ANJ *v* ANK
[2015] SGCA 34

Case Number : Civil Appeals No 102 and 103 of 2014

Decision Date : 07 July 2015

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; Tay Yong Kwang J

Counsel Name(s) : Johnson Loo Teck Lee (Drew & Napier LLC) for the appellant; Koh Tien Hua and Carrie Gill (Harry Elias Partnership LLP) for the respondent.

Parties : ANJ — ANK

Family Law – Matrimonial Assets – Division

Family Law – Maintenance – Wife

Family Law – Maintenance – Child

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2014] SGHC 189.]

7 July 2015

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 Civil Appeals No 102 and 103 of 2014 ("CA 102/2014" and CA 103/2014") were two related appeals filed by the husband ("the Husband") against the orders made by the High Court judge ("the Judge") in relation to the division of matrimonial assets and maintenance for the wife ("the Wife") and children following the grant of an interim order for divorce. The written grounds of the Judge are reported at *ANJ v ANK* [2014] SGHC 189 ("the GD").

2 CA 102/2014 was an appeal by the Husband against the Judge's grant of an interim maintenance (by way of Summons No 10876 of 2013 ("SUM 10876/2013")) on 22 April 2014 in favour of the Wife, pending the final determination of the ancillaries. CA 103/2014 is an appeal against the Judge's final orders made on 29 May 2014 following the hearing of the ancillary matters, where the Judge also made his final order on the Wife's maintenance which superseded the interim maintenance order. The Husband is content to have his appeal against the interim maintenance order (*ie*, CA 102/2014) subsumed under CA 103/2014. Thus, hereinafter, we will refer to the two appeals as one single appeal. At the conclusion of the hearing, we allowed the Husband's appeal in part, the main point being to vary the Judge's ratio for the division of matrimonial assets. We now give our reasons.

Background

3 The parties were married on 29 September 2002. The marriage lasted about 9 years before it broke down. The Husband filed for divorce on 2 February 2012 and the Wife filed a counterclaim on 19 April 2012. Interim Judgment was granted on 30 January 2013.

4 Two daughters were born to the couple. The elder, A, born on 28 July 2004, was 10 years old

at the time of the ancillaries hearing. The younger, B, born on 13 November 2006, was 8 years old at that time. Both were attending a primary school in the western part of Singapore.

5 The parties managed to resolve issues concerning custody, care, control and access amicably through mediation. A Consent Order dated 12 June 2013 gave the parties joint custody over the children, along with care and control to the Wife. The remaining issues concerning the division of matrimonial assets and maintenance were left to be decided by the court and the orders made gave rise to the appeal.

6 At the time of the hearing of the ancillary matters, the Husband was 40 years old and the Wife was 38 years old. The Husband was a Prisons Officer with the Singapore Prisons Service. The Wife was a Product Manager with Manulife Financial.

7 The parties did not controvert the pool of matrimonial assets available for division and distribution. We summarise them as follows:

Asset	Value
Matrimonial home	$1,030,434.25
Value of joint account	$8,348.01
Value of assets in Husband's sole name	$635,063.53
Value of assets in Wife's sole name	$377,982.82
Total:	**$2,051,828.61**

The decision below

Division of matrimonial assets

8 The Judge found, on the evidence before the court, that the Husband's financial contributions towards the acquisition of the matrimonial assets were 60% and the Wife's were 40%. Even though the Judge found that the Husband had "played a part" in homemaking and parenting, in his view, the Wife was the primary homemaker and caregiver of the children, of whom, B was at risk of suffering from Attention Deficit Hyperactivity Disorder ("ADHD") and/or Oppositional Defiant Disorder ("ODD"). For her indirect contributions, the Judge awarded her an additional 20% of all the matrimonial assets, and arrived at an apportionment of 60:40 in favour of the Wife.

9 In determining the mode of distributing the assets, the Judge wanted (and we thought there was some sense in that), as far as possible, each party to retain assets held in their respective names. As the assets in the Wife's sole name were less than those of the Husband's, the Judge awarded her an extra 22.79% share of the matrimonial home, on top of the 60% share she had as a result of her direct and indirect contributions, thereby giving her a total 82.79% share of the matrimonial home. He further gave the Wife an option to acquire the remaining 17.21% share belonging to the Husband (see [4.1]–[4.3] of the oral judgment annexed to the GD). The Judge intended that she retain the matrimonial home so that she and the children would have a roof over their heads.

10 Subsequently, the parties appeared before the Judge again during which counsel for the Husband registered his dissatisfaction with the mode of asset distribution adopted by the Judge,

chiefly because the adjustment in the parties' respective share of the matrimonial home, in effect, reduced his share of the matrimonial home while at the same time enlarged his share of the CPF account under his name. The Husband argued that the adjustment was to his disadvantage as the assets in his CPF account were less liquid than the additional share of the matrimonial home received by the Wife. However, the Judge was not minded to rescind his order as this point was not brought to his attention before he delivered the oral judgment; neither did the Husband request further arguments in this regard.

11 The CPF account point aside, the Judge also noted the Husband was dissatisfied with his decision not to pro-rate the quantum of the retirement funds under the Husband's sole name. Amongst other reasons expressed at [29] of the GD, the Judge was also not minded to take that into consideration because this issue was not raised before him.

Maintenance

12 Given that the Wife was gainfully employed earning a monthly salary of $6,810 and therefore fully capable of maintaining herself, the Judge found that there was no need to award her a substantial sum of maintenance. He nevertheless awarded her $1 monthly maintenance to leave the window open for the court to increase the quantum in the future should circumstances justify an increase.

13 As for the children's expenses, the Judge ordered the Husband and the Wife to bear 65% and 35% of their expenses respectively. He arrived at this proportion by comparing the Husband's monthly income of $12,700 against the Wife's monthly income of $6,810.

14 The children's expenses were ascertained to amount to $5,355 in total, comprising the following components:

(a) Living expenses: the quantum of the children's living expenses was very much disputed. The Judge found in favour of the Wife for some items, but for other items he reduced the specific quantum to more reasonable figures.

(b) Accommodation expenses: the Judge regarded two-thirds of the Wife's accommodation expenses as the children's accommodation expenses.

(c) Expenses of a full-time maid: the Judge regarded the monthly expenses of a full-time maid as a component of the children's expenses.

15 The Judge further noted that in July 2013 the Wife filed an application for interim maintenance pending the hearing of the ancillary matters, and the application was allowed on 22 April 2014 with an order for the Husband to pay $1,200 per month to the Wife starting 1 May 2014. Following the resolution of the ancillary matters, the Judge backdated the children's maintenance orders to commence on 1 July 2013.

Issues

16 The main focus in the appeal was whether the Judge erred in the division of the matrimonial assets. The remaining issues related to whether the Judge erred in the maintenance orders granted, and whether the Judge erred in ordering the Husband to bear the costs of the interim maintenance application.

Division of matrimonial assets

Applicable legal principles

17 It is now axiomatic that the court's power to divide matrimonial assets must be exercised in broad strokes, with the court determining what is just and equitable in the circumstances of each case. The philosophy underlying what is known as the "broad-brush approach" is that mutual respect must be accorded for spousal contributions, whether in the economic or homemaking spheres, as *both roles are equally fundamental* to the well-being of a marital partnership (*NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [41]). Much has been said about the importance of adhering to this rationale, and we do not propose to reprise our past comments in this regard.

18 We are however cognisant that it is not uncommon for lower courts, in exercise of their discretion under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the WC"), to start from the proportions of the spouses' financial contributions to the acquisition of matrimonial assets before adjusting those proportions by giving the spouse who had made more significant non-financial contributions an "uplift" (also known as a "mark-up" or "premium") to those proportions. This court has on past occasions disapproved of the use of the "uplift" methodology as it is *inconsistent* with the rationale of the broad-brush approach as well as the underlying spirit of s 112 of the WC. Objections to this approach were stated in *NK v NL* at [22]–[29] and *Pang Rosaline v Chan Kong Chin* [2009] 4 SLR(R) 935 ("*Pang Rosaline*") at [23] and more recently, we reiterated the same in *Tan Hwee Lee v Tan Cheng Guan and another appeal and another matter* [2012] 4 SLR 785 ("*Tan Hwee Lee*") as follows:

> 84 In our view, the Husband could arrive at such an unreasonably low figure to be awarded to the Wife – and even cite cases that appear to support his view – because his suggested approach to the division of matrimonial assets is fundamentally flawed. The Husband's approach (which has also filtered into his interpretation of the cases he cites) is one where the direct financial contributions of a spouse are first calculated, before the value of non-financial contributions is added as a form of "uplift" to the former figure. This translates into the Wife – who did not work and therefore did not provide any direct financial contribution – being awarded, as a starting point, 0% of the matrimonial assets. However, such an approach has already been categorically disapproved of by this court in *NK v NL* …, as the division of matrimonial assets in s 112 "does not simply entail a mathematical process of returning to the parties their respective direct financial contributions *plus a percentage of indirect contributions*" (at [47]) [emphasis added]. It also militates against this court's holding that "direct financial contributions are not to be considered as a *prima facie* starting point" (see … [*Pang Rosaline*] at [23]).
>
> [emphasis in original]

19 We would like to, once again, caution against using the "uplift" methodology as a means to give credit to the parties' indirect contribution. As we see it, the "uplift" methodology is not a good tool to assess and recognise the parties' indirect contributions to the marriage. The primary difficulty with this approach is the inherent risk of it undervaluing a spouse's non-financial contribution. Using direct financial contributions as the *prima facie* starting point would not achieve the objective of the 1996 amendments to the WC of equalising the non-financial contribution with financial contribution given the tendency for direct financial contributions to assume centre-stage, leaving inadequate room for indirect contributions to feature within the calculus. This objection is given prominence not only by the courts but also academics (for instance see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd ed, 2013) at p 622). Under this approach, undue emphasis is likely to be given to direct financial contributions, in which case the homemaking spouse's indirect contribution to the family would be under-compensated.

20 Interestingly, the present appeal highlighted another unsatisfactory aspect of the uplift approach but of the reverse kind. Not only does that approach carry with it the risk of undervaluing the homemaker's indirect contributions, it could also cause an *overvaluation* of the homemaker's indirect contributions. An example would best illustrate this. A decision to grant a wife, say for instance, a 5% uplift to what would have been a 50:50 ratio of direct contribution between both spouses translates into an actual uplift of 10%, as not only does the wife receive a 5% uplift, the court also *deducts* a 5% share from the husband. It defies logic why the husband should lose 5% just because the court intends to give the wife a 5% uplift. When the ratio becomes 45:55 in favour of the wife, the actual disparity is 10% and not 5%. In such an instance, the wife will be over-compensated for her indirect contribution. This was what happened in the present case. It will be recalled that on direct financial contributions the proportions between the Husband and Wife were 60:40 in favour of the Husband. The Judge gave a 20% uplift to the Wife for her indirect contributions. On this basis, the new proportions between the Husband and Wife should have been 60:60, which translates to an equal division between them. It must be borne in mind that, in that sense, the ratio for division does not necessarily have to add up to 100%. Instead the Judge gave the Wife an additional 20% and subtracted 20% from the Husband's share, resulting in a 40:60 division against him. As a result there is double crediting of the Wife's share of indirect contribution. This is the reverse form of risk which adopting the "uplift" approach could give rise to unless the "uplift" is applied in a manner to avoid double counting of the wife's indirect contribution.

21 If the courts are to refrain from using the "uplift" approach, is the broad-brush approach an unguided discretion to divide assets? While it is true that the broad-brush approach entails wide discretion to determine what is just and equitable in the circumstances of each case, this court has observed in *ATT v ATS* [2012] 2 SLR 859 that such an approach cannot be so heuristic as to become indeterminate, leaving lawyers without any meaningful guidelines with which to advise their clients (at [14]). We are of the view that a structured approach towards the division of matrimonial assets is not inconsistent with the broad discretionary powers accorded by s 112 of the WC, and in this case that was the approach we adopted. We now turn to explain the framework of this structured approach.

22 The ultimate objective of any approach towards the division of matrimonial assets is to accord due and sufficient recognition to each party's contribution towards the marriage – without overcompensating or undercompensating a spouse's indirect contributions – so that the outcome would, in the circumstances of each case, lead to a just and equitable division. Using the structured approach, the court could first ascribe a ratio that represents each party's direct contributions relative to that of the other party, having regard to the amount of financial contribution each party has made towards the acquisition or improvement of the matrimonial assets. Next, to give credit to both parties' indirect contribution throughout the marriage, instead of giving the party who has contributed more significantly than the other an "uplift" to his or her direct contribution percentage, the court should proceed to ascribe a second ratio to represent each party's indirect contribution to the well-being of the family relative to that of the other. Using each party's respective direct and indirect percentage contributions, the court then derives each party's average percentage contribution to the family which would form the basis to divide the matrimonial assets. Further adjustments (to take into account, *inter alia*, the other factors enumerated in s 112(2) of the WC) may need to be made to the parties' average percentage contributions – a point which we will return to shortly.

23 One may feel that this somewhat structured approach deviates from the broad-brush approach well-endorsed by our courts and represents a step towards an arithmetical exercise that has been consistently eschewed by this court. It really does not. Even in respect of direct financial contributions of the parties, not infrequently, the situation is less than clear. In a case where the documentary evidence falls short of establishing exactly who made what contribution and/or the

exact amount of monetary contribution made by each party, the court must make a "rough and ready approximation" of the figures (see *NK v NL* at [28], citing *Hoong Khai Soon v Cheng Kwee Eng* [1993] 1 SLR(R) 823 at [17] with approval). At the end of the day, the court would have to approach the issue by exercising sound judgment, having regard to the inherent veracity of each party's version of events reflected in their affidavits or testimony as well as the documentary evidence. This is where "broad brush" comes in.

24 In relation to indirect contributions, the problem with ascertaining the extent of the parties' contributions with precision is further compounded. In the nature of things, for the court to ascribe a ratio in respect of the non-financial or indirect financial contributions of the parties, the court is clearly not indulging in any mathematical calculation because often there is very little concrete evidence to be relied upon. Contributions in the form of parenting, homemaking and husbandry, by their very nature, are incapable of being reduced into monetary terms. No mathematical formula or analytical tool is capable of capturing or accommodating the diverse and myriad set of factual scenarios that may present themselves to court as to how the parties may have chosen to divide among themselves duties and responsibilities in the domestic sphere. It is in making this determination that what is known as the broad brush approach would have to come into play. What values to give to the indirect contributions of the parties is necessarily a matter of impression and judgment of the court. In most homes, even in a home where both the spouses are working full time, in the absence of concrete evidence it is more likely than not that ordinarily the wife will be the party who renders greater indirect contributions. That said, even in a home where the wife is a full-time homemaker, it would be an exceptional home where the husband renders no indirect contribution at all. What values to attribute to each spouse in relation to indirect contributions would be a matter of assessment for the court and in that regard broad strokes would have to be the order of the day. In seeking to arrive at a ratio that represents both parties' comparative indirect contribution towards the family, the court must, in the final analysis, exercise sound discretion along with a keen emphasis on all the relevant facts of each case.

25 We would reiterate that while we seek to bring in some system into the question of determining how the matrimonial assets of a marriage are to be divided, we do not pretend to be scientific. The broad brush is in no way replaced as we recognise all too clearly that in any marriage many things are done unrecorded – out of love, concern and responsibility – and not with the view to building up a case in the event the marriage fails. It would be a sad day for the institution of marriage if parties were to enter into a marriage with a mental outlook of tracking their contributions towards the marriage.

26 This court has observed in *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260 at [14], that "[a]s for the non-financial contributions, they also play an important role, and depending on the circumstances of the case, they can be just as important." We made similar remarks in *NK v NL*, that spousal contributions, regardless of whether it rests in the economic or homemaking spheres, are equally fundamental to the well-being of a marital partnership (at [41]). The strength in the above approach lies in the fact that it paves the way for the court to put financial and non-financial contributions on an *equal footing*, as opposed to the traditional "uplift" approach that places direct financial contribution as the foremost consideration. We would underscore that s 112 of the WC does not give pre-eminence to any of the factors enumerated in s 112(2). We should, however, also point out that, for the very same reason, the approach proceeds on the basis that the collective indirect contribution made by both parties carries *equal weight* as the collective direct financial contribution made by both parties. This may well be the case in many instances, but there will also be instances where one component necessarily assumes greater importance than the other on the facts and correspondingly greater weight should be attached to that component as against the other. In cases that fall within the latter category, the court should tweak or calibrate the "average ratio" in favour

of one party to reflect what would be a just and equitable result in the circumstances of each case. To do so, the court must engage in a *non-mathematical* balancing exercise to determine the appropriate weight that should be accorded to the parties' collective indirect contribution as against their collective direct contribution. We stress that the balancing exercise should be non-mathematical in nature, and should instead be based on the court's sense of what is fair and just. This is fact-sensitive inquiry where context is paramount. Put simply, the "average ratio" is a non-binding figure; it is meant to serve as an indicative guide to assist courts in deciding what would be a just and equitable apportionment having regard to the factual nuances of each case.

27 The circumstances that could shift the "average ratio" in favour of one party are diverse, and in our judgment, there are at least three (non-exhaustive) broad categories of factors that should be considered in attributing the appropriate weight to the parties' collective direct contributions as against their indirect contributions:

(a) The length of the marriage. Indirect contributions in general tend to feature more prominently in long marriages (*Tan Hwee Lee* at [85]). Conversely, indirect contributions usually play a *de minimis* role in short, childless marriages (*Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 at [28]).

(b) The size of the matrimonial assets and its constituents. If the pool of assets available for division is extraordinarily large and all of that was accrued by one party's exceptional efforts, direct contributions are likely to command greater weight as against indirect contributions (see *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 ("*Yeo Chong Lin*")).

(c) The extent and nature of indirect contributions made. Not all indirect contributions carry equal weight. For instance, the engagement of a domestic helper naturally reduces the burden of homemaking and caregiving responsibilities undertaken by the parties, and to that extent, the weight accorded to the parties' collective indirect contributions in the homemaking and caregiving aspects may have to be correspondingly reduced. The courts also tend to give weighty consideration to homemakers who have painstakingly raised children to adulthood, especially where such efforts have entailed significant career sacrifices on their part.

28 The above principles are germane to the general run of matrimonial cases where the parties' direct and indirect contributions are the only two factors engaged under s 112 (*ie*, s 112(2)(*a*) and (*d*)) when the court's powers to divide matrimonial assets are called upon. We are mindful that there remains a number of other factors under s 112, including the needs of the children; the presence of an agreement between the parties with respect to the ownership and division of matrimonial assets; period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party; and the matters referred to in s 114(1) relating to a maintenance order for the wife. Insofar as the remaining factors become relevant for consideration in the appropriate case, the court is well-advised to make adjustments as it deems necessary to the principles stated in this judgment for the purposes of reaching a just and equitable result on the facts before it.

29 Finally, for the avoidance of doubt, we should add that nothing we have said thus far detracts from the court's powers to draw adverse inference against either party whenever he or she is found to have failed to make full and frank disclosure of the matrimonial assets. It is trite that the party whom the court has found to have hidden away certain matrimonial assets would receive a lower proportion of the known assets (if the court has not already added a specific sum into the pool of matrimonial assets available for distribution to account for the undisclosed assets) (*Yeo Chong Lin* at [66]).

30 In our view, the approach which we have advanced herein would enable us to better strike a proper balance between the search for a principled test and the need to remain sensitive to the factual nuances of each case. We are nevertheless mindful that, by the very nature of matrimonial disputes, each case presents a unique set of facts and we do not propose to say that these principles are necessarily exhaustive, nor do we expect them to be hard and fast rules that must immutably be applied even to cases of exceptional facts. The controlling principle has always been and remains that the court must approach the exercise with broad strokes based on its feel of what is just and equitable on the facts of the case. On this note, we turn to examine the facts of the present appeal.

The present appeal

Parties' indirect contribution

31 The parties did not dispute that the Husband's direct contribution was 60% and the Wife's direct contribution was 40%. The Husband's appeal was targeted at the Judge's decision to give the Wife an additional 20% uplift for her indirect contributions, arriving at a final division of 60:40 in favour of the Wife. In this regard, he proffered three reasons why the 20% premium was excessive:

(a) First, the Wife was not the primary caregiver. Instead, the parties' parents took care of the children.

(b) Secondly, there was no nexus between B's medical condition and the uplift to be accorded to the Wife.

(c) Thirdly, even if the Wife was the primary caregiver, the Judge did not accord sufficient weight to the Husband's indirect contribution.

32 The Wife argued that her indirect contributions greatly outstripped those of the Husband's and taking into account the fact of B's mental condition, the Judge's order was not manifestly excessive.

33 As between the Husband and the Wife, even though we found that they could have had some assistance from the children's grandparents, we were satisfied that the Wife was the primary caregiver of the children. The Husband's assertion to the contrary appeared to us to have been an afterthought as the portion of his affidavit he referred to did not bear out this point. His affidavit merely stated that the Wife had not been willing to pick the children up from the homes of the parties' mothers whenever they looked after the children; this fell short of the argument the Husband was persuading us to accept.

34 We were of the view that B having been assessed to be at risk of suffering from ADHD and/or ODD would have made her a more difficult child to bring up, and to that extent, it was perhaps not entirely fair for the Husband to assert that no credit should be given to the primary caregiver of B. In this regard, the psycho-educational assessment report tendered by the Wife showed that B exhibited "restless and fidgety" behaviour when presented with progressively challenging tasks during an assessment conducted to gauge her intelligence. The assessment also uncovered traces of "oppositional behaviour" where she displayed a tendency to disobey instructions at times. After reviewing the affidavits on both sides, we were of the view that while both parties held full-time jobs, given that the parties had chosen not to hire a full-time domestic helper until December 2012, the Wife was probably the primary caregiver of the children and the primary homemaker. Due credit must be given to her indirect contributions in the domestic sphere.

35 We did not disagree with the Judge that the Wife be given 20% "uplift" for her indirect contributions as the extent of her contributions exceeded the Husband's. However, we did not think that the Judge was saying that the Husband made no indirect contributions at all. Indeed, the Wife did not dispute that part of the housekeeping and homemaking responsibilities fell upon the Husband. Given that the Wife was also in full-time employment, we thought it quite likely that she would have enlisted the Husband's assistance with the household affairs. In this regard, she did not dispute that the Husband was the handyman of the house, carrying out maintenance, repairs and improvements to household appliances, sewage and draining systems. The Wife also accepted that the Husband had helped out with preparing food and the dishwashing whenever the family prepared meals at home. The Husband also played a role in taking care of the children, driving them to their weekend enrichment classes. Insofar as indirect financial contributions are concerned, he paid for the home broadband fees, utility bills as well as the children's enrichment classes fees. The error of the Judge was in "double crediting" the Wife for her indirect contributions (see the discussion above at [20]).

36 Having regard to the Husband's indirect financial and non-financial contributions, we were of the view that the ratio of the Husband's indirect contributions as against those of the Wife's should be 40:60. In other words, we found that the Wife's indirect contributions exceeded those of the Husband's by 20%. Applying the approach set out earlier, the parties' average percentage contributions as derived from the parties' direct and indirect contributions represented in tabular form would be as follows:

	Husband	**Wife**
Direct contributions	60%	40%
Indirect contributions (both financial and non-financial)	40%	60%
Average percentage contributions	**50%**	**50%**

37 We were not minded to adjust the parties' respective average percentage contributions as the facts before us presented no compelling reason to do so. In our view, the just and equitable outcome in the circumstances was an equal division of the matrimonial assets.

Whether the Judge's valuation of the Husband's retirement fund is correct

38 The second issue on which we disturbed the determination of the Judge concerned the Husband's INVEST Retirement Account ("Retirement Fund"). The Judge held that as at the date of division of matrimonial assets the value of the Husband's entitlement from the Retirement Fund was to be $85,728.51, and he adopted that sum as a matrimonial asset. The Husband argued that the Judge had overvalued his entitlement. It was true that as at October 2013, the Retirement Fund showed a sum of $85,728.51 in the Husband's favour. However, this figure was only the notional rather than the actual sum which he was entitled to draw out at that point because the Husband was only entitled to withdraw the full sum if he retired at the retirement age of 55 years old. Then, at age 40, he obviously would not have met the criteria for withdrawal of the full $85,728.51. If he were to resign immediately from Prisons Service, the scheme provided that he was eligible for only 45% of $85,728.51, *ie*, the sum of $38,577.83, as can be seen from an excerpt of the following schedule pertaining to the Retirement Fund tendered by the Husband:

Age	Vesting (%)
38	35
39	40
40	45
41	50
42	55
43	60
44	65
45	70
…	
53	96
54	98
55	100

39 At the hearing of this appeal, and in relation to the Retirement Fund, counsel for the Wife, Mr Koh Tien Hua ("Mr Koh") drew an analogy to *Chan Teck Hock David v Leong Mei Chuan* [2002] 1 SLR(R) 76 ("*David Chan*") where the Court of Appeal considered the issue of whether unvested stock options came within the meaning of a "matrimonial asset" under s 112 of the WC. In that case, the husband's employer granted him certain stock options which had yet to vest in him as at the date of the *decree nisi* and was supposed to vest in him on some future dates (contingent upon the husband's continued employment). Notwithstanding the fact that the stock options had yet to vest in the husband, the Court of Appeal held that the amount of the stock options that had already been earned by the husband as at the date of the *decree nisi* fell within the pool of assets available for distribution. In mathematical terms, it treated only the portion of the stock options as matrimonial assets as was obtained by multiplying the stock options in question by a fraction the numerator of which was the amount of time between the commencement of the husband's employment and the date of *decree nisi*, and the denominator of which was the amount of time between the commencement of his employment and the date when the stock option was exercisable by him (*David Chan* at [37]). Relying on this proposition in *David Chan*, Mr Koh argued that a portion of the *unvested* retirement fund (*ie*, a portion of the 55% balance of $85,728.51) should also fall within the pool of matrimonial assets.

40 With respect, we could not agree with Mr Koh's proposed application of the proposition stated in *David Chan*. The court in *David Chan* found that it was just and equitable to prorate the category of unvested stock options because a portion of it, whilst unvested in the husband, had already been *earned* by virtue of his employment at the time the *decree nisi* was granted. This is eminently distinguishable from the facts of the present appeal as the portion of the Retirement Fund that had been earned by the Husband by virtue of his past employment was restricted to 45% (*ie*, 45% of $85,728.51); the remaining portion of the Retirement Fund had yet to *be earned by him*. For this reason, we held that the *unearned* remaining 55% balance of $85,728.51 should not fall within the pool of matrimonial assets.

Maintenance for the Wife and children

41 The Husband raised three points to argue against the maintenance orders made by the Judge. First, he disputed the Judge's quantification of the children's expenses. Secondly, he argued that the apportionment of the children's expenses between the Husband and the Wife should be in the proportion of 60:40 instead of 65:35. Thirdly, he was dissatisfied with the Judge's award of $1 nominal monthly maintenance to the Wife; his position was that the Wife was not deserving of any maintenance at all.

42 We were not satisfied that the Judge's quantification of the children's expenses warranted appellate intervention. 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 committed an error of law or principle, or has failed to appreciate certain material facts. The appellate court will also be slow to make minor adjustments for idiosyncratic reasons (see *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [46]). All the items of expenditure that the Husband took issue with such as transport expenses, pocket money, swimming and entertainment expenses had been adequately dealt with by the Judge and we broadly agreed with the figures arrived at by the Judge, having regard to the standard of living the children enjoyed prior to the breakdown of the marriage. In the circumstances, we were not minded to make adjustments to the Judge's quantification of the children's expenses.

43 Turning to the second point – that the Husband and the Wife should bear the children's expenses in the proportion of 60:40 instead of 65:35 – the Husband's contention was that the proportion did not correspond with the earnings of the parties. The Husband said that his monthly income as of 2013 was $12,078, which is derived from the Husband's annual income of $144,942.00 stated in the 2013 Notice of Assessment issued by the Inland Revenue Authority of Singapore ("IRAS"); the Wife's monthly income derived from her 2013 Notice of Assessment issued by IRAS was $7,518. Comparing the Husband's monthly income to the Wife's monthly income gave us a ratio of 62:38, which we accepted was not quite the same as the 65:35 apportionment ordered by the Judge. However, we did not think the 3% margin of discrepancy was sufficient to warrant appellate intervention. Neither did we agree with the Husband's proposal of rounding down the apportionment to 60:40, having regard to the fact that the ratios of the parties' income in 2011 and 2012 were always in the region of 65:35.

44 As regards the nominal maintenance sum for the Wife, given the Wife's pre-existing medical condition of a slipped disc, we found it appropriate to preserve her right to obtain financial support from the Husband in the future should anything untoward happen to the Wife on the account of that medical condition.

The Husband's appeal against the interim maintenance order and for costs of the interim maintenance order to be made against the Wife

45 The Husband argued that the Wife's application for interim maintenance by way of SUM 10876/2013 was an abuse of process and asked for an adverse costs order against the Wife. We disagreed. We were of the view that the interim maintenance application was reasonably filed as the Husband had unilaterally reduced his financial contributions to the family expenses from July 2013 onwards.

46 The principle of "costs in the cause" applied to the interim maintenance application. Given our decision to dismiss the Husband's appeal in respect of SUM 10876/2013, we accordingly agreed with the Judge's award of costs to the Wife.

Whether the Judge erred in giving the Wife a further uplift in the matrimonial home

47 Before concluding we need to allude to the order of the Judge where he treated a portion of the Wife's entitlement from the pool of matrimonial assets (the equivalent of 22.79% of the value of the matrimonial home) to be due to her in the form of an increased share in the matrimonial home. As the Judge had held that under his 60:40 division (in favour of the Wife) the Wife would have been entitled to 60% of the matrimonial home; he enhanced her entitlement to the matrimonial home by giving her a further 22.79% share in it whilst increasing the Husband's share of the other assets so that the Husband's overall entitlement to the matrimonial assets would remain at 40%. This meant that the Wife would have 82.79% of the matrimonial home and she needed only to obtain funds amounting to 17.21% of the value of the matrimonial home in order to buy out the Husband's share in it. The Wife was also specifically given the option by the Judge to buy out what remained of the Husband's share in the matrimonial home. We understood the rationale behind what the Judge did, which was to help her keep the matrimonial home for the benefit of the children. The Husband contended that the adjustment was inequitable because it reduced his share of the matrimonial home while his share of the CPF account under his name was enlarged. This would not be an issue if monies in the CPF account were liquid, but the Husband said that the fact was that these monies were by and large locked up until his retirement at 55.

48 We agreed with the Judge's decision to give the Wife the option to buy out the Husband's share in the matrimonial home. Neither did we disturb the adjustment made by the Judge giving the Wife 22.79% more in the matrimonial home. The children's needs, as provided for under s 112(2)(*c*) of the WC, are one of the factors the court takes into consideration in exercising its powers to divide and distribute the matrimonial assets. In this regard, it is not uncommon for courts to order one party to transfer his or her share of the matrimonial home with fair consideration to the other party who has care and control of the children, instead of ordering parties to sell the property in open market. Indeed, we found the following holding in *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 1 SLR(R) 336 apposite for present purposes:

> ***Needs of the children***
>
> 38 In this case, the needs of the children are also an important consideration, and such needs must include not only their present but their future needs. The children are still very young, aged ten and eight only. Although the wife and the children are living with the wife's parents, they will eventually need a home of their own, a roof over their heads. We therefore should consider retaining the house, 2 Brighthill Crescent. Its location is ideal. Not only is it an independent house for the wife and the children to live in but also it has the benefit of adjoining the house of the wife's parents. The children will continue to require the support and care of their grandparents, while their mother has to go out to work to support herself.
>
> ***Division***
>
> 39 We think that an equal division of the property, apart from it being unfair and inequitable to the wife, would not cater for the needs of the children. We are firmly of the view that the house should not be sold but should be transferred to the wife so that she and the children would have a roof over their heads, and that in consideration of such transfer the wife should (a) pay to the husband a lump sum, and (b) take over the entire liability to OCBCF.

49 Given the close proximity of the matrimonial home to the school, tuition classes and music classes attended by the children, the Wife – who has care and control of the children – should be

given the option to retain the matrimonial home in the best interests of the children. We also did not agree with the Husband that the assets which he retained, being CPF moneys, are completely illiquid. The Husband would need a roof over his head and his CPF monies could be used to purchase a property for his own use.

50 However, as we have varied the ratio for the division of matrimonial assets to 50:50, the Wife would now need to obtain funds to the tune of 27.21% of the matrimonial home to pay off the Husband if she wishes to retain the property.

Conclusion

51 For the reasons set out above, we allowed the appeal against the division of matrimonial assets but dismissed the appeal against the maintenance orders made. We therefore made the following orders:

(a) In respect of the Retirement Fund, the sum to be adopted for the purposes of calculating the pool of matrimonial assets shall be reduced to $38,577.83.

(b) The ratio for the division of matrimonial assets is readjusted to 50:50.

(c) Each party is to bear its own costs for the appeal.