IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 2

District Court Appeal No 73 of 2021

Between

VWM

… *Appellant*

And

VWN

… *Respondent*

GROUNDS OF DECISION

Family Law — Matrimonial assets — Division
Family Law — Matrimonial assets — Matrimonial home

VWM
v
VWN

[2023] SGHCF 2

General Division of the High Court (Family Division) — District Court Appeal No 73 of 2021
Lai Siu Chiu SJ
9 March 2022

16 January 2023

Lai Siu Chiu SJ:

Introduction

1 VWM ("the Wife"), who is the plaintiff, and VWN ("the Husband"), who is the defendant, married on 2 May 2015. There are two children of the marriage, a daughter born in 2016 and a son born in 2018. The Husband left and stopped living with the Wife and children sometime in January 2019.

2 The Wife commenced divorce proceedings against the Husband in March 2019 whilst the Husband commenced his counterclaim in August 2019. After Parties had come coming to an agreement on the divorce proceedings in January 2020, interim judgment was granted on 4 February 2020 ("the IJ") on both the Wife's claim and the Husband's counterclaim.

3 On 31 May 2021, the ancillary matters relating to the divorce were dealt with by a district judge ("the DJ") in the Family Justice Court ("FJC") who, *inter alia,* made the following orders:[1]

> (a) the parties to have joint custody of the two children of the marriage with care and control to the Wife;
>
> (b) the parties' identified matrimonial assets (other than the matrimonial home) to be divided in the ratio of 64.5:35.5 in favour of the Wife;
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> (c) as regards the matrimonial home, which is a Built-to-Order ("BTO") Housing and Development Board ("HDB") flat located at [address redacted] in Tampines, the unit to be surrendered or returned to the HDB and the parties to be refunded any sums they had paid in the proportion of their respective contributions towards the purchase price;
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> (d) there would be no maintenance for the Wife; and
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> (e) the defendant to pay a monthly sum of $1,100 to the Wife for the children's maintenance.

Along with the 64.5% distribution of the matrimonial assets in the Wife's favour in [3(b)] above, the DJ also ordered her to transfer $45,574.80 to the Husband's CPF account.[2]

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1 The DJ's grounds of decision dated 15 October 2021 ("the DJ's GD") at para 2.

2 The DJ's GD at para 111.

4 The Wife was dissatisfied and appealed in HCF/DCA 73/2021 ("the Appeal") against the entire decision of the DJ, including the prayer in [3(d)], even though she did not seek maintenance against the Husband.

5 The Appeal came up for hearing before this court. Counsel argued the Appeal for the Wife but the Husband acted in person at the hearing. The Appeal was dismissed save that the monthly maintenance sum for the children was increased to $1,144 with the Husband's consent. This court further dismissed HCF/SUM 25/2022 ("the Wife's application") in which the Wife applied for leave to adduce fresh evidence from (a) thirty videos pertaining to the Husband's access to the children from 1 November 2021 to 21 January 2022; and (b) Short Messages Services exchanged between the parties from 28 October 2021 to 18 January 2022.

6 In regard to the matrimonial home, this court affirmed the order made by the DJ below and ordered that the Wife transfer $45,574.80 to the Husband's CPF account within 30 days of the order being made. As the Wife has appealed against this court's order pertaining only to the matrimonial home, these grounds of decision will focus on that issue.

The division made by the Family Justice Court

7 The DJ in the FJC had painstakingly reviewed the parties' individual as well as their joint assets to arrive at a figure of $432,977.10 as the grand total. In arriving at that figure, the DJ took into account, *inter alia,* that the Wife held a fixed deposit of $220,000 which sum was contributed as follows:

(a) the Wife $120,000;

(b)	the Wife's mother	$ 80,000; and
(c)	the Wife's sister	$ 20,000.

8 The Wife transferred the entire sum of $220,000 to her own account when the fixed deposit matured in December 2019, after which she returned to her mother and sister their principal sums and accrued interest. By the time of the hearing of the ancillary matters, the Wife had spent almost half of her principal sum of $120,000 in the fixed deposit.[3] The DJ noted that the Wife's expenditure amounted to approximately $75,000 in six months, or about $12,500 per month, relating to a number of unaccounted expenditures or transactions. The DJ addressed this issue by relying on case law (*USC v USD* [2020] SGFC 76 at [114], *TYS v TYT* [2017] 5 SLR 244 at [45]–[48] and *ANJ v ANK* [2015] 4 SLR 1043 at [29]–[30]) to draw an adverse inference against the Wife and then adjusted the eventual ratio of division against the Wife.[4]

9 The DJ had cited *USA v USB* [2019] SGHCF 5 and *TND v TNC and another appeal* [2017] SGCA 34 as authority for the rule that the date of valuation of the matrimonial assets would ordinarily be the date of hearing of the ancillaries.[5] However, because of the Wife's partial depletion of her fixed deposit sum, the Husband's lawyer at the hearing below requested the FJC to depart from that rule and value the bank accounts, CPF moneys and non-monetary assets as at the date of the IJ, which the DJ did.[6] Doing so would

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3 The DJ's GD at paras 79 and 89.

4 The DJ's GD at paras 89 and 90.

5 The DJ's GD at para 84.

6 The DJ's GD at para 87.

"recoup" the lost value of the fixed deposit due to the Wife's expenditure from the value of the matrimonial assets (according to the Husband's lawyer). At the hearing below, the Wife's lawyer confirmed that the Wife's principal sum of $120,000 paid into the fixed deposit should be included as part of the matrimonial pool.

The Wife's case

10 At the Appeal, the Wife requested that she be attributed 75% as her indirect contribution towards the marriage[7] instead of the DJ's figure of 64.5%. (In the court below, she had asked for 80% as her contribution.) The Wife further requested (as she did in the court below) that she be allowed to purchase the matrimonial home in her sole name without making any refund to the Husband's CPF account.

11 In his GD, the DJ noted that the Wife gave zero value to the matrimonial home whereas the Husband said it was worth $467,130.[8] The DJ then made the following comments:[9]

> 113 The reasons for this stark difference is because at the time of the hearing, the sale of the matrimonial home had not been completed. In fact, parties have not yet collected the keys to the matrimonial home. That is the reason why the [Wife] had valued the property as "0". To be clear, Ms Tan [counsel for the Wife] was not taking the view that the matrimonial property had no value, but because the sale had not been completed, and no loan had been drawn and there was not [sic] comparative sale price to use as a benchmark, any value attributed to the matrimonial property would be speculative at best.

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7 The Appellant's Case at para 4.

8 The DJ's GD at para 112.

9 The DJ's GD at p 49.

> 114 It is against that backdrop where Ms Chong [counsel for the Husband] submitted that the matrimonial property be "surrendered", and for parties to receive a refund of the deposits they have made. In this regard, there is no dispute that parties had equally contributed the principal sum of $16,141.50 each from their respective CPF accounts. On the other hand, Ms Tan's submission was that the matrimonial [home] be transferred to the [Wife].
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> 115 After considering parties' submissions, I was not inclined to accede to the [Wife's] request for the property to be transferred to the [Wife]. While I noted Ms Tan's submission that by transferring the property, the [Wife] would be the person solely bearing the mortgage, this misses the more fundamental point that the [Wife] would be receiving an asset which is a matrimonial asset which, ordinarily, would have to be divided. Put another way, it would be unfair for the [Wife], on the deposit sum she made, to obtain a large and valuable asset without any further consideration or "compensation" to the [Husband]. Indeed, in *her own written submissions*, the [Wife] offered no position on the kind of payment which could be made to the [Husband] in exchange for her obtaining the matrimonial property.
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> 116 In my judgment, I was of the view that it would be a cleaner break for neither party to obtain the property, For it to be surrendered (or returned) to the HDB, and for parties to obtain the relevant refunds (less any applicable fees/penalties) in the proportion of their respective contributions. With their respective funds, parties are free to move on [and] look for their own accommodation on their own terms. I pause here and note that the matrimonial property is located nearby parties' respective addresses, so the locality of the matrimonial property is, at best, a neutral factor. Furthermore, given also that neither the parties nor the Children has [sic] lived in the matrimonial property, there would be no acclimatization issues.
>
> [emphasis in original]

12 In the Appellant's case, the Wife submitted that the DJ erroneously placed undue emphasis on the brevity of the parties' marriage without adequately considering the Wife's contribution in carrying and giving birth to

two children during that period of time,[10] citing *AXW v AXX* [2012] 3 SLR 900 at [16]. The Wife further submitted that the children were extremely young and as a corollary, had been very dependent on her since their birth for their care and upbringing, a factor which the Court of Appeal in *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 acknowledged.

13 The Wife referred to [101] of the DJ's GD, which summarised the Wife's contributions. The Wife stated that the Husband stopped living with her and the children in January 2019. In other words, the parties lived together for less than four years, as noted by the DJ,[11] and the marriage lasted less than five years.

14 Notwithstanding such a short marriage, the Wife relied in the Appellant's case on such decisions as *TUR v TUS* [2016] SGFC 145 where the family court awarded 80% as the indirect contribution of the Wife (in a marriage that lasted less than three years with two young children) and *VVU v VVV* [2021] SGFC 100 where the family court ascribed 75% as the indirect contribution of the Wife in a one-child marriage that lasted less than three years.[12]

15 The Wife further submitted that the DJ also erred in law in placing equal weight on direct and indirect contributions.[13] She cited *ANJ v ANK* (see [8] above) at [26] to support her submission that "there are instances where one component necessarily assumes greater importance than the other on the facts

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10 The Appellant's Case at para 7.

11 The DJ's GD at para 9.

12 The Appellant's case at paras 12 and 13.

13 The Appellant's case at paras 14–17.

and correspondingly greater weight should be attached to that component as against the other". The Wife added that this principle was affirmed in *USB v USA* [2020] 4 SLR 288.

16 The Wife argued that based on her submissions, the final division of the matrimonial pool should be as shown in the table below:

S/N	Average percentage contribution	Wife	Husband	Weightage
A	Direct contribution	75.8%	24.2%	75%
B	Indirect contribution	75%	25%	25%
C	Adjusted average ratio	75.6%	24.4%	NA

17 She then went on to add that the DJ should have adjusted the final ratio above further *upwards* in her favour by taking into account the needs of the children under s 112(2)(c) of the Women's Charter (Cap 353, 2009 Rev Ed).[14] The Wife argued that the children required a roof over their heads and relied on *UAX v UAY* [2017] SGFC 55 where the court adjusted the final ratio upwards by 5% in the wife's favour. The Wife submitted that this court should similarly adjust the ratio upwards by 5% in her favour, with the final division of the matrimonial pool being as follows:

S/N	Description	Wife's share	Husband's share
A	Matrimonial pool		$437,286.57*
B	Average ratio	80.6%	19.4%
C	Value of percentage	$352,452.98	$84,833.59

[14] The Appellant's case at para 21.

D	Assets already in their name	$331,560.22	$105,726.00
E	Transfer from Husband's assets to achieve 80:20 ratio	$20,892.41	($20,892.41)

*As assessed by the DJ at [94] of the DJ's GD, excluding the matrimonial home.

18 The Wife went even further and submitted that the DJ should *not* have ordered the BTO flat to be surrendered or returned to the HDB, instead, it should be transferred to her sole name.[15] She argued that the DJ's order cannot be properly considered a "division of the matrimonial asset *between* the parties" [emphasis in original] as it amounted to removing the BTO flat from the matrimonial pool "to the loss of *both* parties" [emphasis in original] as the principal sums deposited toward the purchase of the BTO flat will be forfeited by the HDB (see [11] above).[16]

19 The Wife argued that if she completes the purchase of the BTO flat in her sole name, it would not amount to her obtaining a large and valuable asset without any further consideration or "compensation" to the Husband (see [12] above).[17] As the BTO flat is an uncompleted purchase, she reiterated her argument made below that the property has no value. Further, as the BTO flat will eventually be mortgaged, the Wife submitted that the DJ should have considered it a liability instead. The liability was one which she is willing to bear on her own post-divorce. She pointed out that, save for his principal CPF

15 The Appellant's case at para 25.

16 The Appellant's case at para 27; the DJ's GD at para 115.

17 The Appellant's case at para 28.

contribution of $16,141.50, the Husband would not have to bear the liability of the mortgage for the BTO flat. She added that her purchase of the BTO flat should be without the need to refund the Husband's CPF moneys (including accrued interest) that he utilised towards the purchase.

20 The Wife stated that she and the children are currently residing at her parents' flat but the children will eventually require a permanent home of their own, relying on *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 1 SLR(R) 336. She further submitted that the BTO flat is near to her parents' flat and, as the children are young, the ability to receive the support of their grandparents is of immeasurable importance. Accordingly, its locality was not a neutral factor as the DJ held.

21 The Wife submitted "that the DJ should have looked beyond the equities between the parties to consider the needs of the young children and the importance of having a stable, independent home".[18] She stated that allowing her to proceed with the purchase of the BTO flat in her own name would ease her mental and financial burden of sourcing for an alternative home for the children.

The Husband's case

22 As he was unrepresented, the Husband tendered the Respondent's case personally. In essence, the Husband submitted the DJ had not erred in law and requested that this court affirm the decision of the FJC as regards (a) the ratio of indirect contributions (*ie*, 55% in the Wife's favour); (b) the equal weightage

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[18] The Appellant's case at para 32.

to be given to the parties' direct and indirect contribution; as well as (c) the surrender to the HDB of the BTO flat.

23 In regard to the BTO flat, the Husband pointed out that according to HDB's regulations, the BTO flat has to be returned to the HDB.[19] It was also a matrimonial asset as it was acquired by the parties during the course of the marriage. The BTO flat was a valuable asset and it was unfair on the Husband for the Wife to receive this asset based on the deposit she had paid, let alone that he does not receive the return of his CPF moneys used in its purchase and receives no compensation from her.

24 The Husband disclosed that notwithstanding the order of court by the FJC dated 15 October 2021 for the Wife to transfer $45,574.80 from her CPF Ordinary Account to his CPF Ordinary Account, the Wife had to-date failed to do so.

The court's decision

25 This court did not accept the Wife's submission or agree with her divisions in the tables set out at [17] and [18] for the reasons which are set out below.

26 In this court's view, the Wife placed an unduly great emphasis on the facts that she gave birth to, and has care and control of, the children and that they need a roof over their heads. She had obviously paid no heed to the DJ's observations set out at [11] above. Having children is often part and parcel of the marriage process for a woman. It is unrealistic of the Wife to expect that a

[19] The Respondent's case at para 9.

woman who bears children should be accorded special recognition or reward in the division of matrimonial assets in the manner set out in her submissions.

27 In fact, the Wife came across, from her submissions, as utterly selfish and self-centred. She thought of only herself and had no regard whatsoever for the Husband, as seen in her proposal at [20] that there need not even be a refund of his CPF moneys used for the deposit to the HDB. The Husband needs a roof over his head as much as she (and the children) does.

28 The Wife's stance was all the more unreasonable when seen in the light of the parties' CPF savings. As at the date the parties filed their affidavits of means ("AOM") on 12 March 2020, the Wife had, as of 8 January 2020, $156,322.17 in her CPF Ordinary account, $47,748.43 in her Special account and $52,524.92 in her Medisave account, for a total of $256,595.52 in all three accounts.[20] This is due to her earning a monthly average salary of $4,936.00 as a nurse educator with Changi General Hospital.[21]

29 In contrast, the Husband, who earns a gross monthly salary of $4,708.43 (and a net salary of $3,767.20) as an operations executive[22] at Selarang Halfway House, has CPF savings, as of 31 December 2019,[23] of $58,953.02 in his Ordinary account, $21,898.63 in his Medisave account and $24,528.84 in his Special account. His total CPF savings are $105,380.49, which is less than half of the Wife's.

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20 The Wife's AOM at para 12.

21 The Wife's AOM at para 2.

22 The Husband's AOM at p 4.

23 The Husband's AOM at p 8.

30 As for the parties' other assets, the Wife has savings of $68,157.20[24] while the Husband has $345.85[25] in his only bank account. The Wife is much better off. Yet, she sought to deprive the Husband of $16,141.50, which is 15% of his current CPF savings of $105,380.49 ($16,141.50 ÷ $105,380.49 x 100%). That is grossly unfair to the Husband.

31 It was also absurd of the Wife to submit that the BTO flat has no value in the division of the matrimonial assets when the parties had purchased the flat from the HDB at $467,130.[26] Allowing her to retain the BTO flat without refunding the Husband's deposit to his CPF savings and not paying him any monetary compensation whatsoever was even more unjust, as the DJ observed (see [11] above).[27] It would amount to giving her a windfall. It would also make a mockery of the DJ's decision to adjust the ratio in order to draw an adverse inference against the Wife for depleting almost half of her fixed deposit of $120,000 without satisfactory explanation.

32 Every case on the division of matrimonial assets turns on the facts of the case in question. The fact that the High Court in *AXW v AXX* took into account that the wife had borne a child for the husband[28] does not necessarily mean the court should do the same in this case. It should also be noted that the wife in that case had, in any event, lost her appeal *vis-à-vis* her request for a higher percentage of indirect contribution: the High Court affirmed the decision of the

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24 The Wife's AOM at para 11.

25 The Husband's AOM at p 2.

26 The Husband's AOM at p 3.

27 The DJ's GD at para 115..

28 The DJ's GD at para 14.

District Judge in awarding her 7.8% even having taken into account that she had borne a child.

33 In this case, the Wife asked for double recognition of her indirect contributions (see [16] and [17] above). She asked for about 75% as both her direct and indirect contributions, and another 5% increase to bring her overall contributions to 80%. That was not only grossly unfair to the Husband but also wholly undeserved based on the short duration of the parties' marriage.

34 Accordingly, this court dismissed the Appeal and affirmed the orders made by the DJ on 31 May 2021.

Lai Siu Chiu
Senior Judge

Patrick Fernandez (Fernandez LLC) for the Appellant;
The Respondent in person.
