IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 8

District Court Appeal No 66 of 2023

Between

WPK

… *Appellant*

And

WPJ

… *Respondent*

JUDGMENT

[Family Law — Matrimonial assets — Division]
[Family Law — Maintenance — Child — Post-graduate tertiary educational expenses are luxuries that parents should not be obliged to pay for]

WPK
v
WPJ

[2024] SGHCF 8

General Division of the High Court (Family Division) — District Court Appeal No 66 of 2023
Choo Han Teck J
19, 26 January 2024

5 February 2024 Judgment reserved.

Choo Han Teck J:

1 The appellant, aged 63, is a lecturer at a university in Singapore (the "Husband"). The respondent, aged 52, is a homemaker (the "Wife"). They were from Sri Lanka and are now permanent residents in Singapore. They were married in December 1998 and have two adult sons, "K" and "R" (collectively the "Children"). The Wife filed for divorce on 10 August 2021, and interim judgment ("IJ") was granted on 28 October 2021. The ancillary matters ("AM") were heard on 25 May 2023 and the district judge (the "DJ") gave her decision by Registrar's notice on 14 July 2023. The ancillary matters concerned mainly the division of matrimonial assets and maintenance for the Wife and Children. The DJ decided that the assets were to be divided equally. She awarded the Wife backdated maintenance of $5,000 a month up to July 2023, with a total of $85,000. Thereafter, no maintenance was to be payable to the Wife. The Husband appeals against the DJ's decision with respect to the division of

matrimonial assets, the backdated maintenance, and the provisions (or lack thereof) made for the tertiary educational expenses for K and R.

2 The Husband says that the DJ had erred in determining the value of the matrimonial assets because she did not account for the loans made by the Husband's siblings to him (totalling $1,031,621.94) though they were for the benefit of the family. According to the Husband, these loans should have been deducted from the matrimonial assets before any division, otherwise, the Wife would be unfairly enriched by the division. Moreover, the Husband says that the DJ had erred by not considering the market value of his EP&T shares as at AM date. By using the purchase price of said shares instead of the market value as at AM date, the value of the shares was overestimated by AUD 487,250 because the value of the EP&T shares had depreciated significantly since the Husband had acquired them.

3 I agree with the Wife that the Husband's claims here should not be accepted. Counsel for the Wife, Ms Phoebe Tan has correctly pointed out that there is no evidence provided by the Husband to support his assertion that his siblings had lent him the $1,031,621.94 that he claimed. No bank statements or other documents evidencing such loans have been adduced. Indeed, this was what the DJ below had observed as well. It should not have been difficult for the Husband to produce bank statements or the like to support his claims — or from his siblings. This is especially so since the quantum of loans the Husband claims is significant. Without marshalling sufficient documentary evidence to support the existence of the alleged loans from his siblings even on appeal, the Husband's claim here must fail.

4 As for the Husband's claims about the EP&T shares, I do not agree that it would be appropriate to estimate a value for them based on the market price

at AM date for the purposes of determining the matrimonial assets. It is not disputed that the Husband had transferred out those shares during the course of the divorce proceedings. The share transfer forms indicate that the shares were transferred in two tranches on 27 August 2021 (for consideration of AUD 423,000) and on 25 February 2022 (for consideration of AUD 140,250). He no longer has them as at AM date (25 May 2023). There is therefore no basis for valuing them as at AM date for inclusion into the matrimonial assets. It is more appropriate to include in the matrimonial assets the sums the Husband received for the transfers — at the time they occurred. Alternatively, since the Husband claimed that the share transfer forms were neither transferred nor processed, the value of the EP&T shares would be unknown, and it would also have been appropriate for an adverse inference to be drawn against him. This was what the DJ had done and given effect to by adjusting the division ratio in the Wife's favour.

5 Counsel for the Husband, Mr Almenoar, submits that the DJ had erred in dividing the matrimonial assets equally. Counsel submits that the division ratio ought to be 65:35 in favour of the Husband. This is because the Husband had been the sole breadwinner of the family and contributed entirely to the acquisition of the matrimonial assets. Given the Husband's position as sole breadwinner, he paid for all family expenses as well. Counsel submits that the Husband also had a close relationship with his two sons and that the Wife's indirect contributions to homemaking should be reduced as there was a full-time maid throughout the marriage.

6 I agree with Ms Tan that the DJ's decision to divide the matrimonial assets equally should not be adjusted. First, as Ms Tan argues, part of the DJ's decision to divide the matrimonial assets equally stems from an upward adjustment of the Wife's share in the light of the adverse inference drawn by

the DJ for the unknown value of the EP&T shares transferred out by the Husband during the divorce proceedings (as at [4] above). Second, I agree with Ms Tan that the parties' marriage was a long one of 23 years. The Wife does not dispute that the Husband was the sole breadwinner. The Husband does not appear to dispute that the Wife was the primary homemaker as well, subject to the fact that she was assisted by a domestic helper. The fact that the Wife was assisted by a domestic helper does not diminish her non-financial contributions to the marriage. The Husband is not saying that the Wife did no homemaking and left it all to the domestic helper. What he wants is to have more weight given to his financial contributions (both direct and indirect) to the marriage.

7 In long, single-income marriages like the present one, where the non-working spouse was the primary homemaker during the marriage, it is generally fairer and more equitable for the matrimonial assets to be divided equally. The non-working spouse's efforts at home are not less important than that of the breadwinner. A union of the two is needed to make a marriage work. This is consistent with what was held in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 at [48]. It is to the Husband's credit that he shares a close relationship with the Children, but this does not lessen the Wife's role as homemaker in the 23-year-old long marriage. There is also no evidence that the Wife was not an equal (although different) partner in this marriage. Evidence of conflict between the parties themselves at the tail-end of the marriage is not helpful in this regard. The Wife's messages (in late 2020 to early 2021) to the Husband are unpleasant. But that is not reflective of the relationship in the rest of the 23-year-old long marriage.

8 Third, I reject Mr Almenoar's submission that the Husband's efforts at building up the matrimonial assets warrants an upward adjustment in his favour. In my view, such upward adjustments should only occur in special situations

where the assets available for division are extraordinarily large and was obtained due to one party's exceptional effort. The cases cited by counsel involve matrimonial assets valued at around $20 million, $36 million, $42 million, and $68 million (see *WOS v WOT* [2023] SGHCF 36 at [46]) — and relate to situations where the husband was an entrepreneur who put in exceptional effort and skill to enlarge the matrimonial assets. The matrimonial assets in the present case clearly do not fall within such a special situation. The bulk of their value is simply derived from parties' matrimonial home that they jointly bought in 2005, and had appreciated in value with time. The other property parties jointly own in Sri Lanka was bought in 1998 and does not form a significant portion of the matrimonial assets.

9 The Husband says that the DJ erred by not taking into account the past, present and future educational expenses of the Children when dividing the matrimonial assets equally. According to the Husband, the eldest son K has two more years of undergraduate studies at a top university in the United States ("US"). Thereafter, K wishes to study law as a post-graduate degree which would entail a further three years of studies. The youngest son R has obtained an undergraduate degree from a local university and wishes to pursue a master's degree in the United Kingdom ("UK"). The Husband says that an equal division of the matrimonial assets means that the Wife would bear "zero responsibility for the [Children's] education, whether past, present or future expenses". The burden would fall on him to pay for the Children's educational expenses alone, and this is inequitable. He says that the Children "are more vulnerable than [the Wife] and they need the support and maintenance from both parents" in relation to their tertiary education. Therefore, the Husband wants the Wife to bear a portion of the Children's education — through an adjustment in her share of the matrimonial assets.

10 Both the Husband and the Wife have a parental duty to maintain their children and support them through their education, including tertiary education. However, the guiding principle as to the extent of that duty is reasonableness. Children's expenses, including those of tertiary education, must be reasonable. Parents should not be obliged to provide their children with luxuries — and some educational expenses are clearly luxurious. For instance, K's planned post-graduate law degree in the US, and R's planned Master's degree in the UK are not reasonable expenses that parents should be obliged to bear. R and K would have been adult degree-holders by the time they go for such further studies. They are mature enough to take responsibility for advancing their own lives and must be expected to do so. They have the ability to provide for themselves, having been equipped with their degrees (and life experiences). If they wish to go for further studies, reliance on parental scholarship is not their only available option. They can pay their own way by finding employment and saving up; they can obtain a scholarship; they can take out education loans; or they can work part-time as they study. Reason draws a line at the first tertiary degree.

11 The Husband may lavish on the Children if he wishes, but not at the expense of the Wife; her obligations end at the basic level the law thinks reasonable. Like the Husband, she may give the Children extra benefits in different ways — but she is not obliged to go beyond providing for the Children's reasonable expenses, within her financial means. There is thus no basis for an adjustment to be made to the division of matrimonial assets to account for the Children's future post-graduate educational expenses.

12 With respect to K's remaining two years of education in the US, I am of the view that it would not be equitable to adjust the division of matrimonial assets in the Husband's favour. It is not necessary to determine the merits of

whether this is a reasonable expense for the children, we need only recall that the DJ had made no order for maintenance for the Wife. I accept Ms Tan's submission that the Wife had been a homemaker "with no income for more than two decades". Even if she were to return to the workforce, "her earning capacity is very limited". I accept that the Wife's "share of the matrimonial assets is all that she has to sustain herself" and that she "does not have the means and capacity to contribute towards the children's maintenance". Moreover, in deciding not to award the Wife maintenance, the DJ had also accounted for the Children "incurring hefty educational expenses for which [the Husband] has been bearing". It is clear to me that it would not be appropriate to reduce the Wife's share of the matrimonial assets, that she will need to sustain herself in old age.

13 As for the Children's educational expenses which had been incurred in the past, I have already explained why I do not accept the Husband's claim that these expenses were paid for with loans from his siblings (at [3] above). There is no basis to adjust the division of matrimonial assets here.

14 Finally, the Husband says that the DJ should not have awarded backdated maintenance of $85,000 to the Wife because he had been away in Sri Lanka "to work for the Defence Ministry for a contractual period from April 2021 to May 2022", advising it on matters regarding counter-terrorism, and was "only paid a salary of about US $500" a month. This sum is for arrears. The DJ did not award future maintenance for the Wife, which was, in my view, a fair exercise of her discretion in the overall award, as the Wife "has the qualifications to take up gainful employment" and "should do so if she intend[s] to preserve or even enhance the lifestyle she enjoyed prior to the breakdown of the marriage". The assessment of a party's earning capacity must apply equally to the Husband's decision to work for salary that was only a fraction of what he

could have been earning in Singapore if he had continued on in his normal employment (of more than $20,000 a month). Since the Husband's earning capacity remained unchanged notwithstanding his choice to work for less in those months in Sri Lanka, his obligation to maintain the Wife during that period remained unchanged too. There is thus no reason to disturb the DJ's order regarding backdated maintenance.

15 For the reasons above, the Husband's appeal is dismissed. No order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Hassan Esa Almenoar and Diana Foo (R. Ramason & Almenoar) for the appellant;
Phoebe Tan (Tan Rajah & Cheah) for the respondent.