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

**[2025] SGHC(A) 24**

Appellate Division / Civil Appeal No 6 of 2025

Between

XHG

… *Appellant*

And

XHH

… *Respondent*

In the matter of Divorce (Transferred) No 706 of 2022

Between

XHG

… *Plaintiff*

And

XHH

… *Defendant*

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# JUDGMENT

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[Family Law — Matrimonial assets — Division — Consideration of rent-free occupation of matrimonial home — Section 112(2)(*f*) Women's Charter 1961 (2020 Rev Ed)]

[Family Law — Maintenance — Wife — Application of rationale of financial preservation to award of final spousal maintenance — Section 113(1)(*b*) Women's Charter 1961 (2020 Rev Ed)]
[Family Law — Maintenance — Child — Application of issue estoppel doctrine where prior interim maintenance summons was rejected — Section 127(2) Women's Charter 1961 (2020 Rev Ed)]

# XHG
# v
# XHH

**[2025] SGHC(A) 24**

Appellate Division of the High Court — Civil Appeal No 6 of 2025
Ang Cheng Hock JCA, Kannan Ramesh JAD and Debbie Ong Siew Ling JAD
19 August 2025

18 November 2025 Judgment reserved.

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

## Introduction

1 This judgment clarifies the court's jurisdiction and power to order maintenance for a spouse or former spouse in three distinct yet inter-related situations in s 69(1), s 113(1)(*a*) and s 113(1)(*b*) of the Women's Charter 1961 (2020 Rev Ed) (the "Charter"). The court may order a spouse to maintain the other spouse (or former spouse) during the marriage (s 69(1) of the Charter), during the pendency of divorce proceedings (s 113(1)(*a*) of the Charter), or when granting an order for divorce, nullity or judicial separation of marriage, or subsequent to such a grant (s 113(1)(*b*) of the Charter). We also consider in this judgment the court's jurisdiction and power to order a parent to provide child maintenance when granting a judgment for divorce or subsequent to such a grant.

2 The present case concerns the appellant's ("Husband") appeal in AD/CA 6/2025 ("AD 6") against the decision of a Judge in the Family Division of the High Court (the "Judge") on the ancillary matters ("AM") in divorce proceedings. We dismiss AD 6 in respect of all issues appealed against save for one – that of the Judge's award of lump sum backdated spousal maintenance for the respondent ("Wife"). For the reasons which follow, we set aside the Judge's award of $144,000 in backdated spousal maintenance to the Wife.

## Factual background

### *The parties' marriage and divorce*

3 The parties were married in Singapore on 19 October 2013. They have two children, a daughter, who is presently 10 years old, and a son, who is presently 7 years old (collectively, the "Children"). The parties purchased a property in the Wife's sole name (the "Matrimonial Home") and resided in that property from December 2014. An interim judgment of divorce ("IJ") was granted on 18 October 2022. The marriage lasted around 9 years.

4 The Husband had worked in the banking industry in Singapore since September 2009. He worked in the commodities and global markets division of a financial services group since April 2015, earning an average of approximately $58,800 a month (including bonuses). The Wife worked at a bank where she earned approximately $26,500 per month (excluding bonuses) until 30 April 2021. The Wife was unemployed from April 2021 until October 2024. She received an offer of employment from a bank in October 2024 with a monthly base salary of $18,000 and started working at that bank on 11 November 2024.

5 The Husband commenced divorce proceedings on 21 February 2022. From 18 May 2022, the Husband ceased to reside in the Matrimonial Home. The parties' respective accounts of the circumstances surrounding his cessation of residence differ. The Husband portrays it as an involuntary expulsion from the Matrimonial Home. The Wife's perspective is that it was no longer practicable for the both of them to live under the same roof during acrimonious divorce proceedings. What is not disputed is that the parties' separation in May 2022 was preceded by numerous issues and disagreements between them involving a range of highly personal matters. It suffices for us to observe that, by that time, the parties' relationship had patently deteriorated to a point whereby living together was not practical or realistic.

6 On 30 June 2022, the parties agreed to a temporary arrangement where the Husband had access to the Children. On 28 October 2022, the Husband took out a summons for interim access to the Children. The Family Court made interim access orders on 16 January 2023.

***Interim maintenance applications***

7 On 21 September 2022, the Wife applied for maintenance for herself and the Children through FC/SUM 3051/2022 (the "Interim Maintenance Application") in the amount of $23,000 per month backdated to 1 January 2022. A district judge ("DJ") in the Family Court granted the Interim Maintenance Application in part on 14 April 2023. Although the DJ made the finding that the Husband had not neglected or refused to provide for the reasonable needs of the Wife and Children, she granted the orders to provide a framework to facilitate cooperation (at [20]):

> The husband said he has not neglected or refused to pay maintenance and that in fact he continued to pay expenses for

> the home even when he was living apart. There was no dispute about this. The issue was the *adequacy* of the payments. The wife's claim in its entirety does not lead to a conclusion that what the husband has been paying is inadequate given some excesses in the wife's claim. I balanced all the factors in the Women's Charter with the facts of this case. I make no finding that the husband has been derelict in his duty to maintain but I make the orders I do so as to provide the parties a framework which I hope will lead to a level of co-operation. The orders take into account the principles of law as to financial resources, a tide-over sum and the necessity factor.
>
> [emphasis in original]

8 The DJ ordered that the Husband would be responsible for specific expenses of the Children on a reimbursement basis and would contribute a monthly sum for the Wife's and Children's food and groceries expenses with effect from April 2023. However, she declined to backdate the order to January 2022, which the Wife had asked the court to do. The DJ made clarificatory orders on 24 April 2023. The orders on interim maintenance made by the DJ will be referred to as the "Family Court Orders".

9 The Husband appealed against the Family Court Orders on 8 May 2023. The Wife did not lodge any appeal. The Husband's appeal to the Family Division of the High Court ("HCFD") was allowed on 27 July 2023. The HCFD set aside the Family Court Orders, explaining that:

> DJ erred in law and fact. DJ did not make a finding that the H had neglected or refused to pay reasonable maintenance. In fact, DJ said that H was not "derelict", and suggested that that [*sic*] what he was paying was not "inadequate". There was also no finding that the H had been late in/delayed payments, despite the matter being raised. On the facts before me, I would find it hard to reach finding/findings that H had neglected or refused to pay reasonable maintenance, so as to support an order for interim maintenance. For these reasons, the appeal is allowed.

***The Judge's decision in AM proceedings below***

10 In the AM proceedings below, the Judge issued his written judgment in *XHG v XHH* [2025] SGHCF 2 ("Judgment") on 14 January 2025, after receiving the parties' final round of written submissions on 6 December 2024.

11 The Judge granted a consent order in respect of the Children's issues. The parties were to have joint custody of the Children, with sole care and control to the Wife and reasonable access to the Husband (Judgment at [1]). Thus, the remaining issues to be determined concerned the division of matrimonial assets and the Wife's claims for maintenance for herself and the Children.

*Division of matrimonial assets*

12 The Judge valued the pool of matrimonial assets at a little over $8.1 million (Judgment at [29]). Applying the structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*"), he assessed the parties' direct contributions ratio at 56:44 in the Husband's favour and indirect contributions ratio at 50:50. He found that the Husband made more *indirect financial* contributions, and the Wife made more *indirect non-financial* contributions as the primary caregiver of the Children, although the Husband's active role in the Children's lives was well-recognised. The average ratio was thus 53:47 in the Husband's favour. The Judge ordered that the matrimonial assets be divided according to the ratio of 53:47 (Judgment at [33]–[37]).

13 The Judge found no basis to draw an adverse inference against the Husband for concealing assets and declined to accord an uplift in the Husband's share in the pool to account for his accommodation expenses flowing from his alleged expulsion from the Matrimonial Home by the Wife in May 2022 (Judgment at [38]–[39]). In this regard, he observed that the Husband funded

his alternative accommodation using matrimonial moneys which were not returned to the matrimonial pool (Judgment at [15] and [38]).

*Maintenance for the Children*

14 The Judge quantified the Children's enrichment class expenses at $1,193 per child and $2,386 in total, based on the Husband's own submissions on what would be a reasonable amount for those classes (Judgment at [46]). Including that quantum of enrichment expenses, the Children's total reasonable expenses were assessed to be $6,647 per month. The Husband was ordered to bear 72.5% of these expenses, based on the relative incomes of the parties (Judgment at [48]).

15 The Husband was to pay $4,819 per month (*ie*, 72.5% of $6,647) to the Wife (as the parent with care and control) until the Children turned 21 years of age. Maintenance was backdated to August 2023 on the basis of the Judge's finding of fact that the Husband's payments to the Wife for the Children's expenses from August 2023 to March 2024 were approximately $3,722.18 per month. Considering the difference between that sum and the reasonable expenses of the Children which the Husband was responsible for, the Husband was to pay $1,000 per month covering the period of August 2023 to December 2024 in a lump sum payment of $17,000 to the Wife (Judgment at [49]).

*Maintenance for the Wife*

16 Before the Judge, the Wife sought backdated maintenance for herself for the period between December 2021 and December 2023, at $6,000 per month for 24 months. The Judge ordered the Husband to pay $144,000 in lump sum maintenance to the Wife. He was of the view that backdated maintenance was fair in the circumstances given that the Wife only obtained employment in

October 2024, having been unemployed since April 2021. He observed that "[t]he Husband was under a duty to provide reasonable maintenance to the Wife during the marriage (s 69(1) of the [Charter])" (Judgment at [40]) and that he had been paying her an allowance of $6,000 a month from July 2021 before ceasing all payments in November 2021. In the circumstances, he assessed $6,000 per month to be a fair maintenance sum for the material period and ordered a lump sum of $144,000 to be paid to the Wife.

*Costs orders*

17 The Judge fixed costs in the Wife's favour in the sum of $7,000 on 14 February 2025 (see *XHG v XHH* [2025] SGHCF 13 ("Costs Judgment") at [17]). The Judge noted the Husband's belated disclosure of monthly bank statements for June to August 2022 in respect of a Standard Chartered bank account with the account number ending in 5840 ("SCB Account"). These were relevant to the question whether he dissipated the bonus received from his employer in May 2022 (Judgment at [9]). The Husband's belated disclosure of the SCB Account statements in his affidavit filed on 29 November 2024 (the "5th Affidavit") prolonged the AM proceedings and resulted in wasted time and costs, including that incurred by the Wife to prepare her response to his 5th Affidavit. This, among other non-disclosures (Costs Judgment at [10]–[12]), breached the Husband's duty of full and frank disclosure, warranting an adverse costs order against the Husband (Costs Judgment at [13] and [15]). The Judge awarded standard costs fixed at $5,000 to the Wife for the AM proceedings and indemnity costs fixed at $2,000 for the Wife's thrown-away costs for work done in responding to the Husband's 5th Affidavit (Costs Judgment at [16]–[17]).

**Issues raised in the appeal**

18 The issues raised by the Husband in this appeal are:

(a) first, whether the Judge erred in assessing the reasonable sum to be spent on the Children's enrichment class expenses at $2,386 a month (the "Enrichment Class Payments");

(b) second, whether the Judge erred in awarding backdated child maintenance of $17,000 (the "Backdated Child Maintenance");

(c) third, whether the Judge erred in awarding backdated maintenance of $144,000 for the Wife (the "Backdated Spousal Maintenance");

(d) fourth, whether the Judge erred in assessing the parties' indirect contributions ratio at 50:50 (the "Indirect Contributions Ratio");

(e) fifth, whether the Judge ought to have accorded an uplift of 3.5% in the final division ratio to account for the rent-free occupation of the Matrimonial Home by the Wife from May 2022 (the "Rent-Free Occupation"); and

(f) finally, whether the Judge ought not to have awarded the Wife standard costs for the AM proceedings and indemnity costs for her thrown-away costs in responding to the Husband's 5th Affidavit (the "Adverse Costs Orders").

**Issue 1: Enrichment Class Payments**

***The parties' positions***

*The Husband's submissions*

19 The Husband claims that the Judge erred in calculating the quantum of the Children's enrichment class expenses. The Judge derived the monthly sum of $2,386 for such expenses by adding up $1,466 (the amount the Husband said he was paying each month for the Children's enrichment classes) and $920 (which the Husband had represented as a reasonable sum for any additional enrichment classes). As stated earlier, inclusive of the sum of $2,386 per month allocated for enrichment expenses, the Judge held that the Children's total reasonable expenses were $6,647 per month and the Husband was ordered to bear 72.5% of these expenses.

20 The Husband submits this to be erroneous because he is already paying $1,466 per month to the enrichment class providers directly. Hence, he argues that including $1,466 in the calculation results either in double counting (in that the Husband is being made to pay for the same classes twice over), or the unjust enrichment of the Wife (who will then not be required to apply that amount towards paying for the enrichment classes).

*The Wife's submissions*

21 The Wife disputes the Husband's characterisation of the Judge's approach. She submits that the Judge had relied on the Husband's own submissions on the amount that would be reasonable as expenses for the Children's enrichment classes. The Judge's assessment included the existing enrichment classes which the Husband had enrolled the Children in to arrive at a prospective evaluation of their reasonable needs going forward. As such, there

is no double counting or unjust enrichment, since the Husband is not being required to pay both the Wife and the class providers for *specific* enrichment classes. He is being asked to bear his share of the Children's estimated reasonable expenses prospectively.

***Our decision: the Judge had not erred in his calculation of the quantum for the expenses of the Children's enrichment classes***

22 We do not think that the Judge erred in his calculation of the quantum of the expenses of enrichment classes.

23 The Husband's arguments appear to rest on a misperception of what the Judge had ordered below. The Judge's assessment of child maintenance was *not* based on any *specific* enrichment classes which the Children would be enrolled in. Instead, he only estimated a reasonable sum for the Children's enrichment classes more generally. He considered each party's position on what such a reasonable sum would be. The Judge accepted the Husband's position (Judgment at [46]):

> Since the Husband seems to view S$2,386 (*ie*, S$1,466 + S$920) a month for both children's enrichment as reasonable, I value the expenses for each child at S$1,193. The parties should sort out between themselves which enrichment classes they would like the children to attend.

24 We see no error in the Judge's approach, whether in fact or in law. The Judge's assessment of the expenses for enrichment classes at $2,386 per month was not unreasonable as a sum to be included in arriving at the Children's total reasonable expenses per month. The Judge did not order that the Husband had to continue paying $1,466 directly to the specific service providers of the enrichment classes in addition to paying 72.5% of $6,647 to the Wife each month. He made no orders at all as to what the Children's specific enrichment

classes should be, and instead urged the parties to "sort out between themselves which enrichment classes they would like the [C]hildren to attend" (Judgment at [46]). We echo this exhortation, which is in line with the cooperative spirit of co-parenting expected of parents, be they married or divorced. The enrichment classes taken by the Children will be expected to change over time as they grow older. A "budget" approach is a sensible way to address the provision of maintenance (see *WBU v WBT* [2023] SGHCF 3 at [10]). Parties should not litigate by seeking variation orders each time an itemised expense changes – that is not how parents should be discharging their shared parental responsibility.

25 There was thus no double counting as the Wife was not being reimbursed for any specific enrichment class fees.

26 We thus dismiss the Husband's appeal in respect of the Judge's order that the Husband is to pay $4,819 per month to the Wife for the maintenance of the Children.

**Issue 2: Backdated Child Maintenance**

***The parties' positions***

*The Husband's submissions*

27 The Husband argues that the Judge's award of backdated child maintenance at the AM stage is contradictory to the decision of the HCFD which dismissed the Interim Maintenance Application (see [9] above). He argues that such a contradictory finding falls afoul of the doctrine of issue estoppel. Next, he argues that the award is contrary to the Court of Appeal's decision in *AXM v AXO* [2014] 2 SLR 705 ("*AXM v AXO*"), which he interprets to have laid down

a rule that forbids "a situation where there were two different but equally binding obligations operating on the Husband", since the Judge's award "overlapped" with the subject-matter of the prior court rulings on the Interim Maintenance Application (see [7] and [9] above). Finally, the Husband argues that there is no necessity for an order for backdated maintenance as the DJ and HCFD which heard the Interim Maintenance Application had found that the Husband was not derelict in maintaining the Children. Further, the Wife clearly had the means and capability to support the Children.

*The Wife's submissions*

28 The Wife first argues that the issue estoppel doctrine has no application because there were no overlapping issues determined between the HCFD's decision on the Interim Maintenance Application and the Judge's award of backdated child maintenance at the AM stage. The refusal to grant interim maintenance for the Children was based on a finding by the HCFD that the Husband had not neglected or refused to maintain them *then*. The Wife argues that the HCFD determination does not "traverse the same ground" as the award of backdated child maintenance, which involved "distinct legal and factual considerations".

29 Second, she argues that the Husband misstates the rule in *AXM v AXO*, in which the Court of Appeal only held that an award of backdated maintenance could not overlap with a prior subsisting award of interim maintenance covering the same period. Since no order was made in the Interim Maintenance Application, no overlapping orders resulted from the award of backdated child maintenance.

30 Finally, the Wife submits that the backdated child maintenance award was warranted on the facts, since the Husband owed a duty to support the Children during the period from August 2023 to December 2024, during which the Wife was unemployed and the sum paid by the Husband to her for the Children's needs was far below the Judge's order that the Husband should pay $4,819 per month for the Children's maintenance. Hence, the Judge's order of backdated maintenance of $17,000 in one lump sum was needed to make up for that shortfall in the Husband's payment of maintenance.

### ***Our decision: the Judge did not err in exercising his discretion to backdate the child maintenance orders to August 2023***

*New arguments*

31 We point out, as a preliminary matter, that the Husband did not raise the doctrine of issue estoppel or the case of *AXM v AXO* in his written submissions before the Judge below. He would thus have been required to seek permission to pursue these fresh arguments raised on appeal for the first time and ought to have expressly highlighted that they were new points in his appellant's case in accordance with O 19 r 31(1)(*b*) of the Rules of Court 2021 (see *TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd and another* [2024] 1 SLR 690 ("*TG Master*") at [58]).

32 Nevertheless, we are prepared to consider these new legal arguments on their merits. Considering the factors in *TG Master* at [59], the prejudice to the Wife was limited as these arguments concerned pure questions of law which did not involve either new evidence or fresh inferences based on the evidence below. Moreover, the Wife did not object to these new points and had the opportunity to respond to them – and did so respond – in her respondent's case.

*On issue estoppel and AXM v AXO*

33 We do not agree with the Husband that because the HCFD had already rejected the Interim Maintenance Application, the Judge was precluded by law from ordering backdated maintenance for the Children at the AM stage of the proceedings.

34 First, the Husband invokes the doctrine of issue estoppel. A successful invocation of issue estoppel requires the following (see *Ong Han Nam v Borneo Ventures Pte Ltd* [2021] 1 SLR 1248 at [57] and *Lee Tat Development Pte Ltd v Management Corporation of Strata Title Plan No 301* [2005] 3 SLR(R) 157 ("*Lee Tat Development*") at [14]–[15]):

(a) there must be a final and conclusive judgment on the merits;

(b) that court must be a court of competent jurisdiction;

(c) there must be an identity of parties between the two actions; and

(d) there must be an identity of subject-matter in the two actions.

35 We do not think there is "identity of subject matter" between the issues decided in the Interim Maintenance Application and the AM order on backdated child maintenance. The periods in question are not the same. To determine if there is such identity, one must "identify the issue" which had been litigated in the two actions which is said to be identical (see *Lee Tat Development* at [14]–[15]). The outcome of a successful invocation is that the estopped party cannot obtain the relief he or she prays for because of a prior finding of fact or law to which he or she is bound. The onus is on the Husband to show that the prerequisite is met. As we will explain, he cannot do so.

36 As recognised by the HCFD hearing the appeal against the DJ's Family Court Orders, it is well established that a necessary condition for interim maintenance is the neglect or refusal to maintain within the meaning of s 69 of the Charter (see *TCT v TCU* [2015] 4 SLR 227 ("*TCT v TCU*") at [31] and *VRJ v VRK* [2021] SGHCF 9 ("*VRJ v VRK*") at [11] and [19]). The DJ and HCFD found that the evidence did not support a finding of such neglect or refusal from 1 January 2022 (the start of the period in which maintenance was sought) to 21 September 2022 (the date of the application for interim maintenance).

37 On the present facts, the finding by the DJ and HCFD that the Husband had not neglected or refused to maintain the Children as at 21 September 2022 has no bearing on the Judge's decision to award backdated child maintenance for the period of August 2023 to December 2024. Any finding that the Husband did not neglect or refuse to maintain the Children in the period of January 2021 to September 2022 is not determinative of whether he neglected or refused to do so for the period of August 2023 to December 2024. The factual issues are not identical and therefore issue estoppel does not arise.

38 Having said that, we do not propose to address the question whether the requirements governing interim and final child maintenance at the AM stage are substantively different or identical, as the parties did not raise this issue. The question turns upon the proper construction of the interplay between ss 69(2) and 127(2) of the Charter. Nevertheless, we make some observations that touch on that issue at [45]–[59] below. On the present facts, it suffices for us to observe that there could be no "identity of subject matter" for the purpose of [34(d)] above because the periods concerned are distinct. Hence, on this narrower ground, we reject the Husband's argument on the doctrine of issue estoppel.

39 Second, we address the Husband's reliance on *AXM v AXO*. In our view, *AXM v AXO* is not relevant to the present appeal as there are no overlapping orders. In *AXM v AXO*, an interim maintenance order was in force at the time of the AM proceedings. The Court of Appeal in *AXM v AXO* was concerned with a situation in which a backdated final maintenance order made at the AM stage also covers the period covered by an interim maintenance order, resulting in the paying party coming under "two different but equally binding obligations": *AXM v AXO* at [21]. It was held that, on the facts there, the first-instance judge ought not to have backdated the final maintenance order such that it covered the period under an existing interim maintenance order. The Court of Appeal's cautionary note in situations where there *is* a subsisting interim maintenance order is that there should not be any over-provision in the final AM stage by the court making orders of additional sums for the same period. In our view, the facts in *AXM v AXO* are distinguishable from the present case, as there is *no* subsisting interim maintenance order here for there to be any overlap.

*Parents' duty to maintain their child*

40 Finally, we address the Husband's contention that the facts do not warrant the award of backdated maintenance for the Children because the Wife's resources in that period were sufficient to meet the Children's needs.

41 We emphasise that both parents have the duty to maintain their child. It is clear that "[l]iability for child maintenance rests equally on the father and the mother" and "parents should co-operate in their discharge of their financial responsibility towards their child": Leong Wai Kum, *Elements of Family Law in Singapore* (Lexis Nexis, 3rd Ed, 2018) at para 12.022. Parents have an equal responsibility to maintain their child although their precise obligations may differ depending on their means and capabilities (see *UHA v UHB and another*

*appeal* [2020] 3 SLR 666 at [36] and *AUA v ATZ* [2016] 4 SLR 674 at [41]). The court will consider all relevant circumstances, including the parties' income, earning capacities and financial resources, in arriving at the proportion of their children's expenses each party should bear. A broad-brush approach is sensible and practical – for example, it may be fair for a spouse with a more modest income but with more assets to bear an equal proportion of maintenance liability with the other spouse who has a higher income but fewer assets.

42 Considering the evidence before the court, the Judge made a factual finding that the Husband had maintained the Children at an average of $3,722.18 per month from August 2023 to March 2024, based on the Husband's own submissions as to the reimbursements he made to the Wife, in addition to the $3,040.74 per month that the Wife accepted he had paid (Judgment at [49]). Given that the Judge ordered child maintenance of $4,819 per month to be paid by the Husband, the Husband was under-contributing to the Children's reasonable expenses during the period in question. Thus, the Judge was of the view that the Husband should pay $1,000 per month as backdated maintenance from August 2023 to December 2024, which amounted to a lump sum of $17,000.

43 As both parents are obliged to maintain the Children depending on their respective means and capacities, we do not see any merit in the Husband's argument that he should not contribute to maintenance during that period just because the Wife was capable of maintaining the Children's needs without any contribution from him. Even assuming that were true, it is irrelevant. The Wife is not required to show that she could not maintain the Children's needs out of her earnings and assets alone; she need only to show that the Husband was not

contributing his fair share towards the Children's maintenance, having regard to their respective incomes (amongst other things).

44 For these reasons, we dismiss the Husband's appeal against the Judge's award of $17,000 in Backdated Child Maintenance.

*Observations on s 127 of the Charter*

45 Before moving on to the next issue, we make one more observation on the issue of child maintenance in AM proceedings. The Husband's invocation of the issue estoppel doctrine in relation to the DJ and HCFD's findings that the Husband did not neglect or refuse to maintain the Children brings into focus the question whether the requirement of neglect or refusal in s 69(2) of the Charter is a requirement for a final *AM order* of child maintenance. As noted earlier, this issue was not raised by either party in this appeal or in the proceedings below. Nor was it necessary for us to determine this point in this appeal, given the narrower ground on which we rejected the Husband's invocation of the issue estoppel doctrine at [37]–[38] above. However, given its importance, we nevertheless provide our provisional views in this sub-section.

46 We begin by observing that while cases have held that the requirement of neglect or refusal applies to applications for *interim* child maintenance pending final AM orders (see [36] above, which refers to *TCT v TCU* and *VRJ v VRK*), *final AM* orders for child maintenance have been routinely made in AM proceedings *without* a determination of whether the paying parent had neglected or refused to maintain the child within the meaning of s 69(2) of the Charter. This position may at first glance appear to contradict the plain wording of s 127(2) of the Charter, which provides that Parts 8 and 9 (with s 69(2) contained

in Part 8) apply to a maintenance order made when the court grants a divorce or subsequent to the grant of a divorce. Section 127 states as follows:

> **Power of court to order maintenance for children**
>
> **127.**—(1) During the pendency of any matrimonial proceedings or when granting or at any time subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, the court may order a parent to pay maintenance for the benefit of his or her child in such manner as the court thinks fit.
>
> (2) The provisions of Parts 8 and 9 apply, with the necessary modifications, to an application for maintenance and a maintenance order made under subsection (1).

47 The exercise in legislative construction utilises the purposive interpretation approach provided in s 9A(1) of the Interpretation Act 1965 (2020 Rev Ed) and the framework in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [37], which provides for three steps:

> (a) First, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole.
>
> (b) Second, ascertain the legislative purpose or object of the statute.
>
> (c) Third, compare the possible interpretations of the text against the purposes or objects of the statute.

48 In the present case, in ascertaining the ordinary meaning of the words in s 127(2) of the Charter, the key issue is whether one of the "necessary modifications" contemplated in s 127(2) can include the modification of the requirement of neglect or refusal in s 69(2) where child maintenance is sought as a final AM order in divorce proceedings.

49 Provisionally, we would opine that a "necessary modification" should be made in applying the provisions of Parts 8 and 9 of the Charter to s 127(1) when the court considers whether to make a final AM order on child

maintenance. The legislative history of s 127(2) informs that this provision was never intended to impose the requirement of proof of neglect or refusal upon *AM orders*. Instead, the amendments that led to the present s 127(2) targeted a specific issue arising from the previous position of there being two apparently distinct bases for the award of child maintenance: one arising during the subsistence of the marriage of the child's parents and another arising during or upon the grant of the parents' divorce. Previously, s 61(2) of the older version of the Women's Charter (Cap 353, 1985 Rev Ed) (the "1985 Charter") provided for the power to award maintenance for a child on proof of neglect or refusal by his or her parent, while ss 122(1) and (2) of the 1985 Charter provided for the maintenance of children by parents undergoing matrimonial proceedings. The two provisions are set out here:

> **Court may order maintenance of wife and children**
>
> **61.**—(1) …
>
> (2) If any person neglects or refuses to maintain his legitimate or illegitimate child who is unable to maintain himself, a District Court or Magistrate's Court on due proof thereof may order that person to pay a monthly allowance or a lump sum for the maintenance of that child.
>
> …
>
> **Power of court to order maintenance for children**
>
> **122.**—(1) During the pendency of any matrimonial proceedings the court may order a parent to pay towards the maintenance of his child.
>
> (2) When granting or at any time subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage the court may order a parent to pay maintenance for the benefit of his child in any manner the court thinks fit.

50 Section 61(2) of the 1985 Charter contained the requirement for proof of neglect or refusal by the parent where child maintenance orders were made outside of matrimonial proceedings. However, where there were matrimonial

proceedings, the court had the jurisdiction and power in s 122 of the 1985 Charter to make child maintenance orders without the requirement for proof of neglect or refusal to maintain the child.

51 The Women's Charter (Amendment) Act 1996 (Act 30 of 1996) (the "1996 Act") made several material changes to ss 61 and 122 of the 1985 Charter. First, s 12 of the 1996 Act repealed and re-enacted s 61. The duty of parents to maintain their children was then set out in the re-enacted s 61 (which is now reflected in s 68 of the present Charter) while s 61A(2) provided that the court may order maintenance on due proof that a parent has neglected or refused to provide reasonable maintenance. The provisions in ss 61 and 61A after the amendments of the 1996 Act came into force (which are largely similar to ss 68 and 69(2) of the present Charter, respectively) are reproduced here:

> **Duty of parents to maintain children**
>
> **61.** Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, and whether they are legitimate or illegitimate, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.
>
> **Court may order maintenance of wife and children**
>
> **61A.**—(1) …
>
> (2) A District Court or a Magistrate's Court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his child who is unable to maintain himself, order that parent to pay a monthly allowance or a lump sum for the maintenance of that child.
>
> …

52 Section 33 of the 1996 Act also repealed and then re-enacted s 122 of the 1985 Charter. Sections 121, 123, 124 and 125 of the 1985 Charter were

repealed by s 32 of the 1996 Act. Section 122 of the 1985 Charter was amended to include the language now found in s 127 of the present Charter, which contained the proviso in its subsection (2) that "[t]he provisions of Parts VII and VIII [now Parts 8 and 9] shall apply, with the necessary modifications, to an application for maintenance and a maintenance order made under subsection (1)".

53 The Select Committee on the Women's Charter (Amendment) Bill (Bill No 5/1996) ("1996 Bill") received representations from Professor Leong Wai Kum ("Prof Leong") (Paper No 19 dated 25 May 1996), who recommended that the two regimes for child maintenance orders under ss 61 and 122 of the 1985 Charter be harmonised as it was, in principle, not justifiable for a parent's duty to maintain the child to differ based on whether matrimonial proceedings were ongoing or not. Prof Leong had suggested that (*Report of the Select Committee on the Women's Charter (Amendment) Bill (Bill No 5/96)* (Parl 3 of 1996, 15 August 1996) (the "Select Committee Report") at B32–B33):

> 7.1 … There is one major deficiency in the Act's provisions. The Act separates the duty of a parent to maintain his or her child into two distinct periods *viz*, during the continuance of the parents' marriage (sections 61(2) and 62 and the rest of Parts VII and VIII) and during or after the termination of the parents' marriage by court decree (sections 121, 123 and 125 and the rest of Chapter 5 of Part IX). … A parent's duty towards his or her child's financial needs is actually not affected by the state of the parents' marriage. Whether the parents are married or separated or divorced, their duty in this regard should be exactly the same. To the extent the Act suggests that the duty may be different, it is conceptually unsound. … To separate the parents' duty thus weakens the responsibility. The message the Act should give is that we hold every parent responsible for the financial needs of the child the parent has chosen to have. This responsibility continues for the length of time the child is dependent … unaffected by what the parents choose to do with their marriage.
>
> 7.2 I suggest that a rationalisation of the law requires that the provisions which lay down the extent of the parents' duty

> should only appear once. Sections 61(2) and 62 appear the more suitable. The mechanics for invoking this duty may be separately provided for when the parents' marriage is continuing, as the present sections 61 – 67 of Part VI provide, and when the parents are in the process of terminating their marriage, as the present sections 122 or 123 of Chapter 5 of Part IX provide. The change that is required, then, is that the extent of the parent's duty should be exhaustively provided for in Part VII. The mechanics for invoking the duty may be separately provided for in Part VII and Chapter 5 of Part IX.

54 Prof Leong's proposed solution (at para 7.3(ii) of her paper) was to insert the new language in s 122 of the 1985 Charter, which is reflected in s 127 of the present Charter.

55 The speeches at the Second Reading of the 1996 Bill made no mention of the legislative amendments eventually effected in ss 12 and 33 of the 1996 Act (see Singapore Parl Debates; Vol 66, Sitting No 1; Cols 62–71; [2 May 1996] (Abdullah Tarmugi, Minister for Community Development)). The speeches at the Third Reading of the 1996 Bill referred to the amendments in s 12 of the 1996 Act but only in relation to the amendment concerning circumstances in which children over the age of 21 years should be allowed to claim maintenance (see Singapore Parl Debates; Vol 66, Sitting No 6; Col 524; [27 August 1996] (Abdullah Tarmugi, Minister for Community Development)).

56 From this background, it appears that the relevant amendments were not intended to effect a sea change to the then-prevailing legal criteria for an order of child maintenance, but to avoid divergence in the contours of a parent's substantive duty to maintain his or her child in matrimonial proceedings as compared to other family proceedings. Prof Leong observed that previously, the courts had had to strain the interpretation of some of the provisions in order to avoid finding that the parent's duty differed between the two proceedings (see the Select Committee Report at B32, Paper No 19 at para 7.1(ii)). Considering

the legislative context, our view is that s 127 of the Charter was probably never intended to impose a more rigorous threshold for AM child maintenance orders than the position prior to the 1996 Act where there was no requirement for proof of a parent's neglect or refusal to maintain in s 122 of the 1985 Charter (see [50] above).

57 The reasons underlying child maintenance orders in s 69(2) of the Charter differ from that for AM orders under s 127(1). During the subsistence of the parties' marriage, the court's intervention into private family arrangements is not warranted unless there is a clear failure of a legal duty. Thus, proof of neglect or refusal by a parent to maintain the child is a necessary pre-requisite in s 69(2) for the court to be justified in exercising its power to order child maintenance in such circumstances.

58 On the other hand, *final AM orders* on child maintenance stand in a different context. The court has matrimonial jurisdiction over the parties in divorce proceedings, with the ancillary powers to make orders for the family where the marriage has broken down. The court's task is to ensure that family obligations continue to be discharged after the drastic event of a divorce. This is independent of whether a parent has neglected or refused to maintain the child in the past. Upon divorce, the children will have new living arrangements and the parties' financial arrangements (including child maintenance) must also be re-organised as a result of the radically changed circumstances post-divorce. This was the position reflected in the 1985 Charter where proof of a parent's neglect or refusal to maintain was not required before the court dealing with the final AM orders could grant orders for child maintenance. Thus, while the inquiry for an award of child maintenance under s 69(2) is backward-looking, focused on a *prior* breach of duty to maintain, the inquiry in final AM orders on

arrangements for the children *post*-divorce is forward-looking, concerned with providing for their best interests following the dissolution of their parents' marriage. The wording of s 127(2) of the Charter or the 1996 Act does not suggest that Parliament intended to remove the distinction between these fundamentally different judicial tasks. The extraneous materials to which we referred at [53]–[55] above militate against such a reading (see *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] 3 SLR 295 at [67], applying *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 at [65]–[66]).

59 In light of the different tasks of the court in an application under s 69(2) as compared to that in s 127(1) in AM proceedings, we think that a necessary modification in s 127(2) of the Charter would have to be made in respect of whether or how the requirement of neglect or refusal in s 69(2) should be applied in AM proceedings. It appears to us that the interpretation of s 127(2) which best furthers the legislative purpose is to read "necessary modifications" in s 127(2) to require the *disapplication* of the neglect or refusal requirement in the AM context.

## Issue 3: Backdated Spousal Maintenance

### *The parties' positions*

*The Husband's submissions*

60 The Husband's main arguments in respect of his appeal against the order of backdated spousal maintenance are similar to that for backdated child maintenance, relying largely on issue estoppel and *AXM v AXO*.

61 The Husband also submits that there is no necessity on the present facts for backdated spousal maintenance because an objective review of the Wife's financial assets shows that she had savings of more than $900,000 in her bank accounts and she was capable of earning a significant sum prior to her ceasing employment in April 2021.

*The Wife's submissions*

62 The Wife reiterates her submissions on why the issue estoppel doctrine and the rule in *AXM v AXO* do not legally preclude the Judge from making the order for backdated spousal maintenance. She also argues that it was fair to make that order in the circumstances of the case, highlighting that the Judge ordered a modest sum of $6,000 a month during the period after the Husband unilaterally ceased to pay an allowance for her reasonable needs whilst she was unemployed. The Wife points out that she ceased working from May 2021 and only managed to secure a full-time job in November 2024.

### ***Our decision: the Judge's award of $144,000 in backdated maintenance to the Wife should be set aside***

*On issue estoppel and AXM v AXO*

63 With respect to whether the Judge was precluded by *AXM v AXO* from awarding the Wife backdated spousal maintenance for the period of December 2021 to December 2023, we reiterate our views at [39] above that the Husband's reliance on that case is misplaced. There was no subsisting interim maintenance order for the Wife capable of overlapping with the period covered by the Judge's backdated spousal maintenance order. However, having said that, it does not necessarily follow that the Judge was correct in making the order. We elaborate on this later (at [79]–[83] below).

64 As for the Husband's reliance on the issue estoppel doctrine, we are of the view that there is no identity of subject-matter between the DJ's and HCFD's decisions and the Judge's order for backdated spousal maintenance (see *Lee Tat Development* at [15] ([34(d)] *supra*)).

65 Section 113(1) of the Charter provides:

> **Power of court to order maintenance**
>
> **113.**—(1) The court may order a man to pay maintenance to his wife or former wife…
>
> (*a*) during the course of any matrimonial proceedings; or
>
> (*b*) when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage.

The juxtaposition between s 113(1)(*a*) and s 113(1)(*b*) of the Charter leaves no room for doubt that the two subsections encompass distinct factual scenarios. That distinction stems from the clear difference in the *purposes* intended to be served by an interim and a final spousal maintenance order, respectively, which ought not to be conflated.

66 The Court of Appeal in *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506 ("*Foo Ah Yan*") made clear that "the duty of a husband to maintain his wife during the marriage, as provided by s 69(1) of the [Charter], and the obligation to provide maintenance to a former wife under s 113 of the [Charter] are driven by separate forces": *Foo Ah Yan* at [22]. The matters that the Charter specifically directs the court to consider under ss 69(4) and 114(1) are not identical. The aim of maintenance in s 69(1) is to provide for the wife's immediate needs subject to proof of neglect or refusal to maintain, while that in s 113(1)(*b*) is for "financial preservation", that is, to enable the former wife to continue to live at

the level that she did immediately prior to the breakdown of the marriage so far as it is practicable (see *Quek Lee Tiam v Ho Kim Swee (alias Ho Kian Guan)* [1995] SGHC 23 at [18] and *Foo Ah Yan* at [13]; see also s 114(2) of the Charter). We reiterate that, as held in *TCT v TCU* at [31] and *VRJ v VRK* at [11] and [19] ([36] *supra*), spousal maintenance under s 69(1) and interim spousal maintenance under s 113(1)(*a*) of the Charter are governed by a similar legal requirement, namely that of neglect or a refusal to maintain. In contrast, no such requirement applies to final spousal maintenance orders made under s 113(1)(*b*) of the Charter (see *VXM v VXN* [2022] 3 SLR 1174 at [6]).

67 On the present facts, there can be no issue estoppel as the determination by the DJ and HCFD that the Husband had not neglected or refused to maintain the Wife was not a necessary issue that had to be decided before the Judge could make an order for final spousal maintenance in the AM proceedings. As explained, the rationale and factors applicable to interim maintenance and the AM maintenance are different. Thus, there can be no identity of subject-matter (at [34(d)] and [64]–[66] above).

68 Having rejected the Husband's submissions on issue estoppel and *AXM v AXO*, we proceed to address whether the Judge's order of backdated spousal maintenance was correct in the present circumstances.

*Maintenance of a former wife: applying the legal principles*

69 In the present case, the Wife sought backdated maintenance for the period from December 2021 to December 2023 on the basis that (i) she was unemployed until November 2024, (ii) the Husband had the financial means at the time to support her expenses, and (iii) he originally paid her a monthly allowance from May 2021 to November 2021 before ceasing all payments to

her (Judgment at [40]). She argues that the Judge was correct in exercising his discretion to order that that maintenance be continued until at least December 2023, given that she only started work in November 2024.

70 The Judge explained his decision to order backdated spousal maintenance as follows (Judgment at [40]):

> … The Husband was under a duty to provide reasonable maintenance to the Wife during the marriage (s 69(1) of the WC), and I agree that S$6,000 a month was reasonable in light of the Wife's unemployment at the time. As for the period from the IJ date to December 2023, I think it that [*sic*] is fair for the maintenance to remain at S$6,000 since the Wife was unemployed up until 1 October 2024. I thus order the Husband to pay a lump sum of S$144,000.

71 It appears that the Judge's main basis for ordering the backdated spousal maintenance is that the Wife was unemployed during the relevant period. It is also apparent that he made the order in the context of ss 69(1) and 113(1)(*a*) of the Charter. With respect, we are of the view that the Judge erred in making this order.

72 It is readily apparent that ss 69(1) and 113(1)(*a*) on the one hand, and s 113(1)(*b*) on the other hand, address distinct factual scenarios and serve different purposes. As we explained at [66] above, the former concerns the duty of a spouse to maintain the other spouse during the subsistence of the marriage and is exercised to provide for the dependent spouse's *immediate* financial needs; the latter concerns a broader remedy to even out the economic disadvantages arising from the role the spouse has undertaken in the marriage in order to achieve financial preservation in post-divorce life. "Financial preservation" must be understood in the context of the "new realities that flow from the breakdown of marriage", including that it is "notoriously true that two separate homes are much more expensive to run than one" (see *Foo Ah Yan* at

[16], relying on *NI v NJ* [2007] 1 SLR(R) 75 at [15]–[16] and the United Kingdom, House of Lords, *Parliamentary Debates* (4 December 1969) vol 306 at cols 267–268).

73 Unlike maintenance orders made *before* a divorce is granted, "the power to order maintenance [in s 113(1)(*b*)] is *supplementary* to the power to order division of matrimonial assets" [emphasis added] (*Foo Ah Yan* at [26]). Thus, this power is exercised after considering the financial resources each spouse will have pursuant to the division order. It may be that, depending on the facts of the case, there is no need to order maintenance for a wife who will receive a substantial amount of assets from the division order. For example, no maintenance was ordered for the homemaker wife in *Yeo Chong Lin v Tay Ang Choo Nancy and another appeal* [2011] 2 SLR 1157 at [62] and [82] as she would receive assets worth more than $20 million from the order on division of assets. Her application for post-divorce maintenance in the first instance AM proceedings was hence rejected having regard to the division order made there (see *Tay Ang Choo Nancy v Yeo Chong Lin and another (Yeo Holdings Pte Ltd, miscellaneous party)* [2010] SGHC 126 at [59]–[61]).

74 That is because the court's discretion in s 113(1)(*b*) is exercised with reference to the objective of facilitating the former spouse's transition into post-divorce life where eventual economic self-sufficiency will be reasonably expected (see Leong Wai Kum, *Marriage, Spouses and Assets* (Academy Publishing, 2025) at paras 13.91–13.96). The court must have regard to all the circumstances of the case including those stated in s 114(1) of the Charter, which sets out, amongst other things, the following factors for consideration:

> (*a*) the income, earning capacity, property and other *financial resources* which each of the parties to the marriage has or is likely to have in the foreseeable future;

> (*b*) the *financial needs*, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
>
> (*c*) the *standard of living* enjoyed by the family before the breakdown of the marriage;
>
> (*d*) the *age* of each party to the marriage and the *duration* of the marriage;
>
> …
>
> [emphasis added]

75 In the present case, the task before the Judge was determining maintenance for the Wife under s 113(1)(*b*) and not s 113(1)(*a*) or s 69(1). The principles applicable are those that we have set out on s 113(1)(*b*) at [72]–[74] above. It is when these principles have been applied to the specific facts of the case and only when a maintenance order is then made under s 113(1)(*b*) that the next question of whether the orders should be backdated would then arise.

76 The court has the power and discretion to backdate a final AM spousal maintenance order. The court in *AMW v AMZ* [2011] 3 SLR 955 ("*AMW v AMZ*") provided some factors relevant in the exercise of this discretion (at [12]). Such a backdated order may cover the period prior to the AM hearing. In *AMW v AMZ*, Woo Bih Li J (as he then was) ordered a final maintenance order to be backdated and explained that "there is no reason why, generally speaking, an applicant for maintenance should be compelled to apply for interim maintenance pending the hearing of ancillaries", adding that to require a wife to take out an interim maintenance application "is to encourage applicants to incur unnecessary costs and to clutter the court's calendar with unnecessary applications" (at [10]–[11]). This was affirmed by this court in *CVC v CVB* [2023] SGHC(A) 28 at [113].

77 The discretion to backdate maintenance orders is in line with the broad powers of the AM court to make orders that ensure a just outcome for the parties who require financial re-organisation and structure that will enable them to move forward in their significantly changed circumstances. The AM court is well placed to assess all the relevant facts so as to make orders on the division of assets, maintenance for the spouse and children, as well as the custody and care and control of the children. These reliefs are inter-connected – the determination of child maintenance requires consideration of the children's post-divorce custody and care arrangements; determining spousal maintenance requires a consideration of what each spouse will receive from the division order (among other factors). The AM court has full access to the evidence on the parties' assets and means, their contributions to the marriage and their various financial needs throughout the material periods in their divorce journey – it is best placed to exercise its broad powers to ensure a just outcome for the family to move forward in the next phase of their lives.

78 A useful illustration of the broad powers of the AM court is found in *ATZ v AUA* [2015] SGHC 161 ("*ATZ v AUA*"), though set in the context of custody and care and control orders. In that case, the parties had both applied for sole custody and care and control of their child under the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) ("GIA") *before* divorce proceedings commenced. A district judge made orders under the GIA ("GIA order"). In subsequent divorce proceedings, a preliminary point was raised as to the effect of an order made under the GIA on the AM proceedings. The wife argued that the issue of care and control of their child was *res judicata* with the result that the husband was estopped from raising any argument about care and control in the AM proceedings. The husband argued that any order made under the GIA in contemplation of divorce was an interim and not a final order. After an

adjournment for parties to research the point, the wife's counsel withdrew the *res judicata* point and accepted that a court hearing the AM has the power to "reopen the issue of care and control even if there was a decision on the same under the GIA" (*ATZ v AUA* at [95]). Belinda Ang Saw Ean J (as she then was) held (at [98]–[99]):

> 98 … it can be seen that once the parties are within the matrimonial jurisdiction of the court, the court is entitled to make any order or vary any previous order in relation to the custody, care and control and access of the child. Therefore, it is clear that the *discretion of the Ancillaries Court is not fettered by any previous order* made under s 5 of the GIA …
>
> 99 … a GIA order made in contemplation of a divorce can only have an interim effect as it does not take into account the fact that the parties would eventually be parting ways and does not allow a court to *assess holistically the interaction between maintenance, the status of the matrimonial assets and the custody, care and control and access of a child*. The *Ancillaries Court is thus in the best position, with all the necessary information and evidence*, to make an order that ensures the child's interests are treated as and made paramount.
>
> [emphasis added]

79 In the present case, the Judge made no final AM maintenance order for the Wife under s 113(1)(*b*). The Judge made *only* an order covering the period *prior* to the AM hearing, which would have been the period relevant to applications under s 69(1) and s 113(1)(*a*) of the Charter. With respect, there is no basis for the order he made. In the present case, there is simply no AM spousal maintenance order to be "backdated". In the absence of an order for spousal maintenance under s 113(1)(*b*), be it on a periodical or lump sum basis, the court has no power under s 113(1)(*b*) to make *only* an award of spousal maintenance covering earlier periods.

80 The Judge was tasked with determining the AM orders after an IJ had been granted. The relevant principles in determining maintenance for a former

wife have been explained above. There was no pending application under s 69(1) or s 113(1)(*a*) to provide for the Wife's immediate needs whilst the matrimonial proceedings were ongoing.

81 We also point out that the income of the spouses is only one of the factors to consider in determining maintenance. The Judge appeared to have ordered backdated spousal maintenance because the Wife was unemployed during the period in question. Unemployment alone is not a basis for ordering spousal maintenance. It stands to be weighed together with all the other relevant factors, including – significantly, in this case – the parties' other financial resources. After the Judge's order on the division of assets, the Wife will receive 47% of the pool of matrimonial assets valued at $8.1 million. As the power to order maintenance in s 113(1)(*b*) is *supplementary* to the power to order the division of assets, the Wife's financial resources are relevant and should be taken into account. The age of the parties and length of the marriage are also relevant factors (see s 114(1)(*d*) of the Charter and [74] above).

82 Finally, we observe that while the Husband provided monthly allowance to the Wife in the sum of $5,000 per month from May 2021 to June 2021 and $6,000 per month from July 2021 until November 2021 (Judgment at [40]), the fact that he agreed to pay a certain amount as allowance during the marriage does not necessarily result in a legal obligation to pay that sum as spousal maintenance. As explained, other relevant circumstances must also be taken into account.

83 There is no basis for backdated spousal maintenance to be ordered in the present case. The Judge did not order any maintenance pursuant to s 113(1)(*b*), nor did the Wife seek it. Had she sought it, she would not have been successful given that she had worked throughout the marriage until April 2021, would

receive a substantial share of assets under s 112(1) and, significantly, she was gainfully employed and earning a substantial income by the time of the AM hearing.

84 In the circumstances, we set aside the Judge's award of backdated spousal maintenance in the amount of $144,000 from December 2021 to December 2023.

**Issue 4: Indirect Contributions Ratio**

***The parties' positions***

*The Husband's submissions*

85 The Husband takes issue with the indirect contributions ratio of 50:50 reached by the Judge. He argues that this ratio should instead be 60:40 in his favour. He submits that the Judge did not give sufficient recognition to his active role in the Children's lives when assessing his indirect non-financial contributions. His counsel argued at the hearing before us that the Judge ought to have disregarded the Wife's contributions to the caregiving of the Children after he was allegedly evicted from the Matrimonial Home in May 2022, because the Wife should not be allowed to rely on her own wrongful conduct which gave rise to the circumstances where she looked after the children while the Husband was deprived of that opportunity.

*The Wife's submissions*

86 The Wife argues that the evidence below supported the inference that she was the Children's primary caregiver and, by extension, the Judge's finding that she had made greater indirect non-financial contributions to the household was correct. She takes issue with the Husband's attempt to have her caregiving

contributions past May 2022 discounted from the calculation, and submits that she did not wilfully obstruct the Husband's access to the Children.

***Our decision: the Judge did not err in arriving at the indirect contributions ratio of 50:50***

87 We do not see any basis to interfere with the indirect contributions ratio of 50:50 determined by the Judge. We begin with the guidance provided by the Court of Appeal in *USB v USA and another appeal* [2020] 2 SLR 588 ("*USB v USA*") at [43] (which this court recently reaffirmed in *WXW v WXX* [2025] SGHC(A) 2 at [17]):

> … the broad-brush approach should be applied with particular vigour in assessing the parties' *indirect* contributions. This would serve the purpose of discouraging needless acrimony during the ancillary proceedings. Practically, this means that, in ascertaining the ratio of indirect contributions, the court should not focus unduly on the minutiae of family life. Instead, the court should direct its attention to broad factual indicators when determining the ratio of parties' indirect contributions. These would include factors such as the length of the marriage, the number of children, and which party was the children's primary caregiver.
>
> [emphasis in original]

88 In the present case, we note that, in relation to the indirect *financial* contributions to the family expenses, there is no dispute between the parties as to the Judge's factual finding that the Husband made greater contributions than the Wife (Judgment at [34]). The Wife does not challenge this finding on appeal, taking the position that the Husband made greater financial contributions, but that her own "were by no means insubstantial". In any event, that finding is supported by the Husband's higher income throughout the marriage and the documentary evidence of the Husband's payment of various expenses, such as MCST fees and utilities.

89 As for the parties' indirect *non*-financial contributions, the Judge found that the Wife was the primary caregiver of the Children (Judgment at [35]). The Wife was not employed from May 2021, which allowed her to care for the Children full-time until she had commenced work again in November 2024. The Judge also accepted her evidence of her active role in the Children's lives even before she was unemployed, including her contributions as "a dedicated mother who tended to the [C]hildren and managed their medical issues" (Judgment at [35]).

90 The broad factual indicators point to a marriage where the Husband made greater indirect *financial* contributions to the well-being of the family, while the Wife made greater indirect *non*-financial contributions. This is *not* to say that the Husband did not make substantial indirect *non*-financial contributions or that the Wife did not make substantial indirect *financial* contributions at all. Indeed, the Judge found that the Husband had been an active father who also made substantial contributions in the Children's lives (Judgment at [36]). The task of the court is to weigh the substantial contributions from both the Husband and the Wife in this case in the twin spheres of their indirect financial and non-financial contributions.

91 The Husband also argues that the Wife should not be permitted to rely on acts that arose from her alleged wrongdoing in "evicting" him from the Matrimonial Home, and hence, her contributions in the care of the Children from the time of that eviction in May 2022 should be disregarded. We note that it is not disputed that the Wife did care for the Children in the period after the Husband exited the Matrimonial Home in May 2022 and we are of the view that such indirect contributions should be recognised, notwithstanding the circumstances of the Husband's departure from the Matrimonial Home. We

point out that, in any case, IJ was granted in October 2022 and thus the period from May 2022 to October 2022 – approximately five months – is short; discounting contributions in this period would not have shifted the ratio in light of the broad-brush approach and the circumstances of this case. We make this point *not* to suggest that the Husband would have been entitled to such a discount if the period were longer (which we answer in the negative), but to reiterate that the broad-brush approach in *ANJ v ANK* and *USB v USA* prioritises a holistic approach to assessing the parties' contributions, thereby discouraging the parties from focusing on the other party's "faults" and disparaging each other's conduct and character.

92 Bearing in mind that the broad-brush approach should be applied with particular vigour in assessing the parties' *indirect* contributions, we do not see any reason to depart from the Judge's finding of the indirect contributions ratio of 50:50. We dismiss this point of appeal brought by the Husband.

**Issue 5: Rent-Free Occupation**

***The parties' positions***

*The Husband's submissions*

93 The Husband submits that the Judge failed to consider that the Wife's rent-free occupation is an independent basis to grant an uplift to his share of the matrimonial assets. He seeks a 3.5% uplift to account for the expenses he had to incur since he was evicted from the Matrimonial Home in May 2022. A 3.5% uplift works out to approximately $283,500 (which is close to the amount he had allegedly spent on alternative accommodation). He contends that the Judge wrongly conflated an argument that an adverse inference be drawn with an argument that an adjustment be made to the final ratio of division under

s 112(2)(*f*) of the Charter. He further submits that the Judge was wrong to decline the uplift on the basis that the sums he spent on alternative accommodation were matrimonial moneys which had not been added back into the pool – he alleges that only five months' worth of his expenses (out of 30 months) were matrimonial moneys.

*The Wife's submissions*

94 The Wife argues that whether an uplift should be accorded based on the factors in s 112(2) of the Charter is a discretionary exercise based on all the facts and circumstances. The Judge was entitled to give weight to the fact that the Husband's accommodation expenses were paid out of matrimonial moneys which he had not been made to add back into the pool. Moreover, she argues that she did nothing wrong in causing the Husband to leave the Matrimonial Home in May 2022. The escalating disputes and arguments between the spouses rendered it simply impracticable for the two of them to continue living in the same home and the Husband's exit was necessary for the well-being of the Children.

***Our decision: no 3.5% uplift as submitted by the Husband is warranted***

95 The starting point of our analysis is the wording of ss 112(1) and 112(2) of the Charter:

> **Power of court to order division of matrimonial assets**
>
> **112.**—(1) The court has power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.
>
> (2) It is the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have

> regard to all the circumstances of the case, including the following matters:
>
> …
>
> (*f*) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
>
> …
>
> [emphasis in original]

96 Subsection 112(2)(*f*) is only one of the eight factors expressly stated as matters to which the court should "have regard" in the exercise of its powers in dividing matrimonial assets. As the court is to have regard to "all the circumstances of the case", the list of factors in s 112(2) is not exhaustive. Indeed, the Court of Appeal in *ANJ v ANK* emphasised that the "controlling principle has always been and remains that the court must approach the exercise with broad strokes based on its feel of what is just and equitable on the facts of the case" (*ANJ v ANK* at [30]).

97 As set out at [12] above, the average ratio of the parties' direct and indirect contributions reached by the Judge was 53:47. The Judge used this average ratio as the final ratio for dividing the matrimonial assets. While the average ratio "is a non-binding figure … meant to serve as an indicative guide to assist courts in deciding what would be a just and equitable apportionment" (see *ANJ v ANK* at [26]), and the various factors in s 112(2) could shift the average ratio where the court thinks it just and equitable to do so (see *ANJ v ANK* at [28]), in the present case, we do not see any error in the Judge's decision to use the average ratio as the final ratio.

98 While the parties were at odds as to the proper characterisation of the facts surrounding the Husband's exit from the Matrimonial Home, the fact that

the Wife occupied the Matrimonial Home to the exclusion of the Husband from May 2022 is not in dispute. The question then is whether, with reference to s 112(2)(*f*), the Wife's rent-free occupation of the Matrimonial Home together with the Children is a matter that should have an effect on the final ratio of division by adjusting the average ratio.

99 In the present case, the Judge explained that "an uplift is not appropriate, because the Husband had funded these expenses using matrimonial moneys, which have not been returned to the matrimonial assets" (Judgment at [38]). The Judge had declined to add back the moneys expended by the Husband on his alternative accommodation on the basis that it "was a reasonable expense" and the Husband clearly required a place to stay after he left the Matrimonial Home, voluntarily or otherwise (Judgment at [15]). The Husband concedes that about five months' worth of expenses came from matrimonial moneys. In relation to the Judge's reason for declining to adjust the average ratio, we are of the view that the use of some matrimonial funds in this way, which were not added back into the matrimonial pool, could be a relevant factor to be taken into consideration against adjustment; however, on the present facts, there were more compelling reasons not to shift the average ratio in the Husband's favour. It is to these other considerations that we now turn.

100 First, we do not think that the amount expended by the Husband on alternative accommodation is an appropriate proxy for his requested uplift in the ratio. The Husband alleged that over $250,000 was spent for "rent and hotel costs … purchasing new furnishings and furniture", and "rent for the remainder of his current tenancy which expires in April 2026" (Judgment at [38]). We indicated to the Husband at the hearing of the appeal that the text of s 112(2)(*f*) suggests that that factor is focused not on compensating the excluded spouse for

the consequential losses flowing from their exclusion from the matrimonial home, but on considering the benefit received by the occupying spouse. That is clear from the words "rent-free occupation or other benefit enjoyed by" the occupying spouse in s 112(2)(*f*). The focus should not be on the sums spent by the Husband on alternative accommodation but what the Wife gained through the rent-free exclusive occupation of the Matrimonial Home.

101 The relevant "benefit" the Wife enjoyed from May 2022 was in occupying the Matrimonial Home with the Children to the exclusion of the Husband. She did not, for example, rent out the property to receive any "benefit" in rental proceeds. She cared for the Children who lived there with her. The Husband argues that the sums he expended on his accommodation could be used to broadly estimate the benefit enjoyed by the Wife. In our view, this equation does not seem logical or fair. For example, what the Husband expended included expenses for accommodation at hotels, including the Capitol Kempinski Hotel, as well as purchases of furnishings and furniture, and the full value of a tenancy expiring in April 2026, and these expenses cannot be said to reflect, for example, the market value of what the Wife gained, that is, her sole occupation of the Matrimonial Home from May 2022 to the termination of their marriage in October 2022 (see [3] and [5] above).

102 Second, the factor in s 112(2)(*f*) should be considered in the balance together with *all* other relevant factors in this case, including, in particular, another factor expressly stated in s 112(2)(*c*) – the needs of the children of the marriage.

103 In the present case, when it became impracticable for the parties to live together in the Matrimonial Home, it was reasonable for the Wife to remain in the Matrimonial Home with the Children, having been their primary caregiver

at that time. The Children had lived in that home since 2014 and maintaining the continuity of living and care arrangements was reasonable, as well as being in their best interests.

104 The Husband was also under a duty to provide for the Children's reasonable needs, which would have included expenses for their reasonable accommodation. Had the Wife left the Matrimonial Home with the Children to live in a rented property, the Husband would have been liable to contribute to their accommodation expenses.

105 In *Sim Kim Heng Andrew v Wee Siew Gee* [2014] 1 SLR 1276 at [72], the court remarked that while "the court is required to pay regard to any period of rent-free and exclusive use of the matrimonial home", that is only "part and parcel of the multi-factorial approach that the court takes towards making a just and equitable determination", which "cannot be approached on a mathematical basis nor can it be considered in abstract and in isolation. In some cases, it may be a significant factor. In other cases, the significance may be small".

106 Thus, considering all the relevant circumstances, and bearing in mind that the power to divide assets is exercised in broad strokes based on what is just and equitable, there is no reason for us to disturb the ratio of division reached by the Judge. We affirm the Judge's final ratio of 53:47 in favour of the Husband (Judgment at [37]).

**Issue 6: Adverse Costs Orders**

***The parties' positions***

*The Husband's submissions*

107 The Husband argues that the Judge should not have made the adverse costs orders against him for the non-disclosures. During the stage of discovery and interrogatories, the Wife had requested that the Husband produce a number of documents, including statements from his SCB Account – *quarterly* from September 2019 to November 2022, and *monthly* from May to October 2022. An assistant registrar ("AR") of the Family Court ordered in relation to the SCB Account that the Husband was to disclose his bank statements quarterly from September 2019 to May 2022. The Husband argues on appeal that in relation to the SCB Account statements, he was entitled to follow the strict letter of the AR's order. In other words, since the AR did not specifically order him to produce those monthly statements for the SCB Account, he should not be penalised for only disclosing those statements later in the 5th Affidavit.

*The Wife's submissions*

108 The Wife emphasises that the Husband breached his duty of full and frank disclosure in connection with a number of belated disclosures and non-disclosures, such as, among other things, the June to August 2022 statements of his SCB Account. She argues that a formal discovery order is not a pre-condition for a party to comply with their duty of full and frank disclosure, and the adverse costs orders were a proportionate response to the Husband's obstructive and uncooperative conduct which prolonged the AM proceedings and added to time and costs below.

***Our decision: there is no basis to disturb the Judge's exercise of discretion in making the costs orders***

109 The Judge ordered standard costs against the Husband for the AM proceedings, and costs thrown-away on an indemnity basis for the Wife's work done in response to his 5th Affidavit filed the day after the AM hearing. He explained (Judgment at [51]):

> … the Husband has wilfully refused to disclose information, such as the expenses for the private investigator he hired and the Opening Balance in his American Express Card statement for May 2022. He also waited until the eleventh hour to disclose his latest salary slip and the bank statements from June to August 2022 … Why would he have filed the May, September, October and November 2022 statements without disclosing the statements for June to August 2022? The Husband has no answer to that. He must have known that the bank statements for June to August 2022 would be relevant in determining the flow of assets. Not only did he not disclose them initially, as he was obliged to do, he did not disclose them even after the Wife had specifically asked him to do so. He has also not explained why he chose to redact the Opening Balance in his American Express Card statement for May 2022. Such conduct impedes the expedient dispensation of justice and undermines respect for legal processes. …

110 Generally, costs are "left in the discretion of the trial judge, and the trial judge's determination on costs will only infrequently be amenable to appellate interference" (see *BCBC Singapore Pte Ltd and another v PT Bayan Resources TBK and another* [2024] 1 SLR 1 at [25]), such as where the judge had misdirected himself as to the principles to be applied, took into account irrelevant matters, failed to take account of relevant matters, or where the exercise of discretion was "plainly wrong" (see *The "Vishva Apurva"* [1992] 1 SLR(R) 912 at [16], relying on *The Abidin Daver* [1984] 1 Lloyd's Rep 339 at 349). On the facts of this case, we are of the view that the Judge was fully entitled to exercise his discretion to make those costs orders.

111 The Judge correctly stated that the general position on costs for AM proceedings is that the parties should bear their own costs. He then considered whether there was a basis to depart from that default position (Judgment at [51]). That basis was the Husband's breach of the duty of full and frank disclosure based on a number of belated disclosures or non-disclosures of material information (Judgment at [39] and [51]).

112 The most significant of the belated disclosures was the failure to disclose the statements of the SCB Account for June to August 2022 until the eleventh hour, shortly before the AM were to be heard on 28 November 2024. The Wife had submitted before the Judge that an adverse inference should be drawn against the Husband on the basis that he had not disclosed the bank statements for the SCB Account from June to August 2022. The Husband then took out a summons for leave to file a further affidavit, the "5th Affidavit", in order to account for the flow of funds in relation to the SCB Account from June to August 2022. Consequently, the Judge granted leave for the 5th Affidavit to be filed and for the parties to file further submissions thereafter. The Husband's submissions on appeal were to the effect that, since the AR did not specifically order him to produce those bank statements, he cannot be faulted for failing to do so earlier.

113 The Husband's contention misstates the import of the duty of full and frank disclosure in matrimonial proceedings. The Court of Appeal has stated in *USB v USA* that (at [57]):

> The duty of full and frank disclosure is particularly relevant in the context of ancillary proceedings. We do not think there is any reason to fault the Husband for failing to follow through on his summons for discovery. The duty of full and frank disclosure exists independently of applications for discovery and, especially in the context of matrimonial disputes, parties

> do not need an added incentive to apply for orders against one another. …

114 There is no merit to the Husband's argument that he did not have to disclose the bank statements since they were not expressly made the subject of the AR's discovery orders. The onus was on him to produce any and all documents or information which are material to the court's exercise of its power in s 112(1) of the Charter.

115 The breach of his duty of full and frank disclosure added to the time and costs incurred by the Wife in the proceedings below. The quantum of costs fixed at $7,000 was reasonable, covering both standard costs for the AM proceedings and indemnity costs limited to the Wife's thrown-away costs in the preparation of her response to the 5th Affidavit.

116 Thus, we see no reason to interfere with the adverse costs orders made by the Judge.

**Conclusion**

117 We dismiss the whole of the Husband's appeal in AD 6, save for the appeal on backdated spousal maintenance. We set aside the order that the Husband is to pay $144,000 to the Wife as backdated spousal maintenance. The remainder of the appeal is dismissed.

118 In determining the costs of AD 6, we consider that the Wife has been substantially successful in the appeal, and unsuccessful only in defending one issue. The material outcome of the appeal is largely in her favour, having regard to the substance of the individual issues raised. Hence, we award costs of

$20,000 (inclusive of disbursements) to be paid by the Husband to the Wife. The usual consequential orders apply.

Ang Cheng Hock
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

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