IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 3

District Court Appeal No 109 of 2019

Between

VGN

… *Appellant*

And

VGO

… *Respondent*

AND

District Court Appeal No 114 of 2019

Between

VGO

… *Appellant*

And

VGN

… *Respondent*

JUDGMENT

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

VGN
v
VGO and another appeal

[2021] SGHCF 3

High Court (Family Division) — District Court Appeals Nos 109 and 114 of 2019
Choo Han Teck J
28 October, 16 November 2020; 24 November 2020

22 January 2021 Judgment reserved.

Choo Han Teck J:

1 These are cross-appeals in respect of the ancillary orders made by the District Judge ("the DJ"). The parties were married in India and moved to Singapore soon after. They were married for about 11 years. The Husband, who is a software manager, is now in his early forties. The Wife, who is an accountant, is in her late thirties. There are two children to the marriage (collectively, "the Children"), a son and a daughter aged 14 and 9 respectively.

2 Notably, before divorce proceedings were commenced in Singapore by the Husband in 2017, the Husband had commenced parallel divorce proceedings in India ("the Indian proceedings"). These proceedings were still ongoing at the time of the ancillary matters ("AM") hearing before the DJ. The Wife's counsel in the Indian proceedings has filed an affidavit deposing that the Indian proceedings were concluded on 19 October 2019. Parties are also in agreement

that the Indian proceedings have been terminated. It is thus unnecessary for me to comment on this issue further.

3 The matters in dispute before me concern the division of matrimonial assets, the care and control of the children, the maintenance of the children and arrears of maintenance which the DJ ordered the Wife to pay to the Husband. Although the Wife did not appeal against the DJ's order on her maintenance, she subsequently indicated in her written submissions that the Husband's actions had put her in an "accommodation crisis" and thus demanded maintenance of S$2,000 per month from the Husband pending the resolution of this "crisis". I will deal with this submission last.

4 Notably, both the Husband and the Wife filed summonses to adduce further evidence in relation to their respective appeals. During the hearing on 28 October 2020, I told the parties that I would allow their applications to adduce fresh evidence, but will ignore irrelevant material.

5 In the decision below ("the GD"), the DJ held that the total value of the pool of matrimonial assets was S$757,433.18. This encompassed the net value of the matrimonial home ("the Flat"), which was agreed at S$457,755.80.The DJ applied the structured approach set out by the Court of Appeal in *ANJ v ANK* [2015] 4 SLR 104 ("*ANJ v ANK*") to determine the division of the matrimonial assets. She held that the ratio of direct contributions was 73.77 (Husband) : 26.23 (Wife), and that the ratio of indirect contributions was 50 (Husband) : 50 (Wife). After making adjustments to the average of these two ratios, the DJ arrived at a final ratio of 58 (Husband) : 42 (Wife).

6 The Husband and the Wife have both appealed against this decision. Counsel for the Wife, Ms Devi Haridas, argues that the DJ omitted to take into

consideration some of the husband's assets for the purposes of ascertaining the value of the matrimonial pool. These include —

(a) rental income from the subletting of the Flat;

(b) an Indian IT company ("the Indian Company") which the Wife claims is owned by the Husband; and

(c) funds allegedly dissipated by the Husband.

Counsel further contends that the DJ, in assessing the value of the parties' contributions, failed to account for certain amounts of money that were contributed by the Wife and by the Wife's father on her behalf.

7 In contrast, the Husband, who was in person, asserts that since he paid for the Flat all by himself, the Wife ought not to be entitled to any share in its value. The Husband further avers that there are several corrections to be made to the values of the assets and liabilities in his and the Wife's individual names. Finally, the Husband opposes the ratio of indirect contributions determined by the DJ.

8 I first address the Wife's contentions on the Husband's allegedly undisclosed assets. The Husband does not deny that he receives rental income, but he claims that he used these proceeds to repay his loans and to cover the family's expenses. The Wife did not adduce any evidence to counter this. As there is nothing to show that the Husband has hidden or intentionally dissipated the rental proceeds, I agree with the DJ that it would be inappropriate to award the Wife a share of the same. That would ignore the fact that the moneys have already been applied elsewhere and result in double-counting.

9 Likewise, I see no basis for adding the Indian Company to the matrimonial pool. This company is registered in the Husband's parents' names and there is no documentary evidence of the Husband's involvement in the said company. Admittedly, the fact that the company had been set up in 2016 – *ie*, after the breakdown of the marriage, and when the Husband's parents were already well advanced in age – raised some suspicions as to the identity of the company's true controlling mind(s). However, as the DJ pointed out, "[m]ere suspicion on the part of the Wife alone, in the absence of any other supporting evidence, was not sufficient for [the court] to hold that the Indian Company was controlled by and beneficially owned by the Husband" (see GD at [31]).

10 As regards the Husband's allegedly dissipated assets, the Wife relies on bank statements from the Husband, indicating that he made bulk cash withdrawals totalling S$122,840 between 2012 and 2017. She also claims that the Husband has hidden funds totalling S$175,970 which he transferred to numerous relatives and friends during the period from 2012 to 2017.

11 In the GD, the DJ undertook a comprehensive analysis of the evidence on hand and arrived at the conclusion that the Husband's alleged 'bulk withdrawals' had been made for genuine purposes (at [32]). I see no reason to overturn this finding of fact. In my view, it is not "incredible" for the Husband to have withdrawn a sum of S$5,000 for his daughter's delivery expenses even though she was only born two-and-a-half months after that. It is plausible that a father might want to make preparations for the birth of his baby in advance. Nor is it unbelievable that the Husband had withdrawn substantial sums from his bank accounts for the purposes of repaying his loans. Admittedly, there are no records (*eg*, in the form of payment slips or receipts) showing that these loans had actually been repaid. However, this must be counterbalanced against the evidence showing that the Husband had indeed taken numerous loans during the

parties' marriage. The Husband's practice of taking loans to repay existing loans is also evidenced by certain text messages between the Husband and the Wife which the Husband had exhibited in his affidavit dated 27 May 2019. In the premises, I am satisfied that the DJ's findings on this point were not plainly wrong or against the weight of the evidence.

12 Counsel's submissions in relation to the moneys which the Husband allegedly transferred to his friends and relatives are likewise unmeritorious. As the DJ pointed out (see GD at [34]), the Husband concedes that some of the sums identified by the Wife were indeed loans. He asserts, however, that these loans have already been repaid and that the moneys were subsequently utilised on an overseas trip with the Children to India. In support of this contention, the Husband adduced a bank statement showing that his older brother had remitted a total of INR 299,900 to him sometime in 2017. On balance, I am inclined to accept the Husband's evidence in this regard.

13 As for the sum which the Husband had transferred to his sister, the Husband argues that this was not a loan but rather money which he had given to his sister to pay rent and "buy things that are required for [the Husband's and the Children's] stay" as and when they travel to India. Counsel for the Wife says that it is unthinkable that the Husband would have rented a vacant flat just to stay there with the Children for one month during the school holidays. With respect, counsel appears to have misread the Husband's evidence. The Husband does not claim to have rented a flat of his own in India. Rather, his evidence is that he transferred money to his sister to help her defray some of her rental costs since he and the Children would stay in his sister's rented apartment during their visits to India.

14 That leaves the sum of INR 4.8m which, according to the Wife, constituted a loan that the Husband advanced to his father in three tranches between 2013 and 2017. Counsel for the Wife submits that the DJ erred in failing to add this sum to the matrimonial pool despite noting that there were "significant gaps" in the Husband's evidence as to how he had expended it. I agree that the Husband had been less than forthcoming in disclosing the nature and whereabouts of the INR 4.8m. I note, however, that the DJ had already expressly accounted for the inconsistencies in the Husband's evidence by adjusting the final apportionment of assets between the Husband and Wife from 61.88 (Husband): 38.11 (Wife) to 58 (Husband) : 42 (Wife) (see GD at [51]). In view of this adjustment, I do not find it necessary or appropriate to add the sum of INR 4.8m to the matrimonial pool.

15 Apart from contending that the assets above should be added to the matrimonial pool, counsel for the Wife also takes the position that the following sums ought to be taken into consideration for the purposes of assessing the Wife's direct and indirect contributions: (a) the sum of S$57,768, which the Wife had allegedly loaned to the Husband; (b) a cash sum equivalent to S$47,000 which the Wife's father had purportedly gifted to the couple; and (c) a sum of S$25,000, being the value of the Wife's jewellery which was allegedly taken away by the Husband's mother. I note that the DJ did in fact give weight to the Wife's loans to the Husband when assessing the parties' indirect contributions (see GD at [49]) and I therefore see no basis for counsel's submissions in this regard. As for the other sums, save for the Wife's bare allegations, there is no evidence of the existence of the alleged cash gift of $47,000, or of the items of jewellery which the Husband's mother had supposedly taken. I thus decline to add these sums to the Wife's direct contributions.

16 I now address the Husband's contentions concerning the Flat. In the GD, the DJ, applying the structured approach in *ANJ v ANK*, held that the Wife was entitled to S$192,257.43 (being 42% of the net value of the Flat) from the Husband. The Husband disagrees with this approach and asserts that the Wife should not be entitled to a share in the Flat at all since it is undisputed that she did not make any financial contributions to the Flat. In support of this argument, the Husband cited *UQP v UQQ* [2019] 4 SLR 1415 ("*UQP v UQQ*"), where this Court held that there are "unusual cases… in which the [*ANJ v ANK*] formula should not be applied" (at [11]).

17 In my view, the Husband's reliance on *UQP v UQQ* does not assist him. In *UQP v UQQ*, the asset in question was a flat which, as in the present case, had been fully financed by one party to the marriage. However, in *UQP v UQQ*, the Flat had been purchased by the wife six years and seven months before their marriage. In those circumstances, the approach in *ANJ v ANK* was not appropriate because it could not be said that the non-financial or indirect contributions of the husband had directly or indirectly assisted or enabled the wife to earn the money that was used to acquire the Flat (see *UQP v UQQ* at [11]–[12]).

18 The situation in this case is very different from that in *UQP v UQQ*. In this case, the Flat was bought in 2008, approximately two years after the parties' marriage in May 2006. The parties' first child, the son, was born in February 2007. From 2006 to 2008, the Wife did not work but was son's primary caregiver. In fact, the Wife and the son resided in India without the Husband for about one year after the son's birth before returning to Singapore to live with the Husband. During this time, it was the Wife's parents who took care of the Wife's and the son's expenses.

19 It is apparent that, in the period leading up to the purchase of the Flat, the Wife's contributions helped to relieve the Husband of both the physical as well as the financial burden of caring for the son. This would no doubt have given the Husband more freedom and flexibility in the pursuit of his then-fledgling career. As such, I do not consider this to be an "unusual" case in which *ANJ v ANK* ought not to be applied. The Wife indirectly assisted the Husband in purchasing the Flat, and for that reason, awarding her a share in the value of her Flat would not be unjust or inappropriate.

20 The Husband also submitted that several "waivers and corrections" ought to be made to the values of the assets in his name and in the Wife's name. I briefly address each of these "waivers and corrections" below.

(a) First, the Husband argued that the value of two premiums ought to be "waived" from his LIC insurance policy, since it had been purchased in 2004 (*ie*, before the parties' marriage in May 2006). This was clearly untenable since the amount that was relevant for present purposes was the sum that the Husband was insured for, and not the amount of premiums that he was required to pay.

(b) Second, the Husband asserted that his motorcycle ought to be valued at S$1,500 as opposed to S$4,000. I am again unable to accept this claim since the Husband did not tender any reliable evidence to show that his motorcycle was valued at S$1,500 as at the date of the AM hearing. All he could produce was a series of text messages with a WhatsApp user called "SGbikemart" showing that the Husband had offered to sell "SGbikemart" his motorcycle for S$1,000 on 8 July 2020, which was after the date of the AM hearing. There was no written response from "SGbikemart".

(c) Third, the Husband argues that his liabilities (arising from his loans from various banks) ought to be increased from S$30,000 to S$68,000. However, I note that a large proportion of these loans were only taken in April to September 2020, *ie*, after the date of the AM hearing. I thus decline to deduct these liabilities from the matrimonial pool.

(d) Fourth, the Husband contends that the Wife has "hidden assets" which she has failed to disclose. In the absence of any evidence as to what or where these "hidden assets" may be, I am unable to accept this contention, which amounts to nothing more to a bare assertion on the Husband's part.

(e) Fifth, the Husband alleges that he bought about S$25,000 worth of gold for the Wife and the Children, which is currently in the possession of the Wife. Although the Husband submitted credit card statements evincing his purchases of gold from Mustafa Centre, there is nothing to show that he had gifted these pieces of gold to the Wife. Indeed, the Wife's evidence is that the Husband had bought this gold for his own family members, and not for the Wife. Given the absence of evidence on the recipient(s) of the gold, I agree with the DJ that the Husband has not discharged his burden of proving that the gold he purchased constitutes part of the matrimonial assets.

21 Finally, the Husband avers that the Wife's percentage of indirect contributions ought to be decreased for various reasons including, *inter alia*, that:

(a) the Wife did not do any household work;

(b) the Husband paid for groceries and the Children's expenses; and

(c) the Wife interfered with the Husband's access to the Children.

In my view, these submissions also lack merit. I accept that the Husband had played a role in caring for the Children but I cannot discount the Wife's contributions in looking after the household, particularly in the early years of the marriage when she was the son's sole caregiver. In the circumstances, I find that the DJ's decision to award the parties an equal ratio of 50 : 50 in respect of their non-financial contributions to be just and equitable. I therefore uphold all of the DJ's orders as regards the division of matrimonial assets.

22 I now address the issues concerning the Children. Only the Wife contests the DJ's decision to grant shared care and control of the Children to the parties. She avers that she ought to be granted sole care and control of both Children. In this regard, her key contention is that the Husband dotes on the daughter but neglects and "ostracises" the son. For instance, the Husband has taken the daughter on numerous overseas trips without the son, leaving him at home without supervision. The Wife also alleges that the Husband has no regard for the daughter's safety and welfare.

23 These allegations are denied by the Husband, who wishes for the arrangement of shared care and control to remain, but seeks various changes to the AM orders on access. For instance, the Husband does not wish to inform the Wife in advance when he brings the Children on overseas trips. He also wishes for all correspondence in relation to the Children to be sent to his home address only.

24 At present, Order 8 provides that during their school term, the Children are to reside with the Wife during the even weeks of the year, and with the

Husband on the odd weeks of the year. I found from interviewing the children that only the daughter is keeping to this arrangement at present. The son feels that he cannot get along with the Husband and thus only stays with the Wife during his school term.

25 Having heard the respective views of the Wife, the Husband and the Children, I am of the view that it would be appropriate for the existing orders on shared care and control to remain. I agree with the DJ that the daughter appears to share a loving relationship with both parents, and that it would be in her interests for the present alternating week arrangement to remain. Although it is unfortunate that the son does not appear to share a close relationship with the Husband at present, I am of the view that it would be beneficial for him to reconcile with the Husband in the long run. To this end, I would order the Husband and the son to attend counselling sessions together on a regular basis for at least 12 months.

26 Where the travel arrangements for the Children are concerned, I decline to make the orders suggested by the Husband. Given the arrangement of shared care and control, it would not be reasonable for the Husband to bring the Children on overseas trips without the Wife's notice. Although the Husband claims that the Wife will "snatch" the Children away if he informs her of these overseas trips, there is no evidence of any such interference on the Wife's part.

27 As to the maintenance of the Children, counsel for the Wife seeks that the Husband be ordered to bear 80% of the Children's expenses (as opposed to 60% as previously ordered). She argues that this variation is necessary because the Wife's financial situation worsened in October 2019, after the AM orders was made. Specifically, the Wife has had to expend moneys on renting a flat because she cannot afford to purchase one for herself.

28 How did this predicament come about? Counsel for the Wife explained that the Husband had been ordered to pay the Wife a sum of S$165,564.07 pursuant to the AM order, which might have been sufficient for the Wife to procure suitable accommodation for herself and the Children – had it been paid to the Wife in cash. As it turned out, the bulk of these moneys were transferred from the Husband CPF's accounts to the Wife's Special and Medisave CPF accounts, which cannot be used for the purposes of purchasing a flat. Although the Wife's situation is unfortunate, ordering the Husband to bear a larger burden of the Children's expenses in these circumstances would effectively discount the substantial contribution that he has already made to the Wife's CPF accounts. In my view, the appropriate avenue for the Wife to pursue this matter would have been to apply to vary the mode of payment of the S$165,564.07 instead.

29 Counsel for the Wife further asserts that the Husband ought to pay a larger percentage of the Children's maintenance because he earns a steady income of about S$7,750 a month (including bonuses and rental income). On the other hand, the Wife has always been on fixed term contracts of employment and has even suffered "pockets of unemployment". I note, however, that the facts and documents pertaining to the parties' income were fully canvassed before the DJ, and neither party submits that there has been any material change in his or her income since the date of the AM hearing. Having considered the parties' relative earning capacities, I am satisfied that the DJ's orders on the maintenance of the Children ought to remain.

30 I now come to the sum of S$4,643.20 which the DJ ordered the Wife to pay to the Husband as arrears under the Interim Order for the period from February 2018 to July 2019 ("the Relevant Period"). Both of the parties appealed against this order. The Wife's contention is that the amount which the

Husband owes to the Wife exceeds the sum of S$4,643.20, and that consequently, it is the Husband who ought to pay the Wife arrears. Conversely, the Husband asserts that the Wife's arrears should be increased from S$4,643.20 to S$10,349.10 to account for various expenses which the Wife allegedly has yet to pay.

31 According to the Notes of Evidence, the sum of S$4,643.20 was proposed by the Husband, and was agreed to by the Wife subject to exclusions for certain items, namely (a) tuition receipts for the son's enrichment classes, (b) pocket money for the son, and (c) the maid's salary and levy payable for the month of June 2019. Given this context, I do not accept either parties' attempt to recalculate the S$4,643.20 figure. All that remains is for this Court to offset the values of items (a) to (c) from the agreed sum of S$4,643.20. In this regard, the evidence shows that the maid's expenses for June 2019 amount to approximately S$533. The Wife has also tendered receipts showing that she paid a total of S$3,400 for the son's enrichment classes during the Relevant Period. As for the son's pocket money, the Wife avers that she gave the son a total of S$992 during the Relevant Period (*ie*, approximately S$52.20 a month), which I find to be a reasonable amount. Offsetting these sums from the agreed sum of S$4,643.20, the Husband owes the Wife a total sum of S$281.80.

32 Finally, I address the DJ's order on the Wife's maintenance which, as explained at [3] above, was not appealed against by either party. I note that the Wife's basis for seeking maintenance at this belated stage is that she is unable to afford to purchase a flat and therefore requires a monthly maintenance sum of S$2,000 to tide her over until her so-called "accommodation crisis" comes to an end. For the reasons stated at [28] above, I do not think that the Wife ought to be awarded maintenance on this ground alone. I reiterate that such an order

would lead to the Husband bearing an undue financial burden over and above the sum which he has already transferred to the Wife's CPF accounts.

33 In summary, my decision is as follows:

(a) I uphold the DJ's orders on the division of matrimonial assets, as well as on the Children's and the Wife's maintenance, in full.

(b) I uphold the DJ's existing orders on the Children's care and control and access arrangements, but make the additional order that the Husband be required to attend counselling sessions with the son on a regular basis for at least 12 months.

(c) I reverse the DJ's order that the Wife pay the Husband arrears of maintenance in the sum of S$4,643.20, and order instead that the Husband pay the Wife the sum of S$281.80.

34 There shall be no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Haridas Vasantha Devi (Belinda Ang Tang & Partners) for the appellant in HCF/DCA 114/2020 and the respondent in HCF/DCA 109/2020;
The appellant in HCF/DCA 109/2020 and the respondent in HCF/DCA 114/2020 in person.