

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 10

District Court Appeal 117 of 2021

Between

VZD

... Appellant

And

VZE

... Respondent

JUDGMENT

[Family Law — Matrimonial Assets — Division]
[Family Law — Maintenance]

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VZD

v

VZE

[2022] SGHCF 10

General Division of the High Court (Family Division) — District Court
Appeal No 117 of 2021
Choo Han Teck J
19 April, 6 May 2022

24 May 2022

Choo Han Teck J:

1 The appellant (“the Wife”) is 49 years old and is working as a teacher. The respondent (“the Husband”) is 52 years old and is working in the tuition industry. The Husband is a 33% shareholder and director of Company X, a company incorporated in Singapore that is in the business of providing educational and student care services for students. The parties were married for 24 years. Interim judgment was granted on 11 February 2020. There are three children to the marriage, with the eldest child being 19 years old, the middle child being 17 years old and the youngest child being 11 years old (“the Children”).

2 The parties agreed on issues of custody, care and control, and access of the Children. The remaining ancillary issues on the division of matrimonial assets and maintenance were heard by District Judge Clement Yong (“the DJ”)

on 12 May 2021 and 24 August 2021. The Wife is appealing against the DJ's orders in relation to the division of matrimonial assets and the maintenance of the Children.

3 In her appeal, the Wife says that:

- (a) the loan of \$30,000.00 that the Husband purportedly took from Company X should not be considered in computing the Husband's net asset value ("the Loan Issue");
- (b) the DJ's determination on the value of Husband's shares in Company X deflates the Husband's net asset value ("the Valuation Issue");
- (c) the Husband has not been forthcoming about the value of the bank account of ETC, a firm in which he is the sole proprietor ("the ETC Issue");
- (d) the parties' indirect contribution should be apportioned in the ratio of 70:30 in favor of the Wife ("the Indirect Contribution Issue");
- (e) an adverse inference should be drawn against the Husband for failing to provide full and frank disclosure of his assets ("the Adverse Inference Issue"); and
- (f) the Husband should contribute 65% to the Children's variable maintenance, which includes the Children's tuition expenses and critical illness insurance for the youngest child ("the Children's Maintenance Issue").

4 First, in relation to the Loan Issue, the Husband took a \$30,000.00 loan from Company X on 5 June 2020, the sum was deducted from the total asset value by the learned DJ in calculating the parties' net asset value. The Wife says that the loan was taken after the interim judgment was granted and such liabilities incurred after the interim judgment should not be considered as matrimonial liability and should not be deducted in calculating the net asset value. Since the Husband concedes and agrees that the said loan should be included in the pool of assets, I agree that the \$30,000.00 should be added back into the matrimonial pool.

5 Second, in relation to the Valuation Issue, the Wife says that DJ erred in valuing the Husband's shares in Company X at \$450,000.00 and that the DJ should have adopted the valuation ascribed by the Wife's expert at \$601,692.00 ("the BDO Valuation"). The Husband's expert valued the Husband's shares in Company X at between \$289,000.00 to \$300,000.00 as of 31 December 2019 ("the PKF Valuation"). The learned DJ carefully considered both the BDO Valuation and PKF Valuation, and took the view that the BDO Valuation did not adequately account for the impact of Covid-19 on the business of Company X. The learned DJ then adopted a broad-brush approach and arrived at the valuation of \$450,000.00 which is the midpoint figure between PKF's valuation and BDO's valuation.

6 I see no reason to disturb the learned DJ's finding. The discounted cash flow ("DCF") method of valuation, by its nature, requires the input of information pertaining to forward-looking projections on the cash flows of the company. The speculative nature of the input data explains why different valuers can use the same DCF method but arrive at dissimilar results. The role

of the court is not to calculate, with mathematical precision, the value of the company, and sometimes taking a broad-brush approach may be a just and equitable division of the parties' matrimonial assets, as it seems in this instance.

7 I agree with the learned DJ that the BDO Valuation overvalued Company X because it does not adequately account for the impact of Covid-19 on Company X. The BDO Valuation Report expressly states that “[b]ased on our discussions with [the Wife], we understand that Covid-19 is not expected to fundamentally affect the business of [Company X] in the long run”. This suggests that BDO relied on the views of the Wife in analysing the effect of Covid-19 on the business of the company, which in turn, inflated the projected revenue and cash flow of the company. The learned DJ considered this factor, among other factors, before arriving at a just and equitable figure that is mid-point between the two valuation reports. I, therefore, dismiss the Wife’s appeal in relation to the valuation of the Husband’s shares in Company X.

8 Third, in relation to the ETC Issue, the Wife says that the Husband is not forthcoming about the balance of ETC’s bank account because the Husband stated that ETC maintains a balance of \$10,000.00 when ETC’s bank account as at 30 May 2020 shows a balance of \$14,575.35. The Husband says that he uses ETC’s bank account to receive rent from his sub-tenants and to pay rent and utilities, therefore the balance in the account is fluctuating and changing each month. The Husband had also produced ETC’s bank account statements during discovery, which shows that the ETC’s bank account balance from January to May 2020 fluctuates in the region of \$11,626.54 to \$14,575.35. I disagree with the Wife that the Husband has been less than forthcoming in stating that he maintains ETC’s account at \$10,000.00. I find that there are no

material non-disclosures by the Husband, and accordingly, I find no reasons to disturb the learned DJ's determination of the value of ETC's bank account.

9 Fourth, in relation to the Indirect Contribution Issue, the Wife says that the parties' indirect contribution to the marriage should be apportioned in the ratio of 70:30 in favour of the Wife, as opposed to 60:40 as determined by the learned DJ. The Wife says that not only did she contribute to the family's expenses, such as groceries, children's tuition and family tours, she also made major career adjustments to take care of her children. The Wife further says that the Husband distanced himself from the household since 2019 when the issue of divorce was raised and had drastically reduced his financial contributions to the family. These facts have been raised by the Wife before the learned DJ when she asked for an 80:20 split in the court below. The learned DJ agreed with the Wife that she should be awarded a greater share, but disagreed that it should be 80:20 in her favour. The learned DJ found that the Husband had also made significant indirect contributions, including how he supported the Wife throughout her career changes, provided emotional support to the Wife, did household chores and cared for their children together with the Wife. The DJ found that a fair ratio should reflect a differential of 20% between the parties, with 60% of the indirect contributions to the Wife and 40% to the Husband. I am of the view that this is a fair apportionment, and I dismiss the Wife's appeal in relation to the indirect contribution of the parties.

10 Fifth, in relation to the Adverse Inference Issue, the Wife says that an adverse inference ought to be drawn against the Husband because the Husband has been less than forthcoming in relation to his financial affairs. The Wife says, *inter alia*, that the Husband failed to produce the ETC bank account statements

in his first affidavit, was not forthcoming about the balance of the ETC bank account, and was untruthful about the \$30,000.00 loan the Husband purportedly took from Company X. I am of the view that the evidence adduced by the Wife is insufficient to establish a *prima facie* case that the Husband has been concealing or dissipating assets (*BPC v BPB* [2019] 1 SLR 608). The Husband has also offered satisfactory explanations in response to the Wife's allegations. For instance, with regards to the ETC bank account statements, the Husband had already produced the ETC bank statements during discovery and had explained that the balance of the ETC account fluctuates each month in the region of around \$10,000.00. With regards to the \$30,000.00 loan, the Husband had produced evidence showing the transfer of \$30,000.00 from Company X to the Husband on 5 June 2020. Nevertheless, the Husband is ready to concede that the sum should be included in the matrimonial pool. Therefore, I find no reason justifying an adverse inference against the Husband and I dismiss the Wife's appeal in relation to the Adverse Inference Issue.

11 Lastly, in relation to the Children's Maintenance Issue, the Wife wants the Husband to pay \$2,572.00 per month for the variable maintenance, in respect of the Children's tuition, enrichment expenses and their insurance for critical illness. The Wife also seeks a further order for the Husband to pay 65% of the Children's expenses relating to their health, medical insurance, IT items (such as mobile devices, tablets and computers), and any further education-related expenses. The Husband agrees that there should be an order for the Children's variable expenses but disagrees that it should be done by way of a fixed sum of \$2,572.00 per month given the fluid nature of variable expenses.

12 The Husband proposes that he pays 65% for five categories of the Children's variable expenses, upon the production of invoice or receipts by the Wife:

- (a) any emergency hospitalization or other medical expenses not covered by existing insurance coverage;
- (b) tuition fees for academic subjects;
- (c) tertiary school fees and necessary expenses not covered by existing education insurance policies;
- (d) non-academic enrichment classes that the Children were attending at the time of the ancillary hearing on 24 August 2021; and
- (e) new non-academic enrichment classes embarked upon after 24 August 2021 which the parties agree to.

13 The Husband disagrees with the Wife that the variable maintenance should cover critical illness insurance and IT items. For critical illness insurance, the Husband says it is normally purchased by the insured person himself or herself after he or she has started working. For IT items, the Husband says that if they (be it a laptop or a tablet) are needed for school, they would be covered under necessary expenses for school. But if they are not necessary for school, the parties should be left to buy such items for the Children of their own volition.

14 I agree with the Husband that it is impractical to order the Husband to pay a fixed sum of \$2,572.00 monthly for variable maintenance when the very nature of variable expenses entails future changes and adjustments since the

Children's needs will change when they grow older. I find that the Husband's proposal to pay 65% of the variable expenses, upon the Wife showing invoices or receipts of payment of the same, is fairer. I also find that the five categories of variable expenses that the Husband proposed are reasonable. The Wife has not convinced me that critical illness insurance is necessary for the Children considering their young age, especially when the youngest child is only 11 years old. As for IT items, the Wife says that the youngest child may need a handphone when he commences secondary school education. I note that the second category in the Husband's proposed categories covers "tertiary school fees and necessary expenses not covered by existing education insurance policies" and does not expressly cover secondary school fees and expenses. Therefore, for the avoidance of doubt, this category should be amended to read "secondary and tertiary school fees and necessary expenses not covered by existing education insurance policies".

15 For the aforementioned reasons, I dismiss the Wife's appeal in relation to the division of matrimonial assets but allow \$30,000.00 to be added into the matrimonial pool. This brings the total matrimonial pool from \$1,977,784.00 to \$2,007,784. I will not disturb the parties' respective ratios as determined by the learned DJ. Since the Husband is entitled to roughly 46.59%, the Husband is entitled to \$935,426.56 of the matrimonial pool. After deducting the assets in his own name (\$873,437), the Husband should receive from the Wife \$61,989.56 to compensate him for his share in the HDB flat. Therefore, I order that the sum to be transferred from the Wife's CPF account to the Husband's CPF account should be varied from \$78,000.00 to \$62,000.00.

16 On the issue of maintenance for the Children's variable expenses, I will allow the parties to vary the order as proposed by the Husband, with the necessary amendments to include secondary school education as mentioned above. I will hear parties on costs at a later date if it is not agreed upon by the parties.

- Sgd -
Choo Han Teck
Judge of the High Court

Physilia Lim Yi Jie (Drew & Napier LLC) for the appellant;
Ang Woon Kherk (Ang & Tan Law Corporation) for the respondent.
