IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 25

Divorce (Transferred) No 3657 of 2019

Between

WGG

… *Plaintiff*

And

WGH

… *Defendant*

JUDGMENT

[Family Law — Custody]
[Family Law — Matrimonial Assets — Division]
[Family Law — Maintenance — Wife]
[Family Law — Maintenance — Child]

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WGG
v
WGH

[2022] SGHCF 25

General Division of the High Court (Family Division) — Divorce (Transferred) No 3657 of 2019
Choo Han Teck J
22 July, 30 August 2022

13 September 2022 Judgment reserved.

Choo Han Teck J:

1 The plaintiff wife ("the Wife") and the defendant husband ("the Husband") were married on 3 August 1998. Their marriage lasted 21 years. The Wife filed for divorce in FC/D 1818/2018 ("D 1818/2018") on 20 April 2018 after discovering evidence of the Husband's extra-marital affairs. She then discontinued the proceedings and filed a fresh suit on an uncontested basis on 30 July 2019. The parties have been separated since December 2018, when the Husband left the matrimonial home. Interim judgment ("IJ") was granted on 31 October 2019. The Wife is 54 years old and the Husband is 56 years old. The Wife has professional qualifications and was an Accounts Executive but has been unemployed since March 2022. The Husband is currently unemployed and has a polytechnic diploma. The parties have one child to the marriage, a son who is 20 years old this year. The issues before me are:

(1) the custody of the child;

(2) the division of matrimonial assets;

(3) the Wife's maintenance and

(4) the child's maintenance.

2 The Wife is seeking sole custody of the child, whereas the Husband is seeking joint custody. The Wife says that she has been the primary caregiver and decision-maker for the child since his birth. As the Wife currently continues to reside in the matrimonial home with the child, giving her sole custody of the child would ensure continuity and stability for him. Further, she says that the Husband has been an absent parent throughout the child's life. As per the Joint Summary, the Husband says that the parties should have joint custody of the child.

3 While generally, joint or no custody orders should be made, and sole custody orders are an exception to the rule (*CX v CY* [2005] 3 SLR(R) 690 at [24]), I note that in the present case, the child is entering national service this year and will turn 21 next year. Having interviewed the child, I find that the child is estranged from his father. The Husband has made little contact with the child and has not met with the child since he left the matrimonial home. Though the child is open to reconciling with his father, that is clearly not an important priority at the moment. Given these circumstances, I will allow the Wife to have sole custody of the child. By parties' consent, I also order that the Husband shall have reasonable access to the child. Since the child still has the Husband's mobile phone number and vice versa, they can make access arrangements themselves.

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4 In respect of matrimonial assets, so long as a property falls within the definition of a "matrimonial asset" under s 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("Women's Charter"), it should be included in the pool of matrimonial assets, regardless of whether it is jointly or separately owned.

5 The parties dispute the operative date for the identification and valuation of the matrimonial assets. The operative date for determining the pool of matrimonial assets is the date of IJ and the operative date for determining the valuation of matrimonial assets should be the date of the ancillary matters hearing. However, as the Husband had started dissipating assets around the time that the divorce was first filed, the Wife says that the court should depart from the default position in respect of the Husband's bank account monies and former companies. The Wife says that the operative date to determine both the pool and the valuation of the matrimonial assets should be 20 April 2018, the date that divorce proceedings were first commenced in D 1818/2018.

6 The Court of Appeal in *ARY v ARX and another appeal* [2016] 2 SLR 686 held that while the court retains the discretion to select the appropriate operative date to determine the pool of matrimonial assets, by default, the operative date to determine the pool of matrimonial assets should be the date of IJ unless the particular circumstances or justice of the case warrant it (at [31]). In *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 ("*TNL v TNK*") at [24], the Court of Appeal considered that another way to ascertain the material gains of the marriage is to add the values of certain assets back into the pool on the basis that a party has expended substantial sums when divorce proceedings were imminent. In my view, although the Wife eventually withdrew D 1818/2018, it was clear to the parties that divorce proceedings were imminent the moment that D 1818/2018 was filed on 20 April

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2018, and the Husband should not be allowed to make substantial withdrawals or dissipate assets after this date, whether deliberately or otherwise.

7 The main dispute concerns the Husband's 96% shareholding in his business, [AA] Pte Ltd ("[AA]"). The Husband has divested his 96% shareholding in [AA] on 15 April 2018 to his elderly parents and friend, and accordingly says that this asset should be excluded from the pool of matrimonial assets to be divided between the parties. The Husband says that his business started to decline since 2018 and is now essentially defunct. He also relies on a more updated valuation report which has assessed the business to be worth only around $80,246. The Husband explains that funds amounting to $490,419 for the purchase of a private property in [O] (the "[O] Property") that he holds on trust for the child mainly came from [AA], but the Wife disputes this.

8 The Wife says that the Husband had divested his shareholding after he became aware that the Wife was commencing divorce proceedings against him, and that this is an attempt to exclude the companies from the pool of matrimonial assets for division between the parties and that the Husband remains the true director of the company as he continued to sign cheques on the company's behalf even after August 2018. The Wife has also filed supplementary written submissions showing that [AA] has carried on business and continues to earn good income. She says that it continues to serve prominent customers including SIA Engineering, and that there is no reason that [AA] would take on prominent customers if it was genuinely winding up its business. The Wife says that the valuation of the company should be taken as of 20 April 2018, which is around $4,004,147.

9 The Husband admitted that he had divested his interest in [AA] upon "sensing that divorce proceedings were imminent". This shows that the

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divesting of [AA] was the Husband's deliberate attempt to exclude [AA] from the pool for division. This squarely falls within the situation that the Court of Appeal in *TNL v TNK* envisioned. I am of the view that the Husband was attempting a 'scorched-earth' campaign leaving little or nothing in the matrimonial pool for the Wife to salvage. I thus include the Husband's 96% shareholding in [AA] in the pool for division.

10 As for the valuation of [AA], both parties are relying on valuations provided by the joint valuers, Axel, Langdon & Sawyer Pte Ltd ("ALS"). ALS provided an initial valuation premised on [AA]'s financial statements in the years 2013 to 2018, of which the valuation of 96% of the shareholding would be around $3,046,577.28 ("ALS' First Valuation"). ALS later provided an updated valuation dated 7 July 2021, valuing [AA] at $80,246 ("ALS' Second Valuation). The latter report considers the Husband's act of divesting his shareholding in [AA], which had consequential outcomes on the management of the company and does not consider any contracts that go beyond the valuation date. As mentioned above, the Husband had clearly divested his shareholding to keep the company's assets out of reach of the Wife. However, contrary to the Husband's claims that [AA] is "essentially defunct", the Wife has shown that [AA] continues to carry out regular business in 2021 and 2022, and that the company continues to receive a steady income. In my view, if the company's shares are transferred back to him, and it continues on the trajectory of securing contracts with the big customers, I think that the company will, no doubt, be worth a substantial figure. The Husband was clearly a successful businessman and has a reasonably high earning capacity. I therefore think that ALS' Second Valuation is too low. Nevertheless, I accept that the Covid-19 pandemic would have affected the business. I will thus take the lower range of ALS' First

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Valuation as at the date of IJ, which is $2,775,844. The Husband's 96% shareholding will thus amount to $2,664,810.20.

11 The parties also disagree as to whether the Husband's 50% shareholding in [SS] Pte Ltd ("[SS]"), amounting to $20,929.25 as of 20 April 2018, is part of the matrimonial assets. The Wife says that the Husband had transferred all his shareholdings in [SS] to his friend on 13 May 2018, shortly after D 1818/2018 was filed. The Husband says that the Wife has no basis to insist that this company be included in the pool of matrimonial assets.

12 I agree with the Wife that the timing of the Husband's transfer of his 50% shareholding in [SS] was a dubious act — part of his 'scorched-earth' campaign. Given that this was done at the doorstep of divorce proceedings, I will order that the Husband's shareholding in [SS] should be included in the pool for division. As for the valuation in [SS], I will adopt the lower range as at the date of IJ, as per ALS' valuation report, in line with my determination of the valuation of [AA] above.

13 The parties disagree as to whether the Husband's Citibank and POSB bank accounts should be included in the pool of matrimonial assets. As to these two bank accounts, the Husband says that he has used the monies therein for the [O] Property and has produced bank cheques to show that a total of $490,419 has been paid by the [O] Property.

(a) Firstly, the parties dispute whether the sum of $509,734.85 from the Husband's Citi MaxiGain Account Ending 9638 (the "Citibank Account") should be included in the pool of matrimonial assets. The Wife says that the Husband withdrew all the monies therein and closed the account on 30 April 2018, just two days after D 1818/2018 was

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served on him, and that this timing is suspect. She also says that he was evasive with regard to the disclosure of the Citibank Account and only accounted for this after her second interrogatories application.

(b) Second, the parties disagree as to the amount in the Husband's POSB Account No. ending 4800 (the "POSB Account") to be included in the pool of matrimonial assets. The Wife says that the correct figure should be taken as of 20 April 2018, which is $8,485.34. She also says that a further sum of $61,663.98, which the Husband had withdrew, should be included in the pool.

14 In respect of the Husband's Citibank Account, I accept that the Husband had withdrawn all the monies and closed the account at a suspect timing. I am thus of the view that the value of the Citibank Account should be put into the pool of matrimonial.

15 Having perused the documentary evidence relating to the Husband's POSB Account, I find that as of 31 October 2019, which is the date of IJ, the Husband had $6,617.28 in his POSB Account. I will include this sum in the pool of matrimonial assets. As for the substantial withdrawals that the Husband made from his POSB account, I will remind the parties that where one spouse expends substantial sums of money after divorce proceedings became imminent, the other spouse cannot be expected to share in it, though what constitutes a substantial sum is not intended to include daily, run-of-the-mill expenses: *TNL v TNK* at [24]. I will thus add $31,706.55 into the matrimonial pool, as these were sums that were withdrawn after 30 July 2019, which is the date that the present divorce suit was commenced. This does not include the sums that the Husband claims were used to make payment of bills and for his rental after he moved out of the matrimonial home, which I accept are part of his personal

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expenditures. Since the Husband has receipts amounting to $490,419 to show that he had used funds from [AA] for the payment of the [O] Property, which the Wife accepts is held in trust for the child, I will also deduct this amount accordingly.

16 The parties further disagree as to the value of the Great Eastern Maxgrowth Enhanced Policy No Ending 9050 ("GE Maxgrowth Policy"). The Husband says that the policy was sold or assigned for $34,551. The Wife says that the Husband had attempted to dissipate the GE Maxgrowth Policy as he had assigned it away on 30 September 2021, exactly a day after her third request for discovery was served on him. The Husband's act of assigning away the GE Maxgrowth Policy well after the date of interim judgment is an act of wrongful dissipation. In my view, the full value of the policy should be included in the matrimonial pool.

17 The Wife also says that the Husband's two motor vehicles, the Toyota Harrier and the Mercedes Benz, should be included in the pool of matrimonial assets for division between the parties. The Husband has included the cars in his Joint Summary, they are therefore included as matrimonial assets.

18 The parties disagree as to how much the Wife had paid towards the purchase of her condominium unit at [C] ("[C] Property"). The Wife says that this was an investment made between her and her cousin and that the Husband did not contribute to this purchase at all. She had personally paid a sum of $275,702.00 as at 2019 towards the [C] Property and only this sum forms part of the pool of matrimonial assets to be divided. The Husband says that the net value of the property (less the mortgage) should be included in the pool for division. Given that this is a shared investment between the Wife and her cousin,

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I agree with the Wife that only her contribution should form part of the matrimonial pool.

19 The parties also disagree as to whether loans taken out by the Wife from her insurance policies should be included in the matrimonial pool. The Husband does not agree to share in this liability. I note that these loans were taken out after the date of interim judgment and that in her Affidavit of Assets and Means, the Wife has listed these loans as "Loans(s) for divorce proceedings". I agree with the Husband that these should not be included in the pool for division.

20 The Wife asks that I draw an adverse inference against the Husband for his lack of full and frank disclosure of his bank account monies. She says that he has two OCBC bank accounts which had a total of at least $508,026.30, and other undisclosed bank accounts from which he made payments of $536,781 for the [O] Property. She says that to give effect to this adverse inference, the court should add these sums back in the matrimonial pool. For a court to draw an adverse inference, there must be some evidence that establishes a prima facie case against the person whom the inference is to be drawn. It must also be shown that the person against whom the inference is to be drawn has some particular access to the information he is said to be hiding: *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [62]. I accept the Wife's documentary evidence of the OCBC account, and I am thus drawing an adverse inference against the Husband for failing to disclose that account. Accordingly, the sum of $508,026.30 should be added into the pool for division. As for the sums paid towards the [O] Property, I think that the Husband was not dissipating these sums in a suspicious manner but was making legitimate payments towards the [O] Property in the child's name. I therefore will not add the sum of $536,781 into the pool.

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21 In view of my findings above, the total value of the matrimonial asset pool is as follows:

S/N	Manner of Holding	Asset	Net Value / in SGD
1.	Joint Assets	Matrimonial Home	665,000.00
2.	Husband's Name	Toyota Harrier 2.0A Elegance	30,609.00
3.		Mercedes Benz C180 AvantGarde	20,500.00
4.		POSB Account No Ending 4800	38,323.83
5.		CPF Accounts	295,577.32
6.		Shares and investments	5,455.40
7.		96% shareholding in [AA]	2,664,810.20
8.		50% shareholding in [SS]	18,665.00
9.		Great Eastern Maxgrowth Enhanced Policy No. Ending 9050	60,291.50
10.		Great Eastern Flexilife 20 (Series 3) Policy No. Ending 0229	6,340.94
11.		Great Eastern Preferred Living Assurance with Special CRB Policy Ending 5041	24,962.39
12.		Great Eastern Supreme Living Assurance with RB Policy No. Ending 7665	21,732.01

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13.		Great Eastern Whole Life with ERB Policy Ending 3744	34,414.10
14.		Citibank Bank Account	509,734.85
15.		OCBC Bank Account	508,026.30
16.		Withdrawals from POSB Account for [O] Property	- 490,419
Sub-total for assets under Husband's name			3,749,023.84
1.	Wife's Name	Standard Chartered Bank Bonus$aver Account No. Ending 3106	2,520.52
2.		OCBC Bank Statement Savings Account No. Ending 6001	1,785.22
3.		OCBC Bank Savings Accounts No. Ending 8937	1,221.36
4.		POSB eSavings Account No. Ending 6532	2,180.34
5.		Maybank Islamic Berhad (Malaysia) Account No. Ending 1768	255.36
6.		ePOSBkids Account No. Ending 5506	26.04
7.		CPF Monies	266,175.02
8.		CDP Securities Account No. Ending 8765	2,440.88
9.		Great Eastern Living Assurance Policy with CRB Policy No. Ending 1738	4,353.03

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10.		Great Eastern Living Assurance Policy Plus with CRB Policy No. Ending 8628	3,349.13
11.		Great Eastern Whole Life with ERB Policy No. Ending 3036	3,598.66
12.		Monies utilized by Wife towards purchase of [C] Property	275,702.00
Subtotal for assets under Wife's name			563,607.56
Total assets			4,977,631.40

22 This is a dual-income family, and the principles in *ANJ v ANK* [2015] 4 SLR 1043 should apply. I first turn to the issue of the parties' direct financial contributions. The parties dispute their direct contributions to the matrimonial home. The Husband says that he contributed $85,000 and the Wife did not contribute anything. The Wife says that they had spent $65,000 in total and that both parties contributed equally. She has also adduced receipts evidencing payments for various furnishings and other renovation items. The Husband, on the other hand, has no receipts or documents evidencing that he contributed $85,000 to the renovations of the matrimonial home. In the light of the documentary evidence adduced by the Wife, which also shows that she had contributed to the renovations, I think that the Wife's estimation of their contributions is fair.

23 The parties' direct contributions to the total pool of matrimonial assets are thus as follows:

	Husband	**Wife**
Sub-total of agreed direct contributions	$3,749,023.84	$563,607.56

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Matrimonial home	$405,599.70	$267,095.62
Total	$4,154,623.54	$830,730.18
Ratio	83.33% ≈ 85	16.67% ≈ 15

24 In view of my findings above and adopting a broad-brushed approach, I find that the parties' overall direct contributions to be 85:15 in favour of the Husband.

25 I now address the issue of the parties' indirect contributions. Although both parties held full time jobs and had a part-time helper, the Wife says that she was also the one responsible for the bulk of the household chores. She also says that she bore a significant portion of the expenses for the matrimonial home. Most importantly, the Wife says that she was the child's primary caregiver since his birth, which the Husband does not deny. When the child had an accident, she was also the one primarily caring for him and taking care of his hospitalization and rehabilitation needs. The Husband says that the indirect contributions should be apportioned equally as the parties had a domestic helper. The Wife had also not been supportive, and her actions had caused the demise of his business.

26 In my view, the Wife contributed more to the upbringing and care of the child. I also find that the Husband kept little contact with the child after he left the matrimonial home in end 2018. Nonetheless, I acknowledge that the Husband had contributed to the household expenses. While the parties do not dispute that they had a part-time domestic helper, I find that the Wife was on the whole, more involved in the day-to-day management of the household. I am

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of the view that the indirect contributions should be apportioned 65:35 in favour of the Wife.

27 Using a broad-brush approach, averaging the direct contribution ratio and indirect contribution ratio above results in an average ratio of 60:40 between the Husband and Wife.

	Husband	**Wife**
Direct contributions	85	15
Indirect contributions	35	65
Average Ratio	60	40

28 The parties should work out the consequential orders between themselves. I make the following orders to reflect the parties' respective entitlement to the matrimonial pool:

(a) each party to retain assets under his/her own name;

(b) the Husband's right, title and interest in the matrimonial home to be transferred to the Wife within six (6) months from the date of this judgment; and

(c) the balance sum to be paid by the Husband to the Wife by cash.

29 On the issue of the Wife's maintenance, the Wife says that the Husband is earning a true income of at least $14,000 to $16,000. As her take-home monthly income is insufficient to cover her reasonable personal monthly expenses, she says that it is reasonable for the Husband to pay her maintenance in the sum of $2,700 per month, being the shortfall between her take-home income and reasonably monthly expenses. The Husband says that the Wife's

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take-home income of $4,900 is more than sufficient to maintain herself, and that her application for interim maintenance was previously dismissed by the Family Justice Courts.

30 The basis of maintenance for a former wife under s 113 of the Women's Charter is for financial preservation and to even out any financial inequities that arise from having been economically disadvantaged by the role taken in the marriage. In the present case, the Wife has a high earning capacity. Although she resigned from her job in March 2022 with the intention of "taking a break", she was working throughout the marriage and would be able to transition easily back into the workforce. In the circumstances, there shall be no maintenance for her.

31 On the issue of the child's maintenance, the Wife estimates that the child's monthly expenses are $7,323.26. She says that the Husband should be responsible of 75% of his expenses, which amount to $5,500. The Husband says that the current maintenance order as per MSS 1239/2021 is that he should pay $1,200 for the maintenance of the child. He further says that he is not in a good financial situation and cannot afford to pay the child more.

32 In my view, the estimate set out by the Wife is unreasonable and too high. Items such as "Monthly tuition fees" are no longer applicable since the child has graduated from polytechnic and is about to enter national service. Furthermore, the child is about to begin his national service and will receive an income. In these circumstances, the maintenance order as per MSS 1239/2021 is adequate.

33 Separately, the Wife also says that the Husband has not yet paid for the child's maintenance and for conservancy fees since September 2021. If the

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Husband has yet to do so, the Husband is to pay these sums from his share of the matrimonial assets.

34 Each party is to bear its own costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Charlene Nah Xiang Ling (PKWA Law Practice LLC) for the plaintiff;
Kelvin Lee Ming Hui (Wnlex LLC) for the defendant.

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