IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 3

District Court Appeal No 89 of 2016

Between

TRS

… *Appellant*

And

TRT

… *Respondent*

JUDGMENT

[Family law] — [Custody] — [Access]

[Family law] — [Maintenance] — [Child]

[Family law] — [Matrimonial assets] — [Matrimonial home]

Version No 1: 28 Oct 2020 (02:01 hrs)

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TRS
v
TRT

[2017] SGHCF 3

High Court — District Court Appeal No 89 of 2016
Choo Han Teck J
23 January 2017; 6 February 2017

27 February 2017 Judgment reserved.

Choo Han Teck J:

1 The Husband ('TRS') appeals against the orders relating to access, maintenance and division of matrimonial assets made by the learned District Judge in *TRS v TRT* [2016] SGFC 108 on 28 June 2016. Aged 44, the Husband works as a lecturer in a private educational institute in Singapore. The Wife, aged 43, works as a portfolio marketing manager in India.

2 The parties solemnised their marriage in India on 10 March 2002 and registered their marriage in Malaysia on 26 March 2002. They have a son ("the Child") aged 12, born on 4 July 2004. In March 2007, the Wife and the Child moved out of the matrimonial home and returned to India, where they have been residing since. The Husband filed a Writ of Divorce on 19 March 2015, relying on the fact that the parties had lived apart for a continuous period of at least 4 years. Interim Judgment was granted on 30 June 2015.

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3 The hearing on ancillary matters came before the District Judge on 17 May and 28 June 2016. I set out the District Judge's specific orders that the Husband now appeals:

(a) Telephone access: The Husband to have telephone access twice a week at 10pm Singapore time (7.30pm India time) on fixed days to be agreed by parties. Both parties shall inform each other 1 day in advance if there is any change in timing. The Husband shall contact the Child through his grandfather's telephone number xxx.

(b) Vacations: The Husband shall be at liberty to bring the child on holiday in India or in Singapore once a year during the child's school holidays, for trips no longer than two weeks in total. The Husband shall bear all the expenses of such holidays. The Husband shall notify the Wife at least two months in advance of his intention to do so, and shall provide the itinerary of the travel plans which shall include the dates of departure and return, the flight or other transportation details, contact details for the duration of the holiday, accommodation details and accompanying persons.

(i) the dates of departure and return;

(ii) the flight or other transportation details;

(iii) contact details for the duration of the holiday;

(iv) accommodation details; and

(v) accompanying persons

(c) Maintenance for the child: The Husband shall pay the Wife $580 per month as maintenance for the child (including school fees

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and related school expenses) with effect from 30 June 2016 and thereafter on the last day of the month. Payment shall be deposited into the Wife's designated bank account.

(d) Division of the matrimonial home: The Wife's rights, title and interest in the matrimonial flat at xxx shall be transferred (otherwise than by way of sale) to the Husband upon the Husband paying the Wife a sum equivalent to 45% of the nett market value of the flat. Nett market value shall be the open market value of the flat less the outstanding mortgage loan. The transfer shall take place within three months of the date of this order. The Husband shall take over the outstanding mortgage loan. The Husband shall, within one month of this order, give the Wife notice as to whether he will be exercising this option. In the event the transfer does not take place within the period above, or the Husband gives notice that he does not wish to exercise the option, the matrimonial flat shall be sold in the open market within 6 months thereafter. The proceeds of sale shall be utilised to pay the outstanding mortgage loan and the costs and expenses of sale. The balance thereafter shall be divided in the proportion 55% to the Husband and 45% to the Wife. The Husband shall refund his CPF account all monies utilised for the purchase, including accrued interest, from his own share. The Husband shall have sole conduct of the sale.

Access orders

4 In relation to the order on telephone access, the Husband claims that telephone access twice a week through the Child's grandfather's telephone number is too restrictive. This is especially so given that the Child resides in India, making frequent physical access impractical. Specifically, he appeals

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the frequency and manner of access granted by the District Judge. First, he seeks reasonable non-physical access to the Child in a manner that can be arranged between him and the Child. Alternatively, if the court is minded to fix the terms of telephone access, he seeks an order that the frequency of such telephone access be increased to five times a week. Second, he contends that such access should not be through the Child's grandfather's telephone number, but instead through the Child's mobile phone (if the Child has one) or through the iPad that the Husband has bought the Child.

5 In relation to the Child's vacations, the Husband contends that he should be allowed to visit the Child in India or have the Child visit him in Singapore for a duration of six weeks (four weeks during the May/June period and two weeks in the December/January period), with notice being given one month in advance. This would amount to half the duration of the Child's school vacation. The Husband submits that this is reasonable as he would not be able to physically spend time with the Child beyond this, given their separate locations.

6 In response to the Husband's arguments, the Wife contends that the Husband has been absent from the Child's life for a few years. To require the Child to now speak to his father five times a week would be uncomfortable for the Child. Further, the Child has a busy schedule and this amount of telephone access would compromise on the Child's time for revision and/or sleep. Similarly, school activities occur during school vacations and six weeks of vacation time with the Husband would not only unduly interfere with such activities, but would again be excessive in light of the strained and distant relationship that the Husband and Child currently share.

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7 I am not persuaded that I ought to vary the District Judge's orders. It is clear that the welfare of the child is the paramount consideration here. The parties do not dispute that the Husband has not seen, or been in contact with, the Child for at least four years since 2012, and that the Husband and the Child have been residing in different countries since 2007. While I may accept that the Husband did not wish for the Child to move to India, it would be unreasonable for him to expect such a liberal level of access given the lack of contact between him and the Child. Their relationship needs to be rebuilt slowly and incrementally. Further, the Wife also acknowledges that the Child is also entering adolescence and would be able to start making his own decisions as to how often he wishes to speak to or meet with his father in the coming years. Thus, at present, telephone access twice a week and two weeks of vacation time a year would be an appropriate starting point.

Maintenance for the child

8 The District Judge ordered the Husband to pay S$580 per month for the maintenance of the Child. She accepted the Wife's evidence that the Child's expenses amounted to S$791.55 per month. As the Husband earned approximately 75% of their combined incomes, the District Judge ordered the Husband to pay S$580 monthly for the maintenance of the Child.

9 In his appeal, the Husband claims first that the Child's total monthly expenses are inflated, and second that the Wife's income is in actuality more than what she had declared. First, he claims that the child's average monthly expenses in India are in the region of S$500 to S$600 at most. However, he has led no evidence to prove this. I see no reason to disagree with the District Judge's orders as to the Child's expenses. The Wife has been responsible for

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the Child's daily and educational necessities since their move to India, and the expenses detailed in her first Affidavit of Assets and Means appear to be reasonable, especially given that the Child is enrolled in an international school.

10 Second, the Husband contends that the Wife earns more than the amount she has declared. The Wife produced her most recent income tax statement. This statement includes performance awards and other components of her annual income that were not evident from the payslips she had previously relied on. Despite this, I am not minded to disturb the District Judge's decision. Taking into account various deductions that have to be made so as to properly reflect her monthly take-home salary, the actual difference in the maintenance to be paid by the Husband is not so substantial as to warrant intervention.

Division of matrimonial assets

11 The District Judge awarded a ratio of 55:45 in favour of the Husband for the division of the matrimonial home. This was based upon the following ratios obtained by applying the principles in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK"*):

	Husband	**Wife**
Ratio of direct contributions	100%	0%
Ratio of indirect contributions	30%	70%
Average percentage contributions (on equal weightage basis)	**65%**	**35%**

12 The District Judge then adjusted the ratio to 55:45 in the Husband's

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favour, in view of the fact that the Husband has had exclusive occupation of the matrimonial home since 2007 and the Wife has paid for the Child's expenses since then with hardly any contribution from the Husband.

13 The Husband does not challenge the ratio of direct contributions and indirect contributions, but the weight given to each ratio. Specifically, he submits that the ratio of direct contributions should be weighted at 70%, while the ratio of indirect contributions should be weighted at 30%. I found that his arguments were without merit.

14 First, the Husband claims that this was a short marriage as the parties' marriage had effectively broken down after five years in 2007 when the Wife left for India. Further, while the Wife has taken care of the Child since, she effectively deprived the Husband of an opportunity to contribute to the Child's care by moving to India and denying him information regarding the Child's education and life. Thus, less weight should be given to her indirect contributions. I do not accept the Husband's arguments. Even though the Wife had moved to India in 2007, from 2007 to 2012, the Husband and Wife kept in contact. The Husband also states that he visited India on a quarterly basis and contributed to the Child's milk and diapers. This discredits both his claim that the marriage had effectively ended by 2007 and also that he had no opportunity to contribute to the Child's life. Further, it is undisputed that he has not contacted the Child in the past few years, even though it is not alleged that the Wife has been intentionally keeping the Child out of contact.

15 Second, the Husband argues that he did not have rent-free occupation of the matrimonial home as set out in s 112(2)(*f*) of the Women's Charter (Cap 353, 2009 Rev Ed) as his occupation was not "to the exclusion of the

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other party", *ie* the Wife. He maintains that he had never chased her away from or refused her entry to the flat. Thus, this cannot be considered as a factor in the division of matrimonial assets. However, rent-free occupation, in its plain and ordinary meaning, means that one party occupies it to the exclusion of any benefit to the other. Importantly, such exclusion does not have to be forced. The only question is whether or not the Husband did *in fact* occupy the matrimonial home exclusively from 2007 to the present, and the answer appears to be yes. The Husband also does not dispute that he had rented out the matrimonial home for a few months. If the Wife had been returning to the matrimonial home as often as he alleges, and had been welcome to do so, the Husband would not have rented out the home. He would have at the very least sought the Wife's consent before doing so. The District Judge hence rightly took this factor into consideration.

16 Third, the Husband claims that the fact that he had not paid maintenance for the Child since 2007 is not one of the considerations to be taken into account under s 112 of the Women's Charter. It is however express from s 112(2)(*d*) that the "extent of contributions made by each party to the welfare of the family, including… caring for the family" can be considered. This thus includes the lack of contribution by the Husband. Further, the Wife correctly points out that the factors under s 112(2) are not exhaustive: *NK v NL* [2007] 3 SLR(R) 743 at [20], and it was open to the District Judge to consider what was just and equitable in all the circumstances in the case.

17 Fourth, the Husband claims that even if the District Judge had wanted to account for the Husband's rent-free occupation and lack of maintenance provided to the Child, this should have been done by adjusting the ratio of indirect contributions, as opposed to simply adjusting the final ratio to 55:45

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in favour of the Husband. He submits that such an adjustment is akin to the "uplift" methodology that had been cautioned against by the Court of Appeal in *ANJ v ANK* at [19]. Adjusting the Wife's contributions upwards by 10% effectively results in a 20% disparity between the two parties, giving the Wife double credit. Adjusting the final ratio instead of the ratio of indirect contributions also overvalues the Wife's contributions.

18 I do not think that there was any error by the District Judge in making an adjustment to the final ratio in order to take the Husband's rent-free occupation into account. Rent-free occupation of the matrimonial home by one party does not fit into the dichotomy of direct and indirect contributions. The Court of Appeal in *ANJ v ANK* at [28] held that further adjustments for such factors may be required for a just and equitable result:

> 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… period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party… 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.

19 However, the lack of maintenance for the Child is better understood in the context of indirect contributions. As mentioned earlier, the Wife's responsibility for the costs of caring for the Child, and the Husband's corresponding lack thereof, fall within s 112(2)(*d*) of the Women's Charter, recognised in *ANJ v ANK* as concerning indirect contributions. Despite this, I find that the District Judge's final ratio of 55:45 in the Husband's favour is a

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fair reflection of the parties' contributions over the course of their marriage. The Wife has been almost entirely responsible for the daily necessities of the Child for close to a decade. Given that both parties were living separately, this would have been the most financially demanding part of the marriage. Thus, I do not think the Wife's contributions had been overvalued. The decision below should be left undisturbed.

20 For the reasons given above, I dismiss the appeal.

- Sgd -
Choo Han Teck
Judge

Kanthosamy Rajendran and Subash s/o Rengasamy (Relianze Law Corporation) for the appellant;
Michelle Ng and Sharanjit Kaur (KhattarWong LLP) for the respondent.

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