IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(A) 22

Appellate Division / Civil Appeal No 132 of 2023

Between

WRX

… *Appellant*

And

WRY

… *Respondent*

In the matter of Divorce Transfer 3747 of 2020

Between

WRX

… *Plaintiff*

And

WRY

… *Defendant*

JUDGMENT

[Family Law — Matrimonial assets — Division — Adverse inference drawn for non-disclosure]
[Family Law — Maintenance — Wife]

[Family Law — Maintenance — Child]

WRX
v
WRY and another matter

[2024] SGHC(A) 22

Appellate Division of the High Court — Civil Appeal No 132 of 2023 and Summons No 13 of 2024
Woo Bih Li JAD, Debbie Ong Siew Ling JAD, Philip Jeyaretnam J
15 May, 3 June 2024

29 July 2024 Judgment reserved.

Debbie Ong Siew Ling JAD (delivering the judgment of the court):

Introduction

1 This judgment principally concerns how the court should give effect to an adverse inference drawn against a party who has breached her duty to provide full and frank disclosure of her assets and means in Ancillary Matters ("AM") proceedings following the grant of a divorce. Undisclosed assets notionally restored to the matrimonial pool to give effect to an adverse inference against the non-disclosing party should not ordinarily be counted as part of that party's direct contributions to the acquisition of matrimonial assets.

2 AD/CA 132/2023 ("AD 132") is an appeal brought by the "Husband" against the decision of a Judge of the Family Division of the High Court (the "Judge") in *WRX v WRY* [2023] SGHCF 50 (the "Judgment") on ancillary matters following the parties' divorce. The respondent, the "Wife", did not

appeal. AD/SUM 13/2024 ("SUM 13") was the Husband's application to adduce further evidence in AD 132.

Background to the appeal

The parties

3 The Husband, a French citizen and Singapore Permanent Resident, works as the Chief Product Officer at [D]. The Wife, a Singaporean, worked as a Business Development Manager at [E]. According to the Wife, she has been unemployed since 29 November 2022 and remained unemployed at the time of the hearing on 15 May 2024.

4 The parties married on 28 December 2002. They have two children, [B], a son aged 11 and [C], a daughter aged 6. Both children are currently studying in local primary schools.

Procedural history

5 On 31 August 2020, the Husband commenced divorce proceedings and an interim judgment of divorce ("IJ") was granted on 5 July 2021. On 13 September 2021, the District Judge of the Family Court issued interim orders for custody, care, control, and maintenance of the children. The Wife was awarded interim care and control of the children, and the Husband was ordered to pay interim maintenance of $4,875 for the children. The Husband was directed to pay the bulk of the children's maintenance directly to the relevant service providers, such as the vendors of the children's various enrichment classes.

6 On 17 January 2022, after the parties had exchanged their affidavits of assets and means, the Husband applied for the disclosure of documents and to

administer interrogatories. In support of his application, the Husband contended that the Wife had been taking steps to dissipate matrimonial assets since 2018, and therefore requested that she disclose, amongst other things, her bank statements from January 2016 to December 2021. In response, the Wife voluntarily disclosed some of the requested documents, including monthly bank statements from 2020 onwards, but declined to disclose monthly statements from any earlier period on the basis that the request for statements during this period was "frivolous, vexatious, and onerous". However, the Wife did disclose some bank statements from May 2019 in support of her own case (see below at [13]). The District Judge allowed the Husband's application and accepted that the Wife had contemplated divorce as early as in 2018. The District Judge ordered the Wife to disclose most of the documents sought by the Husband (the "Discovery Order"), including her bank statements for 2017 on a quarterly basis, and monthly statements for 2018 and 2019. Pursuant to the Discovery Order, the Wife filed an affidavit dated 13 April 2022 (the Wife's "Disclosure Affidavit"). However, in this affidavit, the Wife expressly acknowledged that her disclosure was still incomplete. In particular, in breach of the order, she did not provide her bank statements dating prior to 2020.

The decision below

7 The matter was subsequently transferred to the Family Division of the High Court. The hearing of the ancillary matters took place before the Judge on 4 October 2023 (the "AM Hearing") and the Judgment was delivered on 21 November 2023.

8 The Judge awarded the Wife sole care and control of the children. Although the issue of care and control was initially a live one in AD 132, the parties settled the dispute over the children's care and access on 18 March 2024

after a successful mediation. We commend the parties for working things out and reaching an amicable resolution, as parents should. We made the appropriate consent orders on these issues at the hearing on 15 May 2024. The effect of the settlement is that the children will enjoy substantially more time with their father, with increased consecutive days of overnight access.

9 The Judge applied the structured approach in *ANJ v ANK* [2015 4 SLR 1043 ("*ANJ*") and divided the matrimonial pool in the proportion of 45:55 in favour of the Wife, as summarised in this Table:

	Husband	**Wife**
Matrimonial Pool	**$3,670,071.02**	
Ratio of direct contributions	39	61
Ratio of indirect contributions	50	50
Average ratio	45	55
Distribution	**$1,651,531.96**	**$2,018,539.06**

10 The Husband appeals against four aspects of the Judge's decision on the division of matrimonial assets. We state the relevant facts in brief.

11 The first aspect concerns the valuation of two stock trading accounts and an investment policy owned by the Husband (collectively, the "Investment Accounts"). The value of the Investment Accounts at the valuation dated closest to the IJ date (on 5 July 2021) was $243,086, but this had decreased to $92,350 at the valuation dated closest to the date of the AM Hearing (on 4 October 2023). The Judge held that, although the operative date for valuing the Investment Accounts should be the AM Hearing date if the value had decreased because of market volatility, the higher valuation of $243,086 would be adopted because it

was impossible to tell from the evidence how and why the composition of the Investment Accounts had changed (such as what withdrawals had been made or whether there were profits and losses after the IJ date): Judgment at [14]–[15].

12 The second aspect is on the valuation of an insurance policy held by the Wife (the "Sunlife Policy") as a matrimonial asset. The Sunlife Policy had been acquired on 15 November 1980, before the marriage. The Judge accepted that it had been given to the Wife by her father when she was four years old, and that the Wife had taken over the payment of the premiums in 2017. The Judge valued the Sunlife Policy at $1,533 based on the total estimated value of the premiums paid by the Wife: Judgment at [20].

13 The third aspect relates to how the adverse inferences drawn against the Wife ought to have been given effect. The Judge found that the balance of the Wife's disclosed bank accounts had "dropped significantly" by an estimated amount of $1,258,047 between June 2020 to June 2021, which was a "significant decrease". The Wife claimed that this was merely the "return" of moneys that belonged to her extended family (the "Wife's Family"). The Judge rejected the bare assertions by the Wife's Family that all the funds in the accounts belonged entirely to them, but accepted that $210,714 belonged to her sister, $440,549 belonged to her brother, and $162,000 belonged to her father. This was based on piecemeal bank statements adduced by the Wife, which showed that the Wife's Family had transferred these sums to her disclosed accounts in May 2019 and early 2020. The Judge deducted these sums from the total amount of $1,258,047, and restored the balance unexplained dissipated sum of $444,784 to the pool of matrimonial assets: Judgment at [23]–[25]. The Judge had also drawn adverse inferences against the Wife for failing to disclose details of her bank accounts and for failing to produce a significant number of bank statements: Judgment at [10] and [17]–[19]. However, the Judge was of

the view that the adverse inferences would be best given effect by restoring the dissipated sums, which had already been done when he included into the pool the dissipated sum of $444,784. He therefore declined to award a further uplift to the Husband's final share. In the Judge's view, there were "significant overlaps" between the undisclosed documents and the dissipated funds, such that it would be excessive to make a further adjustment for non-disclosure of statements relating to the same bank accounts: Judgment at [32].

14 The final aspect concerns the ratio assigned for the parties' indirect contributions required in the third step of the structured approach in *ANJ*. The Judge held that the ratio of the parties' indirect contributions was 50:50. The marriage was a medium to long-term marriage where both parties contributed in their own way. Both parties worked during the marriage and ran the household together, and the Wife had not contributed significantly less than the Husband.

15 The Husband also appeals against the Judge's orders on maintenance in respect of the quantum and the mode of payment. As maintenance for the Wife, the Judge ordered the Husband to pay 70 per cent of the Wife's reasonable expenses, in the sum of $2,100 per month, but only until the Wife found suitable employment, or after one year, whichever is earlier. In respect of maintenance for the children, the Judge ordered the Husband to pay 90 per cent of the children's expenses, in the sum of $5,400 payable to the Wife each month, but only until the Wife found suitable employment, or after one year, whichever is earlier; thereafter, the Husband was to pay 75 per cent of the children's expenses, in the sum of $4,500 per month. The Husband argued for no maintenance for the Wife and a lower quantum for the children. He also suggested that he make direct payment to some service providers.

Issues in this appeal

16 The issues before us in AD 132 are therefore:

(a) the valuation of the Investment Accounts;

(b) the valuation of the Sunlife Policy;

(c) how the adverse inferences drawn against the Wife ought to be given effect;

(d) the appropriate ratio of the parties' indirect contributions;

(e) whether maintenance should be awarded to the Wife; and

(f) the appropriate *quantum* of the children's maintenance and the appropriate *mode* of providing the maintenance.

SUM 13

17 The Husband sought to admit two categories of evidence in SUM 13, which are:

(a) First, communications that took place between the parties following the Judgment, from 26 November 2023 to 1 March 2024, and communications between the Husband and [B]'s piano tutor, [F] (the "Post-Hearing Communications"). These related to the Husband's appeal on the issue of the children's maintenance.

(b) Second, records relating to the Investment Accounts that show that the fall in valuation was caused by market volatility rather than dissipation by the Husband (the "Investment Accounts Statements"), and the correspondence from the Husband's solicitors disclosing these records to the Wife's solicitors on 2 October 2023, prior to the AM

Hearing. These related to the Husband's appeal on the proper valuation of the Investment Accounts.

The Husband had initially applied to adduce further communications that related to his appeal on the issues of care and control and access, but withdrew his application in respect of that evidence after the parties reached a settlement on those issues.

18 At the hearing on 15 May 2024, we allowed SUM 13 and admitted the Post-Hearing Communications, Investment Accounts Statements, and the email correspondence disclosing the Investment Accounts Statements.

19 The Post-Hearing Communications related to matters occurring *after* the date of the decision being appealed against. The evidence could therefore be adduced without permission and without needing to show "special grounds" pursuant to s 41(5) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA"). The principles of *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") did not apply. Instead, the test was whether the further evidence would have a "perceptible impact on the decision such that it is in the interest of justice that it should be admitted". First, the relevant matters must have occurred after the date of the decision. Second, the evidence must be at least "potentially material" to the issues in the appeal. Third, the evidence must be at least "seemingly credible": *TSF v TSE* [2018] 2 SLR 833 at [42]–[45]. The Wife accepted that the matters occurred after the Judgment and that the evidence was credible. The only contentious element was therefore whether the Post-Hearing Communications were "potentially material".

20 We found that the Post-Hearing Communications were material as they showed that the Wife had failed to make payment for certain expenses covered

by the maintenance order, causing the Husband to have to make payment to the relevant service providers directly. The Post-Hearing Communications also indicate that the Wife might have caused the termination of [B]'s piano lessons.

21 The Investment Accounts Statements (and the email disclosing the same) related to matters occurring *before* the date of the decision appealed against. Pursuant to s 41(4) of the SCJA, "special grounds" are required, being the three cumulative conditions of *Ladd v Marshall*: non-availability, relevance and materiality, and credibility. However, given the nature of AM hearings, the *Ladd v Marshall* principles may not apply stringently (*UJN v UJO* [2021] SGCA 18 ("*UJN*") at [4] and [8]). The Wife did not dispute that the Investment Accounts Statements were material, and credible. She only disputed the element of non-availability. The Husband submitted that the Wife had raised her allegation that the fall in the value of the Investment Accounts was due to his dissipation for the very first time in her submissions for the AM Hearing on 31 August 2023, long after the fall in value had been disclosed on 3 November 2022. There had been no allegation of dissipation in any of her prior affidavits, submissions, or in the joint summary. The Husband submitted that he was therefore denied the opportunity to address this allegation by way of an affidavit adducing the Investment Accounts Statements at an earlier stage. The Husband also submitted that he *could not* have adduced the Investment Accounts Statements after becoming aware of the Wife's belated allegation because of the District Judge's binding direction on 20 June 2023 that no further applications were to be filed before the AM Hearing. The parties had also confirmed at a case conference on 30 June 2023 that no further affidavits were to be filed. Consistent with this, the Husband had objected to the Wife's applications to file further affidavits on the basis that this would contravene the District Judge's direction. This was why his solicitors had made disclosure of the Investment Accounts Statements by writing directly to the Wife's solicitors on 2 October

2023, in order to seek her confirmation that the allegation of dissipation would be dropped.

22 Although we could not agree with the Husband's claim that he was *unable* to adduce the Investment Accounts Statements, we admitted the evidence. The Husband was in a way constrained from being able to adduce the evidence given the specific circumstances outlined above. However, in the light of the developments, he should have at least tried to seek leave from the Judge to adduce the evidence in the proceedings below. In any event, the evidence was material and would undoubtedly have had an important influence on the result of the case. The Judge had expressly decided to adopt the higher valuation of $243,086 because of the absence of clear evidence explaining the fall in value (above at [11]). We also agreed with the Husband that the Wife's allegation was very belated and such a serious claim ought not to have been made at the eleventh hour.

23 In the circumstances, we ordered that parties bear their own costs for SUM 13. We turn next to the substantive issues in AD 132.

Division of assets

Value of the Husband's Investment Accounts

24 The Husband submits that the Investment Accounts should be valued at the lower value of $92,350, being the valuation closest to the date of the AM Hearing on 4 October 2023, rather than the higher value of $243,086, being the valuation closest to the IJ date on 5 July 2021. This is because the fall in value was caused by market volatility. Before the Judge, the Wife had submitted that this fall in value was due to the Husband's dissipation. On appeal, while the

Wife objects to the admission of the evidence, she does not appear to maintain the allegation of dissipation.

25 In our judgment, the Investment Accounts Statements adduced in SUM 13 largely support the Husband's case. The value of the assets had dropped due to market forces, without any material movements or changes in the composition of the investment assets. We are therefore satisfied that the fall in value of the Investment Accounts was caused by the very poor performance of the underlying investments, rather than by any act of wrongful dissipation by the Husband. However, the Investment Accounts Statements show that the Husband had withdrawn US$28,499.64 (S$38,465.96) for legal fees. Counsel for the Husband confirmed at the hearing that this withdrawal must be returned to the matrimonial pool (*UZN v UZM* [2021] 1 SLR 426 ("*UZN*") at [45]).

26 We therefore allow the Husband's appeal on this issue. The total value attributed to the Investment Accounts is $130,674.

Value of the Wife's Sunlife Policy

27 The Husband submits that the Judge had erred in valuing the Sunlife Policy at $1,533 based on the premiums paid by the Wife since 2017 (above at [12]), instead of the pro-rated surrender value of the policy as enhanced by premiums paid by the Wife during the marriage. As the Wife had failed to comply with the Discovery Order and did not disclose the surrender value of the Sunlife Policy at the time of the marriage, the Husband submits that the entire value being the sum of S$35,450.63 should be added to the matrimonial pool. At the hearing, the Husband advanced the alternative submission that, instead of using the entire value of the Sunlife Policy, 45 per cent of the value could be used as an approximation of the value of the matrimonial asset. This was derived

from the ratio of years the Wife was married while the Sunlife Policy was active from 1980 to 2020, being 18 years out of that 40-year timespan.

28 We do not accept the Husband's submissions on adopting the entire value of S$35,450.63 or 45 per cent thereof, as this fails to account for the contributions to the surrender value attributable to the premium payments made by the Wife's father before she took over payment of the premiums for the Sunlife Policy.

29 Nevertheless, we agree with the Husband that, in principle, the pro-rated value of the Sunlife Policy as enhanced by the premiums paid by the Wife during the marriage should ordinarily be the basis of assessing its value. However, the Wife had failed to disclose evidence of the value of the Sunlife Policy at material time in her Disclosure Affidavit, even though it fell within the scope of the Discovery Order. Due to her non-disclosure, there was no evidence of the surrender value in 2017, the year in which the Wife claimed to have had taken over the policy. Given the state of the evidence, a value that is more reflective of the value of the Sunlife Policy as a matrimonial asset cannot be obtained. We therefore do not disturb the valuation reached by the Judge. However, we take this non-disclosure by the Wife into account when determining how the adverse inferences drawn against the Wife for her non-disclosures ought to be given effect.

Adverse inferences drawn against the Wife

30 The Judge found that there was a decrease of an estimated sum of $1,258,047 from the Wife's disclosed bank accounts between June 2020 and June 2021, but restored only $444,784 to the pool of matrimonial assets after partially accepting the Wife's claim that some of the funds belonged to the Wife's Family. As for giving effect to the adverse inferences drawn against the

Wife for her non-disclosures, the Judge declined to award an additional uplift of 20 per cent to the Husband's final share of the assets, finding that the restoration of the $444,784 had given sufficient effect to the adverse inferences that were drawn (above at [13]).

Parties' cases

31 The Husband submits that he should be awarded an uplift of 20 per cent to his final share of assets, *in addition to* the $444,784 that had been restored, in order to properly give effect to the adverse inferences drawn against the Wife.

32 The Husband contends that the Judge had failed to give full effect to the adverse inferences against the Wife. In arriving at the reduced sum of $444,784 clawed back into the matrimonial pool, the Judge erred in accepting that the Wife's Family owned approximately $813,263 of the funds. There was no proof that the funds were owned by them, and the Wife should not have been allowed to rely on piecemeal evidence of prior transactions when she had failed to provide the complete bank statements from before 2020, in breach of the Discovery Order. He submits that the Judge erred in thinking that there were "overlaps" between the undisclosed bank statements and dissipated funds which could justify declining to grant the additional uplift, as the undisclosed bank statements related to the years of 2017 to 2019, whereas the funds were dissipated from 2020 to 2021. The Husband submits that there were two separate wrongdoings: (a) the dissipation; and (b) the wilful lack of disclosure by the Wife.

33 The Wife accepts that "her disclosure was not as complete as it could have been to discharge her obligations" but maintains that the Judge's order should stand. She submits that the court is limited to a binary choice between restoring sums to the matrimonial pool, or ordering an uplift, but not both.

Legal principles

34 The court's task in exercising its power in s 112 of the Women's Charter 1961 (2020 Rev Ed) (the "Charter") is to reach a just and equitable division of the parties' matrimonial assets. The "starting point of the division exercise … is the identification of the material gains of the marital partnership" [emphasis omitted]: *USB v USA and another appeal* [2020] 2 SLR 588 ("*USB*") at [27]. Thus, the total pool of matrimonial assets must be identified and valued before the first step of the structured approach in *ANJ* is taken. It is not surprising that the duty of full and frank disclosure is particularly significant to the division exercise. The Court of Appeal in *USB* has observed (at [46]):

> In light of the procedural constraints inherent in ancillary proceedings, each party's duty of disclosure to the court takes on greater significance. The duty of full and frank disclosure underpins s 112 of the Charter … It is well established that the court is entitled to draw an adverse inference against a party who fails to comply with his or her duty of full and frank disclosure …

35 A proper discharge of the duty of full and frank disclosure by both parties is thus crucial in ensuring that the pool of assets to be divided reflects the material gains of the marital partnership. The breach of this duty goes to the very root and subject matter of s 112 of the Charter – the matrimonial assets to be divided. The parties must strictly observe their duty to completely disclose and cannot tailor the extent of their disclosure based on *their* own views on what constitutes matrimonial assets (*UZN* at [16]–[17]).

36 Where there is a breach of this duty, the drawing of an adverse inference, followed by giving effect to the adverse inference drawn, enables the court to counter the effects of non-disclosure of assets which diminishes the value of the matrimonial pool and "thereby places those assets out of the reach of the other

party for the purposes of division under s 112 of the Women's Charter as matrimonial assets": *UZN* at [29].

37 In general civil litigation, an adverse inference can be drawn that "evidence which could be and is not produced would if produced be unfavourable to the person who withholds it": illustration (*g*) of s 116 of the Evidence Act 1893 (2020 Rev Ed). The drawing of an adverse inference is part of the process by which the court reaches a factual conclusion, which may be significant to the ultimate finding of liability (or the absence of liability) in civil actions which can involve a wide variety of breaches of rights and issues. However, importantly, the court must be satisfied that the circumstances of the case, including the evidence before it, justify the adverse inference to be made. In the context of s 112 of the Charter, the adverse inference drawn *for the failure to disclose one's assets and means* arises in the specific context of divorce and AM proceedings. The *circumstances* in which it is appropriate to draw an adverse inference and the *consequence* of drawing such an inference are specific to the AM proceedings, where case law has provided useful guidance.

38 It has been established in the judgments of the Court of Appeal that an adverse inference should only be drawn in AM proceedings where (see *UZN* at [18] and *BPC v BPB and another appeal* [2019] 1 SLR 608 ("*BPC*") at [60]):

(a) there is a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and

(b) that person had some particular access to the information he is said to be hiding.

There must be some evidence suggesting that the person has sought to conceal or deplete assets which should be included in the matrimonial pool (*BOR v BOS and another appeal* [2018] SGCA 78 at [75]). The adverse inference drawn is that the non-disclosing party has more assets that are not before the court and hence what is disclosed does not fully reflect the true extent of the material gains of the marital partnership which the court is to divide. Giving effect to the drawing of an adverse inference is thus necessary in order to counter the effects of the breach.

39 There are generally two approaches adopted to give effect to an adverse inference arising from non-disclosure (*UZN* at [28]):

(a) First, the court may make a finding on the estimated value of the undisclosed assets based on the available evidence and, subject to the party dissatisfied with the value attributed showing that that value is unreasonable, include that value in the matrimonial pool for division (the "Quantification Approach").

(b) Second, the court may order a higher proportion of the known assets to be awarded to the other party (the "Uplift Approach").

40 While the Quantification Approach and Uplift Approach are commonly adopted, the court is not restricted to adopting either of them (*BPC* at [39]). The judgments of the Court of Appeal have "made it clear that whether the court adopts the quantification approach or the uplift approach is a matter of judgment in each individual case": *UZN* at [29]. The Court of Appeal observed in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 (at [66]):

> … The very fact that the court is confronted with the problem of 'undisclosed assets' means that the position is unclear and

> far from certain. In the final analysis, it is for the court to decide, in the light of the fact-situation of each case, which approach would in its view best achieve an equitable and just result.

The court will employ the method that best achieves this objective. The Court of Appeal's observation in *UZN* aptly sums up this portion of our discussion (at [61]):

> An adverse inference is the consequence of a culpable failure by a party to make full and frank disclosure. The underlying rationale for the drawing of an adverse inference and the giving effect to it by the quantification approach or the uplift approach is that there is concealment of matrimonial assets which should be included for a fair division under s 112 of the Women's Charter …

41 On the facts of the present case, we find it appropriate to employ cumulatively both the Quantification Approach and Uplift Approach. We explain below why this is the most suitable way to reach a just and equitable division of assets on the facts of the present case (see [44]–[49] below).

Our decision

42 We agree with the Judge that adverse inferences were properly drawn against the Wife for failing to make full and frank disclosure of her assets. Despite deposing that full disclosure would be forthcoming in her Disclosure Affidavit, the Wife subsequently failed to do so. It is significant that the Wife's non-disclosure was in continuing breach of the Discovery Order made on 15 March 2022 (some 17 months prior to the AM Hearing), that expressly ordered the Wife to furnish her quarterly bank statements for 2017, and monthly bank statements for 2018 and 2019. In any event, the Wife did not challenge these findings of the Judge as she did not appeal against the Judgment.

43 However, we are respectfully of the view that the Judge erred in two respects. First, the Judge gave effect to the adverse inferences drawn against the Wife by restoring the sum of $444,784 (above at [13]) and crediting the Wife with this sum as part of her direct contributions. The $444,784 which he found that she had dissipated formed part of the sum of $1,719,731.62 labelled "Rest of Wife's assets" in the Judgment at [29], which was used in the computation of direct contributions. It is established that sums that the court notionally restores to the pool of matrimonial assets as a consequence of giving effect to an adverse inference should ***not*** be credited as the direct contributions of the party against whom the adverse inference was made. This is because these sums are added to give effect to an adverse inference rather than from that party's disclosure (see *BPC* at [67] and *UZN* at [57]). As the Judge had restored the sum of $444,784 in order to give effect to the adverse inferences and his finding that she had wrongfully dissipated the moneys, the Wife ought *not* to have been credited with that sum as her direct contributions.

44 Second, in our judgment, merely restoring the sum of $444,784 did not sufficiently give effect to the adverse inference and did not achieve a just and equitable division of the assets in the circumstances. The Wife dissipated at least $1,258,047 within the short span of one year, in around June 2020 to June 2021. We observe that this dissipated sum is very large, both objectively and relative to the matrimonial pool of $3,670,071 (as quantified by the Judge). The dissipation took place just after the Husband moved out of the matrimonial home in May 2020. The Wife's own evidence was that she had closed several bank accounts with various banks beginning from May to August 2020.

45 The Judge essentially totalled the transfers shown on piecemeal bank statements adduced by the Wife, which showed that the Wife's Family had transferred sums to her disclosed accounts *in May 2019 and before June 2020*,

and deducted the total amount of those transfers from the $1,258,047 dissipated *between June 2020 and June 2021*. In our view, without full disclosure of the relevant documents by the Wife, this approach created a real risk that the true extent of the Wife's assets would be excluded from the matrimonial pool. On the disclosed evidence, what is lacking is a link between the transfers from the Wife's Family in 2019 and early 2020 and the dissipated sum of $1,258,047. Accepting only the selective, piecemeal statements adduced by the Wife in support of her own case potentially allowed her to tailor her disclosure to only those statements most favourable to the case she was trying to advance.

46 For example, if the May 2019 bank statements that the Wife chose to adduce portrayed the largest transfers *into* the Wife's accounts from her family and minimal transfers *away* from the bank accounts, adducing *only* the May 2019 bank statements *without* also disclosing the monthly statements for the rest of 2019 would give the impression that much of the funds in the accounts had been transferred to her by the Wife's Family. However, due to the Wife's non-disclosure, there is *no material* to *contextualise* these transfers. The Wife had breached the Discovery Order in failing to disclose documents which she ought properly to have disclosed, such as the monthly bank statements for 2019, a breach which counsel for the Wife candidly confirmed at the hearing. However, she *was* able to adduce the selective May 2019 bank statements *in support of her own case*. It surely cannot be said that the Wife did not have possession of bank statements from this period.

47 In the circumstances, there is no record of how the account balances changed *after* May 2019 (which could, *for example*, show that funds were subsequently transferred back to the Wife's Family after May 2019 and the transfers into her accounts in May 2019 therefore cannot be relied on to reduce the sum of $1,258,047 dissipated in June 2020 to June 2021), or their

composition *prior to* May 2019 (which could, *for example*, show that the Wife had previously transferred funds to her family, which were then returned to her in May 2019, such that the May 2019 bank statements simply recorded returns of the Wife's own money). Indeed, it is telling that the Wife's Family did not tender any of their own bank statements to substantiate their assertions, despite making affidavits in support of the Wife's position. At the hearing, counsel for the Wife acknowledged that there was no evidence explaining what happened to the accounts before and after May 2019 because of her non-disclosure.

48 In our judgment, the Wife's non-disclosures indicate intentional concealment. In light of the substantial depletion of assets from June 2020 to June 2021, it was reasonable for the Husband to have sought disclosure of bank statements from prior to 2020, from at least the time that the Wife first contemplated divorce in 2018 (as found by the District Judge). More importantly, it was incumbent on *the Wife* to make such disclosure, as it was her own case that the $1,258,047 was simply a "return" of moneys that had been transferred by the Wife's Family. She bore the burden of showing that these moneys in her bank account were not matrimonial assets (see *USB* at [31] and [53]). While the Wife did disclose the May 2019 bank statements, selective disclosure is *not* full and frank disclosure, as she was obliged to disclose *all* monthly statements for 2019.

49 In our view, it is necessary to restore the entire dissipated sum of $1,258,047 to the matrimonial pool. There is no credible explanation for the dissipation. As this sum has been notionally restored to the matrimonial pool as a consequence of drawing an adverse inference against the Wife, this sum will *not* be credited to the Wife in assessing her direct contributions (above at [43]). Furthermore, the circumstances of the Wife's non-disclosures indicate a real possibility that she could have concealed or depleted assets even exceeding the

known dissipated sum of $1,258,047. We have also noted that our inability to properly determine the value of the Wife's Sunlife Policy was also brought about by the Wife's non-disclosures (above at [29]). We are of the view that, in addition to restoring the sum of $1,258,047 to the matrimonial pool, an uplift of five per cent to the Husband's final share of the assets is just in the circumstances to give full effect to the adverse inferences.

Husband's indirect contributions

50 The Husband submits that the ratio of the parties' indirect contributions should have been assessed at 60:40 in his favour. He submits that the Wife had been able to amass substantial assets in her name despite earning a lower income, causing the ratio of direct contributions to be 39:61 in her favour as assessed by the Judge, because he had used most of his income for the family's expenses instead of investing in assets. He also submits that he had become the children's primary caregiver from at least 2018, when the Wife's work responsibilities had increased. He was responsible for the daily care and education of the children and was, for example, the one who brought them to clinics or the hospital for check-ups or whenever they fell ill. He was also the main point of contact for the children's schoolteachers and enrichment classes.

51 While we accept that the Husband bore the bulk of the family expenses over the years, a fact which is indeed relevant to the assessment of indirect contributions as it constitutes a significant form of *indirect* financial contribution, indirect contributions also encompass non-financial contributions made towards to the family. As held by the Court of Appeal in *USB*, "the broad-brush approach should be applied with particular vigour in assessing the parties' *indirect* contributions" (*USB* at [43]). The court will direct its attention to the broad factual indicators which include "the length of the marriage, the number

of children, and which party was the children's primary caregiver" (*USB* at [43]).

52 The submissions and evidence relied upon by the Husband were put before the Judge. There is nothing to suggest that the Judge's determination of a 50:50 ratio of indirect contributions did not take into account the efforts that the Husband has contributed. We do not think that it can be said that the Judge was plainly wrong in exercising his discretion, and hence we do not disturb the Judge's finding on this point.

Final division

53 The total pool of matrimonial assets is valued at $4,370,923.29, after accounting for the proper value of the Investment Accounts (above at [26]) and restoring the dissipated sum of $1,258,047 (above at [49]). Our decision on the appropriate division of matrimonial assets is summed up in this Table:

	Husband	**Wife**
Matrimonial Pool		**$4,370,923.29**
Ratio of direct contributions	42	58
Ratio of indirect contributions	50	50
Average ratio	46	54
Final Ratio (after 5% uplift in favour of the Husband)	**51**	**49**
Distribution	**$2,229,170.88**	**$2,141,752.41**

54 The Husband is entitled to $2,229,170 of the matrimonial assets, after the uplift of five per cent to his final ratio. The Wife is entitled to $2,141,752.

Maintenance for the Wife

55 The Judge ordered the Husband to pay the Wife maintenance of $2,100 each month, representing 70 per cent of the Wife's reasonable expenses, for a period of a year, or earlier if the Wife finds employment before then. The Husband submits that no order for maintenance should have been made as the Wife has substantial potential earning capacity and has been awarded a large share of the matrimonial assets.

56 By tying the order of maintenance to the Wife's employment status, it appears that the Judge considered it necessary to provide the Wife maintenance to tide her over until she finds employment again. With respect, we are of the view that there was no basis to order maintenance on the facts of this case. The Wife had been working throughout the course of this dual-income marriage, and had been gainfully employed at the date of the IJ. She has a proven earning capacity for income sufficient for her own expenses as well as for part of the children's expenses. The Wife's unemployment only came about a year after the IJ and we note that she was given a severance pay of $39,197 from [E]. This severance pay will go towards tiding her over until she finds employment.

57 The power to order maintenance in favour of a former spouse is supplementary to the power to order the division of matrimonial assets. The courts take into account each party's share of the matrimonial assets when assessing the appropriate quantum of maintenance for a former spouse: *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 at [26]. In this case, the Judge had awarded the Wife the larger share of the assets, in the ratio of 45:55 in favour of the Wife. Even after the adjustments that we have made in this appeal (above at [53]), the Wife retains 49 per cent of the matrimonial assets, which is substantial.

58 We therefore allow the Husband's appeal in respect of the Judge's order on maintenance for the Wife. We order that there will be no maintenance for the Wife.

Maintenance for the children

59 As the Wife was awarded care and control of the children, the Judge first assessed the children's share of the household expenses incurred by the Wife. He found that the Wife's reasonable household expenses were $4,200 per month and attributed a two-third share of this amount to the two children. The children's share of household expenses therefore came to $2,800. As for their other expenses, the Judge found that a total of $3,200 per month was reasonable. Putting the figures together, the Judge found that the children's total reasonable expenses were $6,000 per month.

60 The Judge ordered the Husband to pay $5,400 per month to the Wife for the children's maintenance, being 90 per cent of their reasonable expenses, but only for one year or until the Wife found employment (whichever was earlier). Thereafter, the Husband was to pay $4,500, being 75 per cent of the children's reasonable expenses. Departing from the interim order made by the Family Court (above at [5]), the Judge did not order the Husband to continue to make direct payment to the relevant service providers.

61 At the hearing on 15 May 2024, we directed the parties to file their positions in a consolidated tabular form, setting out their respective positions on the quantum of the children's expenses, the ratio in which each party is to bear those expenses and the mode of payment of the maintenance (*ie*, whether the Husband is to make payment directly to some of the service providers, as sought by the Husband). The parties were encouraged to work together to present their

positions clearly in a manner that would best assist the court. The consolidated table was filed on 3 June 2024, and we have considered it.

The budget approach

62 At the outset, we emphasise that parties should not take an overly mathematical or calculative approach to the children's maintenance. An order for maintenance should not be based on the parties curating a list of specific expenses, as if each item on the list represents an item to be specifically provided for. While parties should submit a list of the current expenses of the children in order to provide the court (and the other party) with the children's likely monthly expenses, a maintenance order does not cast those listed items in stone as if only those specific expenses are allowed to be incurred for the children. Instead, the assessment of reasonable monthly expenses upon which the order for maintenance is made is based on broad budgeting rather than the itemisation of specific expenses (*WBU v WBT* [2023] SGHCF 3 ("*WBU*") at [10]–[11]).

Our decision

63 We next consider whether the share of the children's expenses that each party is to bear ought to be adjusted. We note that the Husband has significantly more time with the children on alternate weeks in the current consent orders on the children's care and access, compared to the Judge's orders (above at [8]). On the week that the Husband has access, the children will stay with him from Wednesday to Sunday evenings. There is thus significantly more access, including consecutive overnight access, in the present orders than in the Judge's orders. We take this into account in determining the appropriate ratio of expenses that the Husband ought to bear.

64 We are of the view that the Husband should bear 65 per cent of the children's reasonable expenses from December 2023 regardless of whether the Wife remains unemployed or has found employment.

65 As for the quantum of the children's reasonable monthly expenses, we are in broad agreement with the Judge's assessment. Although the Wife had premised her claim on an itemised list of expenses, the Judge arrived at a monthly sum of $3,200 in personal expenses for both children after applying a broad-brush approach and accounting for some of the Wife's expense claims being excessive. In our judgment, the reasonable personal expenses of the children comprise budgets of approximately $2,000 for enrichment classes, $650 in schooling and transport needs, and $550 in upkeep and entertainment. We therefore affirm the Judge's assessment of the children's total reasonable personal expenses in the sum of $3,200 per month.

66 However, we find that $3,700 is a more reasonable sum for the Wife's household expenses instead of the sum of $4,200. The Wife had claimed for petrol and parking expenses totalling $500 as part of her claim for household expenses. According to her, these were incurred for her use of a relative's car to transport the children. However, the Wife had also made claims for separate transport expenses for both children as well as for [C]'s school bus fare, as part of her claim for the children's personal expenses. As transport expenses have already been included in the budget for the children's personal expenses, any claim for transport should be excluded from the household expenses. We therefore find that the children's two-third share of the Wife's reasonable household expenses is in the sum of $2,500 (rounded up).

67 Adding the aforementioned figure to the children's total reasonable personal expenses of $3,200, the total reasonable monthly expenses of both children are thus $5,700.

68 Next, we consider the mode of payment of the maintenance. We have, in allowing SUM 13, admitted the Post-Hearing Communications (above at [19]–[20]). This evidence is relevant in supporting the Husband's position that he should make direct payment to some of the service providers. Taking into consideration the Post-Hearing Communications, together with the other relevant evidence on the record, we find that it is more practical in the circumstances of this case to allow the Husband to make direct payments to the relevant service providers for the following expenses (the "List A Items"):

(a) Both children's French classes;

(b) Both children's medical insurance;

(c) Both children's Chinese tuition;

(d) [B]'s football classes;

(e) [B]'s piano classes; and

(f) [C]'s school bus.

The portion of the budget attributable to the List A Items is approximately $1,900. Deducting $1,900 from the reasonable monthly expenses of $5,700, the sum of $3,800 remains for the other expenses (*ie*, their reasonable expenses excluding the List A Items).

69 We order the Husband to pay to the Wife 65 per cent of $3,800 every month, which is the sum of $2,470. We shall refer to this as the "Fixed

Maintenance Sum". As the Husband will make direct payment for the List A Items, he shall bear the upfront cost for those items. In respect of the other expenses excluding the List A Items, the Husband shall pay to the Wife the Fixed Maintenance Sum every month, with effect from December 2023 (as ordered by the Judge). As the Wife is also responsible for contributing her 35 per cent share of the cost of the List A Items, after the Husband has made direct payment for the List A Items (for any or all of them), the Husband may deduct 35 per cent of the cost of those items for which he has already made payment from the Fixed Maintenance Sum payable to the Wife in the following month.

70 The children's expenses will certainly change over time. The parties are expected to work together to ensure the children's changing needs are met, adjusting the amount they must provide for their children over the years. Each party should not focus on calculating every dollar which he or she thinks the other party ought to bear, but must instead extend grace and flexibility to each other for the sake of their children's welfare. Adopting a calculative mindset is neither productive nor helpful to what must remain the central focus: the best interests of the children. As the court in *WBU* reminded us (at [47]):

> A maintenance order may be varied if there is a material change in circumstances or any other good cause but going to the court ought to be the last resort in parenting matters. It is to be expected that the exact amounts a child will need will change over time, and if parents file court proceedings for variation each time there is a change, there is something precious that we will have lost in our society made up of family units, for *parenting is to be carried out cooperatively by parents themselves*. Parents must *find the resolve* to overcome the difficulties in co-parenting by a *strong commitment to discharging their parental responsibility*. Litigation has harmful effects on the child – materially, because the family loses in incurring litigation expenses, and psychologically, because *conflict affects the whole family* in ways not easily visible.
>
> [emphasis added]

Other matters

71 The Husband raises other contentions in AD 132, which he submits that the Judge had failed to address. As the Judgment makes no mention of these other claims, the Husband submits that it is unclear if the Judge had declined to make orders or if these were inadvertently omitted from adjudication.

72 First, the Husband alleges that, as a consequence of the Wife's failure to act timeously in respect of the sale of certainty property located abroad, he incurred losses due to the delay. The Husband seeks (a) €269.07 (S$396.96) in penalty and other fees he incurred pending the sale of the property; (b) S$6,400 in legal fees incurred in having to "chase" the Wife to act in respect of the sale; and (c) 50 per cent of €697, being the costs of sale of the property. The Wife does not appear to dispute the claims and only submits that "some of these issues could have been worked out between parties in the wake of the orders" without litigation. We therefore grant the orders sought by the Husband.

73 Second, the Husband seeks the return of various heirlooms (such as stamp, coin, and silverware collections) that are said to be in the Wife's possession. While the court should not generally be asked to make orders on assets that are not claimed or proven to be matrimonial assets, we record the position taken by the Wife at the hearing, which is that she will return the stamp collection and coin collection by the end of May 2024, but that she does not have the silverware.

Conclusion

74 The Husband submits that he should be entitled to the costs of the proceedings below, because of the Wife's conduct over the course of the three-year litigation, which included causing significant delays arising from her

various unsuccessful interlocutory applications, her failure to comply with court directions on the filing of documents, as well as her wilful refusal to comply with multiple costs and discovery orders.

75 In principle, costs may be ordered against a party who has been unreasonable in her actions by causing delays and further costs to be incurred. However, the usual costs order in ancillary matters proceedings on financial relief is for parties to bear their own costs. Costs are in the discretion of the Judge, who was well placed to determine if the Wife's conduct provided sufficient reason for costs to be ordered against her in the proceedings below. We do not think that the Judge's exercise of discretion not to order costs in this case warrants appellate intervention.

76 As for the costs of AD 132, we order costs fixed at $30,000 inclusive of disbursements to be paid by the Wife to the Husband.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Philip Jeyaretnam
Judge of the High Court

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