IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 75

Civil Appeal No 212 of 2019

Between

VDZ

… *Appellant*

And

VEA

… *Respondent*

In the matter of HCF/Divorce (Transferred) No 1677 of 2016

Between

VDZ

… *Plaintiff*

And

VEA

… *Defendant*

GROUNDS OF DECISION

[Contempt of Court] — [Sentencing] — [Principles]
[Family Law] — [Parental responsibility]

TABLE OF CONTENTS

VDZ
v
VEA

[2020] SGCA 75

Court of Appeal — Civil Appeal No 212 of 2019
Andrew Phang Boon Leong JA, Chao Hick Tin SJ and Woo Bih Li J
2 July, 29 July 2020

4 August 2020

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal against the decision of the High Court judge ("the Judge") in *VDZ v VEA* [2020] SGHCF 2 ("the GD") sentencing the appellant wife ("the appellant") on 23 October 2019 to one week's imprisonment for contempt of court. We delivered our decision on liability on 2 July 2020 and deferred our final decision on sentence pending receipt of the requisite medical report. On 29 July 2020, we ordered that the appellant pay a fine of $5,000. These are the detailed grounds for our decision.

2 The backdrop to this appeal was an extremely ugly one in which the Judge found (and correctly, in our view) that the appellant had waged an all-out war against her former husband (the respondent in this appeal) ("the husband") – all this despite being diagnosed with breast cancer approximately half a year

after she had commenced divorce proceedings. This included employing a scorched-earth policy that involved utilising the two children of the marriage as pawns in attacking their father. Affidavits were drafted in their names and allegations in them (already proven to have been unfounded) were posted by the daughter on her social media accounts (which were made public, with various news outlets publishing reports on them). Most alarmingly, what was originally a loving relationship between father and children (see the GD at [9]) was irreparably damaged by the appellant poisoning the children's minds in such a manner that even a temporary removal to a Children's Home proved futile when there were difficulties with implementing the District Judge's decision to award interim care and control of the children to the husband. The children repeatedly returned to the appellant's home and have remained there since, with "[a]ttempts to get the children to return to [the Children's Home]" being "met with extreme resistance and [had] also disrupted the children's school routines" (see the GD at [19]). Throughout all this, a third party, R, became part of the life of the family and, as the Judge observed, "was a key figure in the proceedings" (see the GD at [5] and [16]). R moved into the family home with the appellant and the children for the purpose of assisting the appellant with her medical treatment for breast cancer, and also ended up aiding the appellant in influencing the children. As the Judge aptly described it, "[t]he divorce proceedings have been highly traumatic for the children" and "the Wife had relentlessly polarised them against the Husband to such an extent that any repair of their relationship with their father was not practically feasible" (see the GD at [23]). She also observed thus (see the GD at [24]−[27]):

> 24 Having considered the evidence available before me, including the reports by the counsellors, I found that the Wife had undermined the children's emotional and psychological wellbeing, and damaged their relationship with the Husband through her acts of influencing them towards a highly negative view of the Husband (and that is an understatement). She did

so by, amongst other things, informing them of the material in court proceedings and involving them in their parents' conflict in inappropriate ways, burdening them emotionally with various issues including her own health issues and in general failing entirely to cooperate with the Husband to enable the children to maintain the healthy relationship that they previously enjoyed with their father. Further, she had actively allowed R to manipulate the children against their father. If the Wife is of the view that she is acting in her children's welfare by instigating and encouraging such behaviour, then she has not acquired the necessary insight into the effects of her damaging behaviour on the children.

25 The Wife's conduct made co-parenting practically impossible. The various acts of the Wife and R constituted some of the reasons why the court had earlier ordered interim care and control of the children to the Husband. However, despite the previous orders and interventions from support services, the children appeared insistent on being with the Wife and outwardly rejecting of the Husband. The children were not at all supported by the Wife to have any relationship with the Husband, and they appeared ready to run back to the Wife despite the court orders. Such a state of affairs is highly distressing for them. I was also of the view that as the Wife is in ill health, it is also not in the children's welfare to be isolated from her at this time.

26 Under these circumstances, while both parents continue to share joint custody of the children, my final order on care and control was that the children shall be in the Wife's care and control while the Husband shall have reasonable access whenever the children are ready and willing to meet him. I also ordered that the Wife should support the access of the children to the Husband, and should not persist in creating an environment that alienates the children from their father. This is not limited to any express words that are negative of the Husband. There are many ways, both verbal and non-verbal, as well as active acts, that effectively result in alienating the children from the Husband. In particular, she should not disclose material in court proceedings to the children.

27 Although this was not an ideal situation for the Husband and children, forcing access presently against the children's wishes would not assist in repairing the relationship. I ordered the Wife to send the Husband regular updates of the children's progress in school, such as copies of their school report book records, after the mid-year assessments results are available, and at the end of the year, after the end of the year assessment results are available. Copies of all material in the school report books shall be provided to the Husband so he is

> able to remain updated on the children's lives, albeit indirectly. He shall also have access to the children when they are ready to be with him.

The present appeal

Background

3 The present contempt proceedings were initiated by the husband prior to the Judge's final order on care and control. On 28 June 2019, he filed Summons No 169 of 2019 for leave to commence committal proceedings against the appellant on the basis that she had breached court orders. The Judge granted leave to the husband who then filed Summons No 190 of 2019 ("SUM 190") for an order of committal against the appellant on 11 July 2019.

4 SUM 190 was premised on the appellant's purported breach of two court orders dated 4 September 2017 ("the 2017 Order") and 27 June 2018 ("the 2018 Order"). Order 4 of the 2017 Order stated:

> (4) During the time the children are with the [wife] or the [husband], each party will not make disparaging remarks about the other party to the children, and will also endeavor [*sic*] to ensure that his or her family and friends do not do so.

5 Order 3 of the 2018 Order stated:

> (3) The parties, whether by themselves or their agents and/or nominees are restrained from involving the children in the litigation between them including verbal or written communication of the stage(s) of proceedings, showing them copies of any legal or court documents and/or otherwise sharing with them any correspondences, emails or any other communication pertaining to these proceedings or discussing the same with the children in whatever form or substance.

6 In his Statement For Committal ("the Committal Statement"), the husband alleged that the 2017 and 2018 Orders had been breached as:

> 1. The [wife] disparages the [husband] to the children … and encourages them to hate and reject the [husband] as their father totally and completely.
>
> 2. The [wife] has provided at least one of the children … with documents, photograph [*sic*] and information from her affidavits and other related documents filed in the divorce proceedings and has encouraged, instigated and/or allowed [the daughter] to make public such information as follows:
>
> a. Posting on facebook on or about 24th June 2019;
>
> b. Posting on Instagram on or about 24th June 2019;
>
> c. Giving press interview to the [newspapers] on or about 26th June 2019, resulting in a news article on 27th June 2019.
>
> 3. The language, comments and allegations made by [the daughter] on the said posts are mostly regurgitations of the allegations made by the [wife] and/or the children in her various affidavits and submissions in the divorce proceedings.

7 It was not disputed that on or about 24 June 2019, the daughter made a series of posts on her Facebook and Instagram social media accounts. The posts alleged that the husband was a pervert and sexual predator who had engaged in extra-marital affairs, sexually groomed the children and ruined the parties' marriage. The posts also revealed the husband's full name and employment details, and were widely viewed by various members of the public (including the husband's colleagues and superior).

8 Following the daughter's posts, a reporter from the newspaper contacted the daughter and was granted an interview at the former matrimonial home. The appellant allowed the interview, on the basis that there was "nothing wrong" with the children giving an interview to the press, and that they were entitled to "share their experiences with anybody…[and] to voice out their frustration, their hatred, their bitterness". The article, which reported on the circulation of the daughter's social media posts, was published on 27 June 2019.

9 On 4 July 2019, the daughter made another social media post on Instagram. The post purported to document how the Family Court had acted unfairly towards the appellant between January 2019 and May 2019, and alleged that the husband had abused the court process to harm the appellant and the children.

10 The next day, on 5 July 2019, the daughter made yet another social media post on Facebook. This post, while similar to the one that was posted on Instagram, focused on how the appellant and the children had suffered as a result of court orders and the husband's actions from February 2018 to January 2019.

11 On 16 July 2019, the children submitted a police report titled "Statement of Confession". The Statement of Confession stated:

> … We wish to state that the recent online postings … on our abused life experiences were done solely by both of us. We are solely responsible for all these sharing. We answer for our own actions. No one else is involved. From writing to online postings to newspaper interview, we did all these together and by ourselves …
>
> Our Mother does not know anything about our online postings. She did not tell us, did not share with us and did not give us any information for our Postings. She is innocent …
>
> We also wanted to keep the newspaper interview away from our Mother, but the reporters asked her to be around during our interview. Then, our Mother only came to know a bit of our online postings. We told our Mother, this issue is between me & [my brother] and our father & his family. This has nothing to do with her. Anyway, she also does not want to be involved. She showed herself to the reporter and left us shortly after our interview started.
>
> Our Mother also did not say anything bad about our father. ...

The decision below

12 After reviewing the relevant evidence, as well as the oral testimony of the parties, the Judge held in favour of the husband, holding that the appellant

had intentionally breached the court's orders not to disclose or provide to the children information related to the court proceedings (see the GD at [41]).

13 Specifically, the Judge found that the appellant had allowed access to court documents which the daughter had read and used as reference material for her social media posts (see the GD at [42]). In the course of her written grounds, the Judge emphasised the need for the appellant to "provide guidance and protection" for the children and the need to prioritise their "welfare and wellbeing" (see the GD at [45]). She also highlighted that it was important for parents to set limits on what constituted "unacceptable behaviour".

14 The Judge sentenced the appellant to a one-week imprisonment term for her contempt of court, with the sentence due to commence on 30 October 2019. In doing so, she took into account the appellant's prevailing medical condition as well as the nature of the orders breached (see the GD at [48]–[49]).

15 On 28 October 2019, the appellant's appointed counsel wrote in to the court, producing a letter by the appellant's oncologist, Dr TW. This letter was dated 25 October 2019 and stated, *inter alia*, that:

(a) the appellant had been diagnosed with metastatic advanced Stage 4 breast cancer in September 2018;

(b) since October 2018, she had been on daily chemotherapy and hormonal therapy for three weeks, with a one week rest period;

(c) she had several palpable right chest wall nodules that bled when touched, and several ulcers on her right chest wall;

(d) the right chest wall had to be cleansed daily;

(e) ulcers could easily become infected in a moist environment, such as sweating due to heat, or through contact with non-sterile bandages and gauze;

(f) sudden changes in her environment could cause unnecessary stress and upset the entire cancer recovery process; and

(g) the appellant was susceptible to infections due to her low white blood count.

16 Notably, Dr TW's letter did not express a specific opinion on whether the appellant's medical condition rendered her unsuitable for incarceration. Her letter was also the first substantive evidence on the severity of the appellant's medical condition, and was not available to the Judge when she delivered her decision on 23 October 2019 (see the GD at [51]). Having received this evidence, and considering that the appellant had filed a notice of appeal, the Judge granted a stay of execution of her order of one week's imprisonment.

Our decision

17 On appeal, the appellant took the following positions:

(a) First, that the Judge erred in failing to apply the correct test to determine whether the appellant was liable for contempt.

(b) Second, that the husband failed to adduce evidence to show beyond a reasonable doubt that the appellant had breached the Orders of Court by engaging in conduct particularised in the Committal Statement.

(c) Third, that even assuming the appellant was indeed in contempt, the Judge erred in imposing a custodial sentence on the appellant and failed to give sufficient weight to the appellant's medical issues.

18 The husband naturally opposed these contentions.

Whether the Judge applied the correct test for contempt of court

19 The parties readily accepted the state of law in relation to contempt as set out in the decision of this court in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 ("*Mok Kah Hong*") at [85]–[86]. As stated in *Mok Kah Hong*, the applicable standard of proof to both criminal and civil contempt is that of the criminal standard of proof beyond a reasonable doubt.

20 In addition, in order to establish the requisite *mens rea* for contempt for disobedience of court orders, it is only necessary to prove that the relevant conduct of the party alleged to be in breach of the court order was intentional and that it knew of all the facts that made such conduct a breach of the order. This was stated in *Mok Kah Hong* at [86]:

> … as regards the issue of the requisite *mens rea* to establish contempt for disobedience of court orders, it is accepted that it is only necessary to prove that the relevant conduct of the party alleged to be in breach of the court order *was intentional* and that it *knew* of all the facts which made such conduct a breach of the order: *Pertamina Energy Trading Ltd* at [51]. This necessarily includes knowledge of the existence of the order and its material terms. It is, however, not necessary to establish that the party had *appreciated* that it was breaching the order. Therefore, the *motive* or *intention* of the party who had acted in breach of the order is strictly irrelevant to the issue of liability though it may have a material bearing in determining the appropriate penalty to be imposed. [emphasis in original]

21 The appellant's principal complaint was that when determining whether the appellant was liable for contempt, the Judge had "taken into account matters

which she ought not to have done, and failed to take into account matters she ought to have done". In this regard, the appellant argued that the Judge had erred in: (1) interpreting the 2017 and 2018 Orders as imposing positive obligations on the appellant; and (2) considering the conduct of the parties in the divorce proceedings to reach her decision.

Whether the Judge erred in her interpretation of the Orders of Court

22 On the appellant's case, the 2017 and 2018 Orders only imposed five specific *negative* obligations on the appellant, which the appellant did not breach. These were:

(a) making disparaging remarks about the respondent to the children (the 2017 Order);

(b) involving the children by communicating to them, verbally or in writing, the stage the proceedings had reached (the 2018 Order);

(c) involving the children by showing them legal or court documents (the 2018 Order);

(d) involving the children by showing them copies of correspondence relating to these proceedings (the 2018 Order); and

(e) involving the children by discussing the proceedings with them (the 2018 Order).

23 The appellant was not required, it was argued, to take "specific steps, for instance, to secure the Divorce Related Documents under lock and key, or manage and correct the Children's behaviour, such as their postings on social media and statements to third parties regarding their subjective perspectives of

the Respondent". However, the appellant claimed that the Judge had interpreted the Orders of Court as imposing positive obligations on the appellant to provide guidance and protection to the children, including taking specific steps to guard their access to information. This, in the appellant's view, was unfair as she was faulted for not complying with these positive obligations. In addition, the appellant claimed that the Judge had failed to "precisely specify which parts of [her] alleged conduct contravened which of the Orders of Court".

24 We agreed that, as a matter of fairness and certainty, a person should not be held liable for any acts that an Order of Court did not clearly cover. Indeed, the scope of any given court order should be carefully scrutinised before one may be held to have breached it. However, in our view, both the 2017 and 2018 Orders clearly spelled out what the parties were prohibited from doing – it was clear that the appellant had acted in contravention of the 2018 Order.

25 In assessing whether the Judge had correctly found that the 2018 Order had been breached, it is useful to refer, again, to its specific wording.

26 The 2018 Order stated, *inter alia*, that:

> (3) The parties, whether by themselves or their agents and/or nominees are restrained from involving the children in the litigation between them including verbal or written communication of the stage(s) of proceedings, showing them copies of any legal or court documents and/or otherwise sharing with them any correspondences, emails or any other communication pertaining to those proceedings or discussing the same with the children in whatever form or substance.

27 The wording of the 2018 Order, specifically the use of the words "restrained from involving the children in the litigation between them **including**…" [emphasis added] made it clear that the parties were not to involve the children in the litigation through any means, and that the references to

"verbal or written communication", "showing them copies of any legal or court documents" *et cetera*, were merely examples of prohibited conduct. While the 2018 Order specifically provided for negative obligations, it was not exhaustive in stating the forms of conduct that were prohibited.

28 ***In any event***, the Judge had reached her decision *on the basis that the appellant had* ***breached*** *the* ***negative*** *obligation to refrain from involving the children in the litigation between her and the husband*. She did not, in fact, find that the appellant had breached any positive obligations. While we noted that the Judge did not explicitly state that the 2018 Order had been contravened, this was, in substance, referred to at multiple junctures. For example, the GD at [41]–[42] stated that:

> 41 *The evidence in these committal proceedings clearly demonstrated the Wife's disregard and intentional breaches of the court's orders not to disclose or provide to the children information related to the court proceedings.* The Daughter's posts were replete with details that she could not have obtained herself, unless she had read the Wife's affidavits. For example, the Daughter referred to the Husband's alleged girlfriends by name and made the same accusations about his behaviour that the Wife made against the Husband, none of which she would have known unless the Wife had informed her about these proceedings. I did not find satisfactory the Wife's explanation of how the Daughter obtained the court documents without the Wife permitting her the access.
>
> 42 *I found that the Wife had allowed access to the documents and acted in breach of the court order*; in fact, the evidence on the whole suggested active support from the Wife for the Daughter to use court materials and make allegations against her father …
>
> [emphasis added]

29 We agreed with the Judge that the appellant had, at the very least, showed the daughter "copies of any legal or court documents". The information gleaned from these documents formed the basis of the daughter's social media posts in June and July 2019. As the Judge noted at [41] of the GD, the daughter's

posts were replete with details that she could not have obtained herself, unless she had in fact read the appellant's affidavits – the Facebook post on 24 June 2019, for example, included details surrounding the appellant's application for a Personal Protection Order against the husband, emails sent by the husband from September to December 2015, and even the full name of the husband's alleged mistress.

30 Although the appellant denied that she was responsible for any access by the children to legal or court documents, her explanations were unconvincing.

31 As noted by the Judge, according to the appellant's oral evidence, the daughter had obtained her information from court documents that were kept in a cupboard:

> Counsel: … Did you ask her where she obtained her information from?
>
> Appellant: She said she took it from the cupboard in the room.
>
> …
>
> Counsel: Now [the appellant], knowing that there are two orders prohibiting you from sharing the divorce information with the children and that you have been committed for contempt in September last year for breaching these two orders, did you not think it is incumbent upon you to keep these documents away from the children or under lock and key?
>
> Appellant: When we renovate the house, there was no lock for that cupboard but the cupboard is always closed.

32 Although the appellant claimed that the house had been undergoing renovation works at the time, no documentary evidence was adduced in support of this. Additionally, even on the appellant's own testimony, although she

became aware of the daughter's posts on 25 June 2019, she only locked the door to the room containing the documents after 4 July 2019. Had the appellant truly been unaware of her daughter's access to the relevant court documents, she would have, upon discovering the Facebook and Instagram posts dated 24 and 25 June 2019, taken immediate action to prevent any further access to the court documents.

33 Further, it should be noted that in the daughter's Instagram post dated 4 July 2019, it was revealed that she and her brother "happened to see" court documents "while helping [their] Mother to pack up all her stuff". Even according to this version of events, the appellant had, at the very least, put the children in close proximity to the court documents. Finally, it should be noted that the Facebook post dated 24 June 2019 contained numerous pictures of the husband (some of which featured him in various states of undress) and his female acquaintances – these images would not have been easily obtainable by the daughter if she was acting independently.

34 Having considered the evidence in totality, we were of the view that the appellant had showed the children either legal or court documents.

Whether the Judge erroneously considered the conduct of the parties in the reaching her decision

35 The appellant also submitted that the Judge had erroneously taken into account her prior conduct and motivations in the concluded divorce proceedings when determining if she was liable for contempt. However, the appellant failed to particularise how the Judge had done so – instead, she took issue with the Judge's findings at [37] and [40] of the GD that the appellant's "attitude towards the children sharing publicly matters relating to the court proceedings" was

concerning and that the appellant's "conduct and actions consistently show[ed] up her intention to cause the children to reject their father".

36 The Judge's comments had to be viewed in their proper *context*. They were observations that the appellant had acted in a manner unbefitting of her status as a guardian and protector of the children, rather than constituting the focal point of the Judge's decision on liability for contempt. As noted above at [28], the Judge had made an express finding that, on the evidence, the appellant had either disclosed or provided to the children information related to the court proceedings (see the GD at [41]). We agreed that this conclusion was borne out by the evidence.

37 The Judge's observations that the appellant's conduct was concerning and regrettable stemmed from a desire to provide guidance to the appellant, and in turn to ensure the well-being of the children. For instance, the appellant's act of allowing the children to engage in the interview with the newspaper on 26 June 2019, while not prohibited by the 2018 Order *per se*, would further alienate the children from the husband.

Whether the evidence demonstrated beyond a reasonable doubt that the appellant was liable for contempt of court

38 The appellant argued that the only evidence adduced by the husband in support of his application for committal was that of the daughter's various social media posts and the published interview by the newspaper. These constituted circumstantial evidence and was insufficient to show, beyond a reasonable doubt, that the appellant was liable for contempt of court.

39 Circumstantial evidence is not necessarily a bar to the court finding that the standard of beyond a reasonable doubt has been met. In the words of the

High Court in *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24 at [77], which were affirmed by this court in *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 at [254]:

> Often perpetrators take pains to conceal their crime. Direct evidence of the precise circumstances preceding a homicide will usually be unavailable. In such instances, compelling circumstantial evidence may be relied on to infer guilt. The Prosecution's case against the accused, not surprisingly, is premised entirely on circumstantial evidence. It is trite law that the circumstantial evidence on which the prosecution relies must in the final analysis "inevitably and inexorably" lead the court to a single conclusion of the accused's guilt: see *Ang Sunny v PP* [1965–1967] SLR(R) 123 at [14]. In *PP v Oh Laye Koh* [1994] 2 SLR(R) 120, the Court of Appeal emphasised that the Prosecution did not carry a higher burden in the final evaluation of a case predicated upon circumstantial evidence as opposed to one based on direct evidence. The court declared at [17]:
>
> > … There is one and only one principle at the close of the trial, that of guilt beyond reasonable doubt, and this principle applies equally to cases where the prosecution evidence is wholly circumstantial as it does to those where direct evidence is adduced.

40 These observations on the applicable standard of proof were equally applicable in the present case. Thus, as long as the circumstantial evidence adduced in the present case "inevitably and inexorably" leads the court to the conclusion that the appellant had indeed breached the 2018 Order, the appellant's case would fail. Otherwise, short of installing a camera in the former matrimonial home to gather evidence, the husband would be unable to succeed on his case.

41 The appellant raised two key points in support of her argument that the circumstantial evidence was insufficient.

42 First, the evidence before the court did not provide an irresistible inference that the appellant had showed any legal or court documents to the

children. The children had acted without her involvement, and had likely gained the information used in the social media posts prior to the 2018 Order being made.

43 Pursuant to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) ("s 116"), the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. Although the appellant cautioned that we should be slow to apply s 116 in the present case, she did not explain why.

44 The totality of the evidence provided an irresistible inference that the appellant had breached the 2018 Order. We were especially concerned with the following:

(a) the specificity of the content in the daughter's posts;

(b) the lacklustre explanations offered by the appellant as to how the children had obtained access to the legal and court documents;

(c) the appellant's apparent lack of concern to find out more as to what was to be discussed at a press interview;

(d) the appellant's delay in securing the documents until after 4 July 2019 (when the daughter had posted on Facebook a second time); and

(e) the suspicious timing and content of the Statement of Confession filed to exculpate the appellant from responsibility.

45 There was also little merit to the appellant's contention that the children had gained the information used in the online posts prior to the 2018 Order, but

had only decided to post such information in 2019. Had the children possessed the relevant information in 2018 and wished to make accusations against the husband, there would be little reason for them to wait until 2019 to do so.

46 The appellant's second point was that the Judge had failed to provide sufficient reasons for why she did not believe the appellant's explanation as to how the daughter had obtained the court documents, "despite the fact that [her] account [was] credible and corroborated by contemporaneous documents". In this regard, the appellant sought to rely on the Statement of Confession that was filed by the children (see above at [11]).

47 The timing at which the Statement of Confession was made (mere days after the husband filed for an order of committal on 11 July 2019) *and* the manner in which it was written suggest that it was nothing more than an attempt to exculpate the appellant of any responsibility. In fact, at trial, the appellant admitted that the primary purpose of the statement was to absolve her of any responsibility:

> Counsel: … Don't you agree with me, [the daughter] is trying to protect you in this police report from any accusations by the defendant that you are using them in the proceedings? This report is all about you. It's not even about the children. They are not complaining about themselves or their abused experiences as you called it. They are talking about you and that you had nothing to do with anything they do. Do you agree with me?
>
> Appellant: Yes.
>
> Counsel: Yes. So the purpose of [the daughter's] report is to protect you from any proceedings or further proceedings of prosecution by the [husband] and the Court, correct?
>
> Appellant: Yes.

48 The appellant's reliance on the Statement of Confession was hence of little assistance to her case. Apart from this, we had already considered and found that the appellant's account of events was unlikely and untenable (see above at [29]–[34]). Thus, we found that the evidence did sufficiently demonstrate beyond a reasonable doubt that she had showed legal or court documents to the children.

Whether a one-week imprisonment sentence was appropriate

49 The appellant's final argument centred on the Judge's imposition of a one-week imprisonment sentence on her. It was argued that: (1) a custodial sentence was inappropriate because the appellant was not given a chance to make submissions on sentencing after the finding of contempt; (2) that the relevant factors outlined in *Mok Kah Hong* did not justify an imprisonment sentence in the present case; and (3) that the appellant's prevailing medical condition rendered her unsuitable for any period of incarceration.

50 The appellant's first contention was easily addressed. In the proceedings below, the appellant had, in fact, been given the opportunity to submit on the appropriate sentence that would be imposed if she was indeed found to be in contempt of court:

Appellant:	I do not think imprisonment is suitable for me. I still have to have treatment.
Court:	What medical treatment are you undergoing?
Appellant:	Oral treatments – 3 pills and probiotics daily. Monthly injection and blood tests.
Court:	They asked for one month, but if sentence was for a shorter time, will medical issues be less of an issue?
Appellant:	Yes.

> Court: Do you have anything else to tell me or submit about the sentencing submitted? Sentencing can be just fine, just imprisonment or both.
>
> Appellant: I feel it was not too fair, I wasn't aware of the posts. I'm an innocent party.
>
> Court: Alright, that is on the contempt. Anything else on sentencing assuming court finds contempt of court?
>
> Appellant: No.

51 Given that the appellant had already presented her submissions in relation to sentencing before the Judge pronounced her sentence (which resulted in a shorter sentence of one week considering her medical issues), there was no need for the Judge to ask for her submissions a second time after the court's pronouncement that she had indeed been in contempt. Indeed, the appellant affirmed that she had nothing else to add on top of what she had already said at the trial on sentencing. We noted also that the appellant had indicated her preference to "go to jail instead of paying a fine". As observed by the Judge during the proceedings below, the appellant's submissions on sentencing (as well as the appellant's prevailing medical condition) were taken into consideration:

> On sentencing, the Husband has sought a custodial sentence of one month. The [appellant] has said that imprisonment is not suitable as she has to have cancer treatment. I asked what treatment was required - she has to take 3 pills for her cancer treatment, probiotics and a monthly injection. I asked if a shorter term, not a month, would that render these reasons less significant and she answered in the affirmative. *Her response appeared to be that she could not afford to pay a fine and in that sense, an imprisonment was the more intolerable consequence, although she did not agree to it as she asserted she was not to blame for [the daughter's] posts. She has said again after we stood down for half an hour that she prefers a jail sentence to paying fines.*
>
> I have found that [the appellant] has breached court orders and intended the drastically adverse consequences on [the husband] following the breaches. My order on sentencing must

> uphold our goal of deterring contemptuous behaviour and to protect and preserve the authority of our courts. *I also take into account [the appellant's] medical condition with her need for treatment, as well as the nature of the orders breached. I order that [the appellant] be sentenced to one week imprisonment, which she shall begin to serve 7 days from today.* (This is to allow her to address medical treatment issues before serving).
>
> [emphasis added in italics; emphasis in underlining in original]

52 We should point out that, regardless of the appellant's preference for an imprisonment term over a fine, this was a case that, objectively speaking, justified the imposition of a sentence of incarceration. This will be made clear below.

The factors to consider in cases of contempt by disobedience

53 This court in *Mok Kah Hong* provided useful guidance as to the sentencing considerations for cases involving contempt of court. For instance, a distinction was drawn between one-off breaches and continuing breaches (where a contemnor is ordered to do an act but continuously refuses to comply). In the latter instance, the objective of compelling the contemnor to effect compliance with the order is likely to be given a significant degree of weight, such that the sentence imposed will include both punitive and coercive elements (see *Mok Kah Hong* at [103]).

54 In addition, the following seven factors are to be considered in cases of contempt by disobedience (see *Mok Kah Hong* at [104]):

(a) first, whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) second, the extent to which the contemnor has acted under pressure;

(c) third, whether the breach of the order was deliberate or unintentional;

(d) fourth, the degree of culpability;

(e) fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) sixth, whether the contemnor appreciates the seriousness of the deliberate breach; and

(g) seventh, whether the contemnor has co-operated.

55 Having considered the facts and the evidence as a whole, we found that the appellant had deliberately acted in order to prejudice and harm the husband's reputation, as well as to drive a wedge in the relationship between him and the children. As a starting point, this was not the first instance in which the appellant has been found to have been in contempt of court. As noted by the Judge and the husband, the appellant had previously been found to be in contempt for refusing to handover the children to the respondent at the correct venue (see the GD at [31]). The appellant had been fined for this breach, but had refused to pay it – this resulted in it being converted into a costs order in favour of the husband on 4 April 2019.

56 There was a need to impose a sufficiently punitive sentence, so as to ensure that the appellant refrains from any further instances of contempt of court. It is clear from the appellant's pattern of conduct that she sought to alienate and distance the children from the respondent. For example, her act of encouraging the children to "voice out their frustration, their hatred, [and] their

bitterness" by publicly humiliating the husband during their interview with the newspaper has surely worsened their relationship with him.

57 There was little doubt that the appellant's actions had caused the husband much distress. His professional and personal standing was negatively affected due to the baseless allegations that had been lodged against him.

58 Moreover, considering the prevailing case law, a one-week imprisonment sentence would not be disproportionate.

59 In *Mok Kah Hong*, this court was faced with a contemnor who had acted "in flagrant disregard of judgments or orders made by various courts at all levels" (see *Mok Kah Hong* at [111]). The husband in *Mok Kah Hong* had acted in contempt of court on four occasions (over the course of approximately five years):

(a) he acted in breach of an injunction obtained by his wife when he mortgaged a property;

(b) he failed to discharge all mortgages and encumbrances at his cost in respect of the same property and to transfer it to his wife free from all encumbrances (resulting in his wife being evicted from that property);

(c) he substantially failed to comply with the High Court's orders for regular maintenance payments to the wife; and

(d) he failed to comply with the court's order to pay the wife's share of the matrimonial assets and the lump sum maintenance within one month of the hearing, which took place on 11 March 2015.

60 The Court of Appeal thus imposed a sentence of eight months' imprisonment.

61 Similarly, in *Technigroup Far East Pte Ltd and another v Jaswinderpal Singh s/o Bachint Singh and others* [2018] 3 SLR 1391 ("*Technigroup*"), the High Court was faced with defendants who, despite having two discovery orders made against them for the disclosure of documents belonging to certain entities ("the related entities"), continuously refused to disclose these documents on the basis that the related entities did not exist. This led to the imposition of an unless order, the striking out of their defences and the entering of interlocutory judgment against them (see *Technigroup* at [6]–[7]).

62 The court found that the defendants "took the calculated decision to allow their defences to be struck off and judgment to be entered rather than fully comply with the discovery orders" (see *Technigroup* at [74]). The first and second defendants were sentenced to a suspended sentence of four months imprisonment. The fourth defendant was sentenced to a fine of $5,000 or three days' imprisonment in default – although she had filed affidavits affirming that the defendants did not own or control any related entities, which was found to be false, the court found that she was less culpable as she might not have properly appreciated the contents of the affidavits and she did not have detailed knowledge of the operations of the relevant entities (see *Technigroup* at [102]).

63 In contrast, an imprisonment sentence would not be appropriate despite there having been multiple breaches when a contemnor has purged his or her contempt. In *Tay Kar Oon v Tahir* [2017] 2 SLR 342 ("*Tay Kar Oon*"), the contemnor had committed a total of five acts of contempt:

(a) she failed to attend an Examination of Judgment Debtor ("EJD") hearing on 23 October 2015;

(b) she failed to file a disclosure affidavit disclosing all her assets in Singapore (which was required pursuant to a Mareva injunction filed by the respondent);

(c) she failed to provide answers to the EJD Questionnaire;

(d) she failed to attend an EJD hearing on 13 November 2015; and

(e) she made three withdrawals totalling $3000 in breach of the Mareva injunction.

64 The Court of Appeal found that the fifth breach ought not to be taken into account given the lack of opportunity for the appellant to present her case in relation to that breach. In relation to the other four breaches, the court noted that the appellant's contempt, although sustained for a period of time, had been substantially purged through her compliance with various orders and directions – the respondent was also willing to withdraw the committal proceedings (see *Tay Kar Oon* at [57]). The court thus imposed a fine of $10,000 and, in default, ten days' imprisonment.

65 In the present appeal, the nature of the appellant's breach, her refusal to admit wrongdoing and her pattern of conduct of turning the children against the husband justified a heavier sentence than that meted out in *Tay Kar Oon*, where the appellant's contempt had been substantially purged. However, while the acts of the appellant were unquestionably egregious, she had only committed two breaches of court orders thus far and this therefore could not be compared to a situation like that of *Mok Kah Hong* where the appellant had breached four court

orders over five years or *Technigroup* where the first and second defendants had repeatedly refused to comply with court directions despite numerous directions given by the court. A sentence of one-week imprisonment would therefore be appropriate.

The appellant's prevailing medical condition

66 The appellant's final contention was that her prevailing medical condition rendered her unsuitable for any period of incarceration. In this regard, we reiterate that the appellant had only adduced a letter by her oncologist *after* the Judge had reached a decision on the applicable sentence. Although this letter did not expressly state that the appellant was unsuitable for incarceration, it did raise concerns that the appellant was susceptible to infections and that sudden changes in the environment would be detrimental to the appellant's condition.

67 We thus decided that it would be prudent to have the appellant present herself to the Singapore Prison Service ("SPS") for assessment and confirmation that the SPS could cope with her medical condition.

Our decision on sentence

68 On 9 July 2020, a Prisons Medical Officer from the SPS ("the SPS Medical Officer") informed the court that the appellant was unfit for incarceration at this time. Her critically low red blood cell count rendered her at risk of sudden death if she were to be incarcerated. In addition, she was especially susceptible to infections as she had open wounds in her chest. The state of the appellant's health was such that if she were to be incarcerated, her condition would warrant an immediate referral to Changi General Hospital for the management of her condition.

69 The severity of the appellant's medical condition justified the exercise of judicial mercy to temper the punishment to be imposed. The exercise of judicial mercy, while not unprecedented, has only been done in exceptional circumstances. As Chao Hick Tin JA, delivering the judgment of a specially convened coram of three judges of the High Court in *Chew Soo Chun v Public Prosecutor and another appeal* [2016] 2 SLR 78, observed (at [22]–[23]):

> 22 *The conceptual basis for judicial mercy, which is humanity, should be emphasised. It explains the way the courts have in very serious situations, ie, where the medical condition of the offender is dire, found it just to alleviate the punishment that would otherwise have been warranted by the gravity of the offence committed.* As was noted in *Lim Kay Han Irene v PP* [2010] 3 SLR 340 at [46], judicial mercy had been exercised in these two situations. First, where the offender was suffering from terminal illness. Second, where the offender was so ill that a sentence of imprisonment would carry a high risk of endangering his life. There may be other situations arising in the future which also call for the exercise of mercy, but we need not and should not pronounce on them at this stage. Suffice it to say, it would not be right to anticipate or circumscribe the circumstances which would justify the exercise of mercy by the court. Given the wide and varied nature of human conditions, it is not possible to exhaustively state what are the exceptional circumstances or fully explain every circumstance which would qualify as exceptional. Each case stands on its own facts and has to be guided ultimately by the general principle that mercy is extended as a matter of humanity.
>
> 23 What would have to be guarded against, by the same token, is an unprincipled response. Judicial mercy is an exceptional jurisdiction. *The effect of mercy is that the court displaces the culpability of the offender as one of the central considerations in its determination of the appropriate sentence by considerations of humanity and where benchmark sentences will effectively play no part.* For the court to exercise mercy, there must be exceptional circumstances from which humanitarian considerations arise, outweighing the public interests in having the offender punished for what he had done wrong against the law.
>
> [emphasis added]

70 As pointed out in the above passage, the exercise of judicial mercy effectively displaces the culpability of the offender in order to emphasise considerations of humanity. We find it important to emphasise, however, that not every offender with a terminal illness will "invariably be treated with kid gloves" (see the High Court decision of *Chng Yew Chin v Public Prosecutor* [2006] 4 SLR(R) 124 at [67]). As V K Rajah J (as he then was) explained, myriad considerations must be factored into each sentencing equation as and when it arises for evaluation, with judicial mercy only being granted in limited and exceptional circumstances.

71 The appellant was diagnosed with metastatic advanced Stage 4 breast cancer in September 2018, and has been suffering since. The cancer had taken a serious toll on her health. At the time of her examination by the SPS Medical Officer, the appellant was clinically wheelchair bound and weighed only 29.9kg.

72 It was clear that her path forward would not be easy, as she would have to undergo strenuous medical treatments to attempt to improve her condition. In the circumstances, we were of the view that the humanitarian considerations supporting the exercise of judicial mercy should apply.

73 Nevertheless, the appellant undoubtedly remained in breach of the 2018 Order, and a suitable punishment had to be imposed for her contempt. We therefore ordered a fine of $5,000 to be paid within 14 days from 29 July 2020 (which was the date of our order).

74 We also ordered the appellant to pay the respondent a sum of $21,000 (all-in) in respect of the costs of the appeal. This sum included the costs arising from Summons No 50 of 2020, which concerned the appellant's application for

leave to adduce and rely on Dr TW's letter dated 25 October 2019. The usual consequential orders were to apply.

A note on the importance of Therapeutic Justice

75 Before we conclude the present judgment, we note that the backdrop that gave rise to the present proceedings (which was described briefly above at [3]–[11]) epitomised everything that the family justice system is intended to assiduously avoid. On the contrary, the family justice system is one that – despite the parties' problems with each other (both emotional and otherwise) – is intended to aid the parties (and their children) to achieve as much healing in all its variegated aspects as is possible in order that they move forward as positively as possible with their lives. This is the essence of what the Presiding Judge of the Family Justice Courts, Justice Debbie Ong, has described as "Therapeutic Justice" ("TJ") (see her recent Family Justice Courts Workplan Speech 2020 delivered on 21 May 2020 entitled "Today is A New Day" ("*Speech*")). Put simply, it is a *non*-adversarial system that is "*problem solving*" (see *Speech* at para 33). It is a process which is such that "the entire journey should allow the healing, restoring and recasting of a positive future. It should allow parties time to grieve over the loss of the marriage and be supported through this" (see *Speech* at [39]). As Justice Ong put it (see *Speech* at paras 43, 45–48 and 50–51):

> 43. What is this concept called Therapeutic Justice or TJ? It is a lens of 'care', a lens through which we can look at the extent to which substantive rules, laws, legal procedures, practices, as well as the roles of the legal participants, produce *helpful* or *harmful* consequences. We must build the 'hardware' structure and the 'software' resources that will ensure therapeutic, helpful effects.
>
> …
>
> 45. Upstream, we would build a strong multi-disciplinary family justice system where parties can comfortably reach

> therapeutic interventions and support as early as possible. As much relevant and digestible information on the processes should be available upfront.
>
> 46. Upstream, there should be access to counselling for grieving the loss of such a deep, intimate relationship. Parties should be supported in their journey of 'letting go'. Not 'letting go' is a huge obstacle to 'moving on'!
>
> 47. Upstream, it is very important that parties understand the real consequences of breakdown and the impact on their children.
>
> 48. 'Downstream', so to speak, when obtaining a divorce in court, parties should not see each other as adversaries. Today is a new day for a new mindset – do not look at our system as an adversarial one, it is not. It is a problem-solving system.
>
> …
>
> 50. Therapeutic Justice seeks to address the family's inter-related legal and non-legal issues to reach an outcome that improves the whole family's functioning beyond breakdown. Parties should be assisted with developing their skills to resolve their own disputes, to co-parent after divorce, to be familiar with how to access appropriate support services. Family lawyers must problem-solve as a team especially where children's interests are at stake. The role of the family lawyer has changed. The bulk of family work will be in advising parties well, helping them to make good decisions right from the early stages, and reach agreements that are reasonable, fair, workable, durable and good for the children. Some family lawyers may even look to becoming full-time family mediators. Such family lawyers' services are truly valuable and will be sought after by parties desiring a good outcome. Parties should not think that the lawyers' fees are only for litigation services; instead, a family lawyer who helps parties avoid litigation and reach a harmonious outcome, are giving them the invaluable services that they need most.
>
> 51. When we adopt Therapeutic Justice in our system, we also endeavour to assist parties in acquiring the skills they need to manage their lives ahead – how to manage conflict, how to co-parent, and how to access appropriate support services in future. It is forward looking.
>
> [emphasis in original]

76 And, in the context of *children*, Justice Ong observes thus (see *Speech* at paras 65–66):

> 65 As for Child Arrangements, applications for Custody, Care and Access ***should not become tools to control the other spouse or to hurt that spouse***. I had shared … how important it is that parties ***minimise*** their conflict and sort out their issues as parents. [In Debbie Ong and Lim Hui Min, "Custody and Access: Caring or Controlling" in *Developments in Singapore Law Between 2001 and 2005* (Singapore Academy of Law, 2006) (Teo Keang Sood gen ed) at p 581, it was observed that "custody and access are instruments which allow the parents to continue caring for the child after the breakdown of their relationship. From another perspective, custody and access are rights to be acquired, negotiated with, and even fought over in the elaborate aftermath of separation and divorce. They are a means employed to gain dominion over the child. *Basely used, they can be instruments to control the activities of the other parent. A misguided sense of entitlement, unresolved anger, or a genuine and intolerable difference of opinion are all it takes to turn an instrument of care into an instrument of control*" [emphasis added]]
>
> 66 It is an area that divorcing parents must be personally responsible for. If they make the commitment and sacrifices, their children can be protected from the negative effects of breakdown. Children can do well and emerge resilient and well-adjusted.
>
> [emphasis added in bold italics]

77 TJ is not merely an ideal; it is a necessity. It is not merely theoretical but is intensely practical. It is axiomatic that *relationships* constitute the very pith and marrow of a family. When familial relationships break down, those relationships (between spouses and between each spouse and the children) are damaged. Such damage cannot be repaired (completely at least) by way of material recompense; *healing* needs to take place. It is both logical and commonsensical that healing cannot even begin to take place if the parties (in particular, the former spouses) are in an antagonistic relationship – still less when one or both parties wage war against each other. As Justice Ong noted, a kind act begets a kind response while a nasty act inflames the other (see *Speech* at [18]). Indeed, what occurred in the present case was an extreme example of

such warfare. The consequences of such an approach are negative in at least two ways.

78 First (and as already mentioned), healing cannot even begin to take place. And without such healing, parties (and their children) will find it extremely difficult, to say the least, to move forward with their respective lives.

79 Second, the damage that results will impact not only the former spouses but also the children as well. This was precisely what happened in the present case. It is axiomatic that the parties and the court always act in ***the best interests of the child (or children, as the case may be) – phrased as a legal principle, the welfare of the child (or children) is paramount***. This is not surprising because if the children concerned are adversely impacted (whether physically, emotionally, psychologically or otherwise), this will have a knock-on effect in the future and may, in extreme situations, result in negative family environments being generated as a result down the road. It may be said that the *true* legacy which parents leave behind constitute *their children*; in many ways, this is not surprising because such a legacy is a *living* one. Unfortunately, in the present case, the appellant had acted throughout in a manner that had hitherto resulted in the *precisely opposite* consequences. It is unfortunate that the children were forced to pick sides and turned against their father, with whom they previously had a healthy relationship. The profoundly negative as well as potentially lasting effect on her children cannot be underestimated. However, the wonderful thing about life is that it is never too late. We would urge her to reflect seriously on her life as well as future actions. *Every* child requires *love and care* from ***both*** *parents* in order to grow up and achieve their fullest potential as *balanced* individuals. We hope that she can put aside her negative attitude and emotions and *encourage the children to restore their relationship with their father*. In addition to this fundamental purpose, there is also a *practical* one, given the

unfortunate medical condition of the appellant; as the Judge aptly observed, "should the [appellant's] cancer condition severely worsen, the children should be able to rely on the only other parent in their lives, the Husband (with whom they shared a close relationship not long ago), to raise and care for them" (see the GD at [23]). It undoubtedly requires courage to take this positive step on behalf of the children (and this would apply equally to the husband as well). We trust that both the appellant and the husband will take this vital step together for the sake not only of this generation but also quite possibly for generations to come.

Andrew Phang Boon Leong	Chao Hick Tin	Woo Bih Li
Judge of Appeal	Senior Judge	Judge

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