstances of the case, and the financial status of the widow and the testator. For instance, a rich man may be supposed to have made better provisions for his wife's maintenance than a poor one.
- Maintenance connotes only those payments which will directly or indirectly enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him.
- While the court is not restricted to only ordering maintenance on a sustenance basis, it is also not at liberty to make provision for anything which may be regarded as reasonable desired for the dependant's general benefit or welfare.
- The court will not exercise its discretion to alter the testator's disposition of his assets simply because the court takes the view that the said disposition is morally unjust. Instead, the court should consider whether, on the facts, there is a need to order maintenance for the applicant.

Having examined the relevant authorities, the Court came to the following conclusion:

"It is clear that the discretion accorded by Parliament under the 1938 Act, or IFPA, was not intended to place the court in the testator's shoes. Rather, the court is to look at the applicant's mode of living, the size of the testator's fortune, relations between the parties and all other considerations as listed in s 3 of the IFPA to determine if the provision, as is, is unreasonable."

Therefore, the court will exercise its discretion to order maintenance only if the provisions which the testator had made for a dependant's maintenance were unreasonable. The test, as noted by the Court, is objective and not subjective. Further, this discretion is one which should be cautiously, if not sparingly, used.

Bearing all these principles in mind, the Court of Appeal noted that the Testator had given substantial gifts to the appellant. These gifts included a number of properties purchased by the Testator and vested in the names of B and the appellant. The appellant was deriving about $12,000 in monthly income from the rental of these properties. This income was in fact in excess of her monthly expenses. Moreover, the appellant was receiving a monthly sum of $5,000 from the Testator's family in India. Therefore, the Court of Appeal affirmed the decision made by the trial judge, and held that no additional financial provision was required to be made for the appellant under the IFPA. No orders were made for B because the Court found that B could have made an application of his own.

What would have constituted "reasonable provision" under the new "surviving spouse standard"?

The Court went on to consider the "surviving spouse standard" introduced in the 1975 Act, noting that the "surviving spouse standard" takes a very much wider approach, and enables the English courts to take into

account what the surviving spouse would have been entitled to have there been a divorce instead of death.

In this regard, the Court noted that the appellant would have succeeded in her action had the "surviving spouse standard" been incorporated in Singapore's IFPA. As stated by the Court, this is because this standard "*clearly contemplates the division of matrimonial assets as a relevant factor for a surviving spouse, a surviving spouse applicant under the 1975 Act could justifiably ask for the amount which he or she could have expected to have received in ancillary proceedings in a divorce*".

However, the Court made it clear that Singapore's IFPA has not adopted the statutory amendments to the 1975 Act to introduce the "surviving spouse standard" into Singapore law. Without similar amendments, the "reasonable maintenance standard" remains the only standard under the IFPA:

"… the pertinent case law giving life to the reasonable maintenance and surviving spouse standards clearly establishes how different the ambits of their respective inquiries are. In plain terms, to subsume the latter within the former as argued by the appellant would be to misunderstand their individual contours and objectives. In the absence of our Parliament enacting the surviving spouse standard, following the 1975 Act, into law in Singapore, it does not fall within the powers of the court to judicially expand the scope of s 3(1) of the IFPA."

In the event, the Court dismissed the appellant's application for the reasonable provision of maintenance under the IFPA. The provision made by the Testator before his death was sufficient for the appellant's needs, and the Court saw little need to order further provision for the appellant.

Conclusion

The Court of Appeal in AOS acknowledged the limitations of the IFPA, noting that "*the appellant's predicament is for no reason other than the lack of statutory provision.*" In this regard, if the IFPA had adopted the "surviving spouse standard" introduced in England by the 1975 Act, the appellant could well have received a share of the deceased's estate in the form of maintenance – a sum which she could be awarded to her in a division of the matrimonial assets.

Until such time the IFPA is amended to take into account the changes effected by the 1975 Act, applicants will have to contend with the limitations of the IFPA.