IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 25

District Court Appeal No 91 of 2020

Between

TWM

… *Appellant*

And

TWN

… *Respondent*

JUDGMENT

[Family Law] — [Matrimonial assets] — [Division]
[Family Law] — [Custody] — [Care and control]
[Family Law] — [Maintenance] — [Child]

TWM
v
TWN

[2021] SGHCF 25

General Division of the High Court (Family Division) — District Court Appeal No 91 of 2020
Choo Han Teck J
13 July 2021

27 July 2021 Judgment reserved.

Choo Han Teck J:

1 This is an appeal by the Husband against the decision by the District Judge ("DJ") below in the Family Justice Courts in relation to the division of assets, maintenance for the children, and care and control of the children.

2 This is a marriage of eight and a half years. The Husband runs pubs as a business. He is 45 years old and the Wife is 34. She works as a flight stewardess. They were married in October 2008. They have two children, a son born in April 2010, and a daughter in January 2013. The Husband commenced divorce proceedings in the middle of July 2016. The interim judgment was entered into on 6 April 2017. The children are 10 years and 7 years old respectively when the DJ delivered the decision on ancillary matters on 30 September 2020.

3 In terms of the division of matrimonial assets, the DJ ordered 53.5:46.5 in favour of the Wife. The DJ found that it was a dual-income marriage, and followed the decision in *ANJ v ANK* [2015] 4 SLR 1043 in apportioning the assets.

4 The Husband's counsel submitted that the DJ failed to consider the express wishes of the children, erred in finding that there was a dual-income marriage, erred by drawing an adverse inference against the Husband for his failure to make full and frank disclosure of his assets, and should not have awarded an uplift of 5% to the Wife.

5 As of the date of interim judgment on 6 April 2017, the total value of the assets in the matrimonial pool was $922,681.39, The bulk of which is the matrimonial home, a private flat located at Compassvale. The court accepted the valuation of the matrimonial home as $1,190,000. The flat was purchased for $1,072,900 in 2012. This was paid for with a down payment from the Husband and Wife. The remaining assets amounted to $502,507.01, including parties' CPF accounts, bank savings. In dividing the matrimonial assets, the DJ added parties' respective investments back into the pool. This includes the following:

(a) The CT Unit investment: The Husband and Wife jointly invested in this condominium unit registered in the sole name of the Husband's friend, Liew. The DJ found that the evidence supports the Wife's claim that she contributed $59,000 to the purchase of this unit and thus added the said sum back to the assets of the Wife, and added $87,447 (the difference between the down payment for the purchase and the Wife's investment sum) back to the Husband's assets. The DJ disbelieved the

Husband's evidence that the balance sum he contributed to the purchase of the CT Unit was for repayment of loans due to Liew.

(b) The Botanique Unit investment: The Husband invested in another condominium unit which was registered in the sole name of [NZS], the Husband's friend. The Husband was found to have contributed $75,457 to the purchase of this Unit in September 2015, which the DJ then added to the matrimonial pool. The DJ also disbelieved the Husband that the sum was repayments for loans owed to NZS, and noted that there was no supporting document of any loans owed by the Husband to NZS, nor any cheques evidencing such loans.

(c) TPE investment: The Wife and Husband also held investments in a pub business which operate under the trade name "TPE". The Wife contributed $18,000 in TPE, which was added to the matrimonial pool as part of the assets of the Wife for division.

6 The DJ drew an adverse inference against the Husband for failing to provide full and frank disclosure of his assets. The evidence did not support his assertion that his pub business (SH Pub) was bad. The financial documents relating to one SH Pub and one IN Bar were not forthcoming. He claimed to have sold off SH Pub to one "ENG", who is a good friend of the Husband for $50,000 as of September 2016, without providing any documentary evidence of the payment by ENG. He allegedly sold off IN Bar to ENG at the same time, but this was not mentioned in his affidavit as of 30 November 2016. ENG was ordered to produce financial statements of SH Pub and IN Bar but could not produce any accounts or financial statements. There were other non-disclosures by the Husband in relation to his involvement in TPE. The evidenced produced by the Wife contradicted the Husband's statement that he did not invest monies

in TPE, and TPE was similarly transferred to another party and the management accounts were similarly thrown away after the sale. All these non-disclosures compelled the DJ to draw an adverse inference by awarding the Wife an uplift of 5% in the final ratio for the division of matrimonial assets.

7 The Husband's counsel submitted that the DJ erred in disregarding the loan by the Husband's brother that funded the purchase of the matrimonial home, and in finding that this was a dual-income marriage, and, further, that she erred in drawing an adverse inference against the Husband. Thus, he submitted that the division ought to be 65:35 in favour of the Husband.

8 I do not find that the DJ has erred. With respect to the alleged loan from the Husband's brother, the DJ was right in finding that there was no basis to include such an amount from the matrimonial assets. The Husband claimed that his brother had helped him pay $1,848.69 every month towards the mortgage of the matrimonial home since September 2015, and relied on a purported loan agreement dated 1 September 2016 signed by the Husband and his brother ("YTL"). The alleged loan agreement was signed one year after the loan commenced; the said agreement is lacking in details, such as the duration of the loan and how much the loan was. The Husband also stated on affidavit that there is no documentary evidence of YTL's payment for these loans because YTL had paid him in cash. Indeed, the Husband's counsel could not prove this loan agreement. All he could do was to assert that the DJ had no basis to find the loan questionable merely "because of the date of the loan agreement, and lacking specifics and that [the Husband's brother] did not file an affidavit".

9 I do not think that the DJ erred in finding that this was a dual-income family. The Wife was a full-time flight attendant at the time of the marriage in

October 2018, and continued until she was pregnant with the elder son in August 2009. After she gave birth to the elder son, she worked for the Husband at the pub, and was paid for her employment between 2011 and 2012. After giving birth to the daughter in January 2013, she went back to help the Husband at the pub from June 2013 to November 2015. Thereafter, she left the matrimonial home and continued to work full-time in June 2016 as a flight attendant. The disparity of parties' income is an issue in determining their respective contributions, and does not change the finding that this was a dual-income marriage.

10 In relation to the sums of $59,000 and $87,447 the DJ added them back to the pool. She did not contravene *UDA v UDB and another* [2018] 1 SLR 1015 ("*UDA v UDB*"). In that case, the Court of Appeal held that a third party claiming an interest in any property alleged to be a matrimonial asset is entitled to have his rights ruled on by the court, but the third party has to commence independent civil proceedings against either or both spouses for a declaration as to his interest and other relief, as section 112 of the Women's Charter (Cap 353, 2009 Rev Ed) does not confer power upon the family court to adjudicate a third party's claim in respect of that asset. Where the property is legally owned by the third party, it is also open to either spouse to start a separate legal action against the third party to have his or her rights in the asset determined.

11 In this case, however, the prohibition in *UDA v UDB* does not apply because the DJ below was not considering whether the CT Unit and the Botanique Unit were matrimonial assets, nor was the DJ ruling on the legal ownership of the properties. But rather, the DJ exercised the discretion under s 112(2) of the Women's Charter to add the sums the Husband and Wife contributed to the purchase of these properties back to the matrimonial pool as

the Husband and Wife's respective investments. For the CT Unit, the Husband acknowledged the payment of the principal sum in his WhatsApp exchange with the Wife when parties tried to resolve their asset division. This contradicted what he had stated on affidavit that he had "no involvement whatsoever" in the CT Unit. He also sought to explain away the Wife's $50,000 contribution as a guise to get the Wife to re-pay him money owed to him. Liew's explanation is similarly lacking in credibility that he had extended cash loans of close to $170,000 to the Husband without any underlying loan agreements. For the Botanique Unit, the Husband issued three cheques in favour of the developer for the purchase of the said unit. This again contradicted what the Husband stated on affidavit that he had "no involvement whatsoever" in the Botanique Unit. There was similarly no underlying loan agreement between NZS and the Husband to prove the purported loans from NZS to the Husband.

12 In any event, the Husband and third parties involved had the option to start separate proceedings to establish their beneficial ownership, and to stay the s 112 proceedings. The fact that they did not do so does not preclude the DJ from taking into account the evidence that the Husband had contributed to those properties.

13 The Husband's counsel also contended that the TPE investment by the Wife should not be added to the matrimonial pool, as the Wife has rights as a shareholder of TPE to enforce her claim. Whether the Wife has rights as a shareholder of TPE is not the issue. The issue is whether the Wife's contribution to TPE is an investment that should be considered as a matrimonial asset. I agree with the DJ's view that it is. Hence, I find no basis to disturb the DJ's decision on the division of matrimonial assets.

14 As for the care and control of the children, the Husband's counsel submitted (in less respectful terms) that the DJ failed to consider the express wishes of the children, and ought to have interviewed the children, and not just rely on the Child Representative Report ("the CR Report"). The judicial interview of children is an important option in our judge-led family justice system. It is within the judge's discretion to decide whether such an interview should be conducted, taking into account the advantages as well as limitations of judicial interview. Ultimately, the judge decides how best to ascertain the views and wishes of the children, and the judge is under no duty to interview the children. It is not for counsel to assert, as counsel did in this case, that the DJ ought to have conducted an interview. There are, if need be, polite ways to make the point. For example, counsel might submit, "Had the children been interviewed, the court would have found ..." In this case, the DJ's reliance on the CR Report in no way means that the DJ has failed to ascertain the wishes and views of the children. Further, in addition to the CR Report, the DJ also had the benefit of a social welfare report ordered by the court in Summons 3973/2017. The DJ also considered the stability and continuity of the current arrangements, with the Wife having sole care and control of the children. There is thus no indication that the DJ has failed to consider the best interests of the children in making orders for care and control and access.

15 In relation to the maintenance of the children, the DJ awarded $840 for the elder son, and $600 for the younger daughter. The Husband's counsel submitted that it should be $400 for each child. No justification was given as to why a reduction is warranted. I find that there is no basis to grant the Husband's appeal, as the DJ has taken into account the financial needs of the children and allowed for reasonable expenses.

16 I dismiss the Husband's appeal in its entirety and make no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Alfred Dodwell (Dodwell & Co LLC) for the appellant;
Lee Ee Yang and Wong En Hui Charis (Covenant Chambers LLC)
for the respondent.
