IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2017] SGHCF 5

Divorce Transfer No 704 of 2011

Between

BNS

… Plaintiff

And

BNT

… Defendant

JUDGMENT

[Family law] — [Matrimonial assets] — [Gifts]
[Family law] — [Matrimonial assets] — [Division]
[Family law] — [Maintenance] — [Wife]
[Family law] — [Maintenance] — [Child]
[Family law] — [Custody] — [Joint custody]
[Family law] — [Custody] — [Care and control]
[Family law] — [Custody] — [Access]

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BNS
v
BNT

[2017] SGHCF 5

High Court — Divorce Transfer No 704 of 2011
Valerie Thean JC
9, 30 November 2016; 12 December 2016; 13 January 2017

27 February 2017 Judgment reserved.

Valerie Thean JC:

Introduction

1 Both the Defendant ("the Husband") and the Plaintiff ("the Wife") are Canadian citizens. He is a 50-year old lawyer in a global law firm, she is a 49-year old part-time events planner. Parties married on 11 May 2002 in Toronto, Canada. Both have been permanent residents of Singapore since 2003. There are two children of the marriage who are not permanent residents. Their daughter is aged 10 and their son is aged 9. The Wife commenced divorce proceedings on 17 February 2011. Interim judgment ("IJ") was granted on 26 March 2012.

2 Parties have been before various courts for various related proceedings, including personal protection order applications against each other, multiple applications in their divorce and the Wife's application for relocation, which

was dealt with by the Court of Appeal in *BNS v BNT* [2015] 3 SLR 973 ("*BNS v BNT (Relocation CA)*").

3 This judgment deals with parties' ancillary matters, in particular: (i) the division of their matrimonial assets; (ii) maintenance for the Wife and children; and (iii) orders for the children as to custody, care and control and access.

Division of Assets

4 The first task is to ascertain the size of the matrimonial pool for division between the parties.

Matrimonial Assets

5 Parties were in agreement that the date of the interim judgment would be the relevant date for determining the pool of matrimonial assets to be divided. There were four main areas of dispute in relation to the constitution of this pool:

(a) the sale proceeds of a condominium in Thailand ("Thai Condo"),

(b) a cottage in Canada in the joint names of the parties ("Canadian Cottage"),

(c) a sum inherited by the Wife ("Internaxx Account"), and

(d) certain alleged dissipation of assets by the Husband.

6 I will deal with these specific issues first before setting out the overall division of the matrimonial pool.

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Thai Condo sale deposit

7 The parties moved to Bangkok, Thailand, in October 2004 and purchased a condominium there in July 2005, which served as their matrimonial home and where they started a family. The Thai Condo was registered in the Wife's sole name, and in 2011 she gave instructions to sell the property. In May 2011, a deposit of around 10% of the sale price of the Thai Condo was transferred into the Wife's bank account.[1] In the present proceedings, parties dispute whether this 10% deposit should be taken into account as part of the matrimonial pool. The Wife contends that she spent the sum on rental and legal fees. The Husband claims that this sum should be added to the matrimonial pool because the Wife has not satisfactorily accounted for its expenditure.

8 I note that the Wife has only spent S$73,175.41 out of the deposit of S$99,592.67: the remainder of S$26,417.26 sits in her DBS xxx-x-xx2625 (Savings Account).[2] Regarding the expended S$73,175.41, the Wife did not receive any maintenance for a 15-month period from May 2011 to July 2012, which was largely before the IJ. This sum would work out to about S$4,878 per month. In my view, it is just and equitable to take the expended sum as a reasonable sum that the Wife would have spent on maintenance for herself and the children during that time. I thus hold that the expended sum was legitimately spent by the Wife. The unexpended remainder of S$26,417.26, however, remains liable for division as part of the assets within the matrimonial pool.

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1 Husband's 5th Affidavit dated 23 November 2011 at para 31.

2 Revised Joint Summary of Issues at item 2 of D1.1 and item 2 of D1.2.

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Canadian Cottage

9 The Husband claims that only 2/3 of the value of the Canadian Cottage should be taken into account in determining the matrimonial pool because 1/3 of the cottage was a gift and only 2/3 was obtained by acquisition. The Canadian Cottage was initially acquired by the Husband's parents in 1971.[3] The Husband claims that 1/3 of the interest in the property was gifted to him as part as his inheritance in 2008, and was transferred to him and the Wife as joint tenants.[4] He further paid C$135,000 to each of his two sisters for each of their 1/3 share of the property, using funds from a joint account held by him and the Wife.[5]

10 In my view, the entire Canadian Cottage is liable for division. Section 112(10) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC") states:

> (10) In this section, "matrimonial asset" means —
>
> (*a*) any asset acquired before the marriage […]; and
>
> (*b*) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,
>
> but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

11 Under s 112(10)(*b*) of the WC, "matrimonial asset" is defined as including assets "acquired during the marriage by one party or both parties to the marriage". The Canadian Cottage was transferred to the Husband and the Wife in 2008 and clearly satisfied s 112(10)(*b*) of the WC. The only issue is whether the proviso applies. I find that it does not. In respect of the argument

3 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at para 67.

4 Husband's Submissions dated 2 November 2016 at paras 196-197.

5 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at para 68.

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that the Canadian Cottage was partially a gift or inheritance, it is significant that the Husband's father placed the Canadian Cottage in both the Husband's and the Wife's names as joint tenants. The property cannot be said to be a gift *only* to the Husband. The proviso in s 112(10) applies only to assets "acquired by *one party*… as a gift or inheritance." It is also not disputed that the Wife contributed financially to the acquisition of the sisters' shares of that property. Thus, the property is liable for division in its entirety.

Internaxx Account

12 This disputed sum arises from two payments originating from the Wife's late father's estate that were made to a Hong Kong Citibank account, which was in the Wife's sole name, in 2005 and 2008 respectively. In 2009, the Wife opened a Luxembourg (Internaxx) Account in her sole name with these same funds ("Internaxx Account"). She thus contends that her inheritance contained in the Internaxx Account has been segregated from other funds within the matrimonial pool, and accordingly remains her sole property.[6]

13 The Husband, however, submits that during the marriage there was no distinction between funds held in the bank accounts of parties' joint or individual names.[7] He argues that the long-term financial plans, prepared by investment advisors Raymond James Canada and Creveling & Creveling Bangkok ("Creveling") in 2006 and 2009 respectively, reflected the parties' understanding that funds originating from the Wife's inheritance would be utilized for long-term family investments.[8] In particular, the Husband submits that parties jointly engaged Creveling in 2008 to advise them on their investments, including on the Internaxx Account, and transferred some funds

6 Wife's 2nd Affidavit of Assets and Means dated 10 October 2012 at para 29.

7 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at para 59.

8 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at paras 71 and 72.

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to Luxembourg in 2009 for family investment purposes on their advice.[9] The Husband further submits that he continued to help with these advisors until December 2010 and managed the family's finances with a view to the Internaxx Account being used as the family's long-term investment vehicle.[10] The Husband contends that the above facts show the clear intent of the Wife to share the inheritance contained in the Internaxx Account with him as part of the family's assets, even though events never formally caught up.[11] He also points to a form to make the Internaxx Account a joint account between the parties, which he signed, but not the Wife.[12]

14 Since the asset concerned was acquired by the Wife during the course of the marriage, the sole issue is whether the proviso in s 112(10) of the WC applies to exclude the funds in the Internaxx Account from the matrimonial pool. In my view, the proviso is satisfied as the Husband has not substantially improved the asset during the course of the marriage. I do not accept, based on what is before me, that the Husband's being a co-client of Creveling or his involvement in the setting up of the account constitutes improvement of the asset, substantially or otherwise. The Husband's indirect contribution of the kind that goes towards the general welfare of the family is also in itself "too vague and remote to justify a finding that the spouse concerned had helped to substantially improve an asset within the meaning of s 112(10)" (*Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [51] ("*Chen Siew Hee*")).

15 Further, the Wife has not evinced any intention to share the asset with the Husband. The Husband places reliance on *Chen Siew Hwee* for the

9 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at paras 72 and 73.

10 Husband's Submissions dated 2 November 2016 at para 222.

11 Husband's Submissions dated 2 November 2016 at para 228.

12 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at para 73.

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proposition that inherited assets would form part of the matrimonial pool if they were utilised "for and on behalf of the family" or if it could be "demonstrate[d] that there was a real and unambiguous intention on the part of the [heir] that the [inherited] assets… were to constitute part of the pool of matrimonial assets" (at [57]). That is, however, not the case here, as the Wife's inheritance funds had been kept separate throughout the material time and have not been commingled with the family's assets, despite there being some degree of active management and transference of the funds from the Wife's Citibank account in Hong Kong to the Internaxx Account. Further, the fact remains that the form to create a joint account on these funds was not signed by the Wife. These two facts show that there was no requisite intention on the Wife's part such that her inheritance in the Internaxx Account constituted part of the matrimonial pool, whatever the Husband's private expectations and preferences may be. Indeed, if, as the Husband argues, there was no distinction between accounts held in joint or individual names, then there would be little imperative for the joint account form to be filled out in the first place. Thus, in line with *Chen Siew Hwee*, I reject the Husband's submission and find that the funds in the Internaxx Account are not matrimonial assets and thus not liable for division.

Allegations of dissipation by the Husband

16 The Wife alleges that the Husband dissipated around S$326,516.00 from the parties' various joint bank accounts in May 2011, which comprises S$82,836 from the parties' joint account with DBS in Singapore, US$175,471 (approximately S$229,071) from the parties' joint account in Citibank Hong Kong, and Baht $350,000 (approximately S$14,609) from their joint account in Citibank Bangkok.[13] The Husband replies that he spent the monies

[13] Wife's Submissions dated 21 October 2016 at para 31; Husband's Affidavit dated 23

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legitimately. Around S$57,767.21 was expended as a result of the Wife leaving the family home and taking away all valuable furniture, kitchen supplies and electronics. For this sum, he exhibited household expense receipts totalling some S$42,282.21.[14] He also claims to have spent S$54,235.20 on the children and a further S$188,702.07 on joint liabilities and taxes.[15]

17 I am only satisfied that the spending on the joint liabilities and taxes is legitimate. As for spending on the children and setting up of his separate household, these amounts are still required to be reasonable. I also note that the expense of setting up a second home is a longer term investment that their separation would inevitably have required. In this regard, the Husband should be allowed the same latitude as the Wife: the Wife spent S$73,175.41 from the Thai Condo deposit and thus I allow the husband to deduct the same. This means that the Husband failed to satisfactorily account for S$64,638.52 (being S$326,516.00 – S$188,702.07 – S$73,175.41) which has to be added back to the matrimonial pool.

Liabilities

18 For the liabilities, I allow the Husband to deduct the tax and expenditure on the Canadian Cottage as this is an asset included in the pool for division and the liabilities have to be shared equally. Part of the tax liability has been paid by the Husband and I allow him to exclude those sums from division. However, the Husband has only managed to prove that he incurred around S$80,609.52 as liabilities and not any larger sum he claims.[16] This

November 2011 at para 26.

14 Husband's Submissions dated 2 November 2016 at para 247; Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at X37-87.

15 Husband's Submissions dated 2 November 2016 at para 246.

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stated sum is thus allowed to be deducted from the value of the Canadian Cottage.

19 As for the Husband's claim that he owed his mother a total of about S$73,000 for legal fees,[17] I disallow it. The Husband has used considerable monies from the parties' joint accounts to meet his expenditures in relation to the Canadian Cottage. He was also employed during the material time and ongoing maintenance ought to have come from his salary, especially where the operative date for determination of the size of the pool, in this case, is the IJ date. On the evidence before me, I am not satisfied that these loans were genuine or that they were reasonably incurred.

20 As for the children's school fees of around S$62,000 owed by the Husband,[18] given that the Husband was supposed to pay these fees under the interim maintenance order, they ought not to feature as deductions from the matrimonial pool, and I reject his submissions in that regard.

Excluded items

21 For practical reasons, I omit the items that have minimal value, and personal items of lower resale value, from the matrimonial pool. The Court of Appeal in *Tan Hwee Lee v Tan Cheng Guan* [2012] 4 SLR 785 held that courts retained a discretion to exclude items of *de minimis* value, including inter-spousal gifts, from the matrimonial pool: "this exception is desirable… as it prevents the lower courts from being overly burdened by petty arguments over gifts of this nature" (see [45] to [49]). Notably, in determining whether an asset can be considered *de minimis*, the Court of Appeal explained that this

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16 Notes of Evidence dated 12 December 2016; Husband's Core Bundle at p 171.

17 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at para 89.

18 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at para 89.

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"would depend very much on the precise factual matrix before the court" (at [49]).

22 In the present case, I exclude from the matrimonial pool electronics, paintings, furniture, and also two rings. Both parties assert, without evidence, that they paid for these rings, which were purchased on the occasion of their marriage. While inter-spousal gifts may be added into the pool, the diamond grading certificates are no longer available. The rings are therefore of questionable resale value, even if one of these excluded rings is insured for S$50,000. Having excluded the rings, which the Wife will keep, I also exclude the Husband's Harley Davidson motorcycle, which was valued between S$10,000-S$15,000 in 2012, and which is also depreciating in nature.[19]

Adverse inferences

23 Both parties submit that I should draw adverse inferences against the other spouse for failure to give proper disclosure of their assets. The law on adverse inferences was discussed by Court of Appeal in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 ("*Koh Bee Choo*"). In summary, for a court to draw an adverse inference, there must be (see *Koh Bee Choo* at [28]; *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [62]): (a) a substratum of evidence that establishes a prima facie case against the person against whom the inference is to be drawn; and (b) that person must have had some particular access to the information he is said to be hiding.

24——The Wife submits that the Husband failed to disclose the monies that he took from the parties' accounts, which amounts to around S$326,516.00 (see above at [16]).[20] Further, the Wife challenged the Husband's declaration

19 Wife's 3rd Affidavit of Assets and Means dated 24 May 2016 at para 31; Husband's 1st Affidavit of Assets and Means dated 28 June 2012 at para 8.

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of less than S$100,000 in his 1st Affidavit of Assets and Means filed on 28 June 2012.[21]

25 As explained above (at [16]-[17]), the Husband has sought to account for slightly more than S$300,000 of the sums taken: about S$60,000 arose from replacing items that the Wife had taken when she left the matrimonial home, S$188,000 was for joint liabilities and taxes paid by the Husband, and S$54,000 was for expenditure on the children.[22] In respect of the first category of claims, the Husband exhibited receipts of household expenses amounting to S$42,282.21.[23] The Husband thus submits that no adverse inference should be drawn against him as he has accounted for the monies.

26 In my view, the Husband ought to have given full and frank disclosure in a *timelier* manner. Nevertheless, he has attempted to account for the use of the monies and I am satisfied that there are no hidden assets. I have dealt separately with the reasonableness of his expenditure (see above at [17]) where sums amounting to S$64,638.52 that were not reasonably spent are added back into the pool.

27 The Husband, on his part, submits that an adverse inference should be drawn against the Wife. The Husband claims that the Wife deliberately concealed documents that would have assisted him in making out his case of direct financial contribution towards the marriage.[24] The Husband further claims that the Wife took all of the financial documents from the family home,

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20 Wife's Submissions dated 21 October 2016 at para 31; Husband's Affidavit dated 23 November 2011 at para 26.

21 Wife's Submissions dated 21 October 2016 at para 78.

22 Husband's Submissions dated 2 November 2016 at para 346.

23 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at para 64, X37-87.

24 Husband's Submissions dated 2 November 2016 at para 264.

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including the title deeds to the Thai Condo and Canadian Cottage. She also took bank and credit card statements for accounts jointly held by the parties. While the Wife has exhibited these documents in her voluminous affidavits, some of the documents still have not been disclosed. These include documents relating to the Husband's bank accounts with DBS and in Canada prior to 2003.[25] The Husband thus has no way to substantiate his claims as to his premarital assets, and was crippled in his ability to show his direct contribution to the matrimonial assets. An example of this can be seen from the fact that, when the Wife claimed to have paid for her wedding rings and over C$100,000 in wedding costs and costs of moving to Singapore, the Husband who claims that he paid for these sums could not evidentially justify his position as the Wife did not disclose the relevant bank statements and remittance documents. The Husband further submits that an adverse inference is necessary as the Wife refused to comply with the discovery orders made in relation to the Internaxx Account.

28 I disagree with the need to draw an adverse inference against the Wife. I have found that the Internaxx Account is not a matrimonial asset liable for division (see above at [12]-[15]). In respect of the other allegations, in my view, although the Wife was not especially helpful to the Husband, this unhelpfulness in the context of their litigation was mutual. In any event, there is no evidence suggesting that the Wife dissipated or concealed funds. Accordingly, I decline to draw an adverse inference in favour of either party.

Net Matrimonial Assets

29 From the foregoing and the documents before me, this is the list of the parties' matrimonial assets:

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25 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at paras 62-64.

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Matrimonial Assets that are Jointly Held			
S/N	**Asset Description**	**Value**	**Comments**
1	DBS Bank Account No. xxxxxxx84-20 (joint account containing the balance of the sale proceeds of the Thai Condo)	S$812,808.14	Value agreed between parties[26]
2	Canadian Cottage	S$343,666.48	Value taken at S$424,276 (C$400,000) as an average of valuations on the property in 2015.[27] Proved liability on Canadian Cottage of S$80,609.52 duly taken into account.[28]
Sub-Total			**S$1,156,474.62**
Matrimonial Assets in Wife's Possession			
S/N	**Asset Description**	**Value**	**Comments**
1	DBS xxx-x-xx2625 (Savings Account)	S$26,417.26	Value as at IJ date[29]
2	DBS xxx-xxx857-0 (Current Account)	S$23,163.46	Value as at IJ date[30]

26 Notes of Evidence dated 12 December 2016.

27 Notes of Evidence dated 12 December 2016; Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at X102; Joint Summary of Relevant Information tendered on 24 October 2016 at Annex B.

28 See above at [18].

29 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12.

30 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12.

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3	DBS xxx-xxx5307 (Savings Account)	S$524.27	Value as at IJ date[31]
4	Royal Bank of Canada xxxxx-xxx2848 (C$ Savings Account)	C$52.86 (S$65.86)	Value as at IJ date[32]
5	Royal Bank of Canada xxxxx-xxx2059 (US$ Savings Account)	US$3,375.23 (S$4,123.18)	Value as at IJ date[33]
6	Royal Bank of Canada xxxxx-xxx1770 (C$ Savings Account)	C$1,391.84 (S$1,734.10)	Value as at IJ date[34]
7	CPF Ordinary Account	S$8,123.38	Value as at IJ date[35]
8	CPF Medisave Account	S$3,178.73	Value as at IJ date[36]
9	CPF Special Account	S$2,695.22	Value at as IJ date[37]
Sub-Total			**S$70,025.46**
Matrimonial Assets in Husband's Possession			
S/N	**Asset Description**	**Value**	**Comments**
1	HSBC xxx-xxxxx9-	S$53,531.43	Value as at IJ date[38]

31 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12.

32 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12.

33 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12.

34 Joint Summary of Relevant Information tendered on 24 October 2016 at p 25.

35 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at para 13.

36 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at para 13.

37 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at para 13.

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2	Citibank Thailand Visa Credit Card Account	B$292,914 (S$11,739.00)	Value as at IJ date[39]
3	DBS Current Account xxx-xxx454-4	S$41.07	Value as at IJ date[40]
4	DBS xxxx-xxxxxx-4-031 (Fixed Deposit Account)	S$23,187.85	Value as at IJ date[41]
5	CPF Ordinary Account	S$50,855.35	Value as at IJ date[42]
6	CPF Medisave Account	S$10,285.95	Value as at IJ date[43]
7	CPF Special Account	S$17,885.93	Value as at IJ date[44]
8	Monies taken by Husband from parties' joint bank accounts in May 2011	S$64,638.52	Added back into pool[45]
Sub-Total			**S$232,165.10**
Total			**S$1,458,665.18**

38 Husband's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12.

39 Husband's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12.

40 Husband's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12

41 Husband's 1st Affidavit of Assets and Means dated 28 June 2012 at para 12.

42 Husband's 1st Affidavit of Assets and Means dated 28 June 2012 at para 13.

43 Husband's 1st Affidavit of Assets and Means dated 28 June 2012 at para 13 and CPF Statement at p 25. Parties appear to have made a typographical error in their Joint Summary of Relevant Information.

44 Husband's 1st Affidavit of Assets and Means dated 28 June 2012 at para 13.

45 See above at [17].

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Division of the asset pool

30 The Court of Appeal set out a structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*") (at [17]–[30]) to determine a just and equitable division of matrimonial assets. This approach may be summarised as follows (see *ANJ* at [36]; *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52 at [17]):

> (a) express as a ratio the parties' direct contributions relative to each other, having regard to the amount of financial contribution each party made towards the acquisition or improvement of the matrimonial assets;
>
> (b) express as a second ratio the parties' indirect contributions relative to each other, having regard to both financial and non-financial contributions; and
>
> (c) derive the parties' overall contributions relative to each other by taking an average of the two ratios above, keeping in mind that, depending on the circumstances of each case, the direct and indirect contributions may not be accorded equal weight, and one of the two ratios may be accorded more significance than the other. Adjustments can also be made taking into consideration other relevant factors under ss 112 or 114(1) of the WC.

Assessment methodology

31 As highlighted in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*"), there are two methodologies which may be applied in clustering matrimonial assets in preparation for division. The global assessment methodology entails the court applying one ratio to a global pool of identified matrimonial assets; the

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classification methodology requires the court to classify the matrimonial assets and thereafter determine and apply separate ratios to each class. The Husband urges the court to adopt a global assessment methodology as that would be fairer to his relatively greater indirect financial contribution, while the Wife's submissions use the classification methodology with no proffered reason.

32 As noted by the Court of Appeal in *NK v NL* (at [33]), the statutory *imprimatur* of s 112 of the WC requires the court to consider and apply the methodology that would result in a "just and equitable" division of the matrimonial assets based on the facts of each case. In my view, the following fact patterns may render the classification methodology more suitable than the global assessment methodology:

(a) Where an adverse inference is drawn against a party in relation to one class of asset and the court wishes to confine the consequences of that adverse inference to the relevant class of assets (see *eg NK v NL* at [33]; *BJZ v BKA* [2013] SGHC 149 at [73]).

(b) Where there is a clear reason to make a different *ANJ* calculation in relation to one class of assets. In this regard, because indirect contributions are to be assessed in hindsight with full appreciation of the context of the marriage (see *AYQ v AYR* [2013] 1 SLR 476 at [22]-[23]), the ratio for indirect contributions should remain constant in relation to all assets even under the classification methodology. There could, nonetheless, be reason to attribute a different direct contribution ratio to a specific class of assets (see *eg TNC v TND* [2016] 3 SLR 1172 at [44] where pre-marriage properties were differentiated), or to use a different weightage of the direct and indirect ratios in the third stage of the *ANJ* analysis.

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33 The appropriate choice of methodology is fact-dependent. Here, the Wife's submission urging the classification methodology appears to be premised solely upon the fact that different direct contributions were made by the parties to different assets. This is not a sufficient reason against the use of the global assessment methodology. In almost all cases, direct contributions by the parties would vary across the assets liable for division. In my judgment, it is just and equitable in the present case to use the global assessment method for two reasons. First, this aligns with "the legislative mandate to… treat all matrimonial assets as community property… to be divided in accordance with s 112 of the [WC]" (*Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) at [40]). Secondly, that legislative mandate, consonant with the Court of Appeal's guidance in *ANJ* at [30], is one that ought to be exercised in broad strokes, premised upon the Court's feel as to what is just and equitable on the facts of the case.

Direct Contributions

34 Turning to the parties' direct contributions, I make a preliminary observation about the uncertainties in this case that render any precise calculation of the parties' direct contribution ratio practically impossible. The evidence as to contribution or purported lack of contribution is patchy. There was also extensive commingling of monies by the parties at various stages of the marriage. The source of these jointly held funds is heavily disputed and not well-documented. This is a case where a "rough and ready approximation", as permitted by *ANJ* (at [23]), is necessary.

35 In respect of the approach on direct contributions, the Husband proposes an income-based approach, under which (a) each party's total *income*, brought into or accrued over the course of the marriage, is assumed to be their respective *financial contributions to the marriage*, and (b) the ratio of

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their *financial contributions to the marriage* in relation to each other is implicitly equated with the ratio of their *direct contributions to the matrimonial assets*. In essence, the ratio of the parties' incomes is used as a rough gauge of the ratio of their direct contributions. While this can in general be a useful approach, I find the Husband's proposed direct contribution ratio of 91:9 to be unduly skewed in his favour for several reasons in the present case. First, on the Husband's own contentions, the Wife spent a relatively larger proportion of her monies on the acquisition of matrimonial assets than did the Husband, whose monies were used relatively more for daily living expenses.[46] This indication as to the Wife's contribution is also consonant with the asset portfolio, where the significant matrimonial assets were largely acquired in the earlier years of their marriage, whereas the bank accounts and deposits (where a large part of the Husband's salary must therefore have gone) are low. His proposed pool of contribution also includes sums earned post-IJ. In my view, it is sounder, on the specific facts of this case, to derive the direct contribution ratio by using the *absolute value* of the Wife's direct or financial contribution (which may be derived based on the absolute value of her total contribution) as a fraction of the total value of the matrimonial pool that I have found, rather than directly adopting the parties' income ratios as suggested by the Husband.

36 Using this modified contribution-based approach, the Wife's direct or financial contribution in absolute terms must first be derived. As stated above, the Wife took a position in favour of the classification methodology. Despite being given the opportunity to do so, the Wife did not provide an alternative estimation of her direct contribution to the matrimonial assets under the global assessment methodology.[47] However, summing up her estimations of her direct

[46] Husband's Submissions dated 2 November 2016 at para 174.

[47] Notes of Evidence dated 9 November 2016.

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contribution in relation to each class of matrimonial asset, it appears that that the Wife attributes to herself at least 55% of the total direct contribution to the matrimonial pool (being around S$865,392 out of a total value of the pool estimated at S$1,578,294). Even accounting for some difference in the constitution of the matrimonial pool in the Wife's proposal and my findings, and some difference in the valuation of the underlying assets, I find this account of the Wife's direct contribution to be overstated. Parties do not dispute that during the majority of the term of marriage, the Husband was the sole breadwinner of the family whereas the Wife was a full time homemaker with no clear or significant source of income. Even considering that the Wife may have committed her inheritance and pre-marital assets towards the matrimonial assets, I find the Wife's numbers to be an inflation of the true state of affairs. In particular, in respect of monies credited into a Citibank joint account in Hong Kong, some of these monies were paid out to the Husband's sisters during the acquisition of the Canadian Cottage. Some of the monies that the Wife claims to be from her own accounts were also shown by the Husband to be from commingled funds.[48] For these reasons, I do not accept the Wife's account of her direct contribution.

37 As for the Husband's numbers, in his first submissions for the ancillary hearing, the Wife's financial contribution was stated as S$541,085.53, comprising her three main sources of income (pre-marital savings, gross salary during the marriage, and inheritance monies that were not segregated).[49] In his supplemental submissions, however, he used the figure S$407,970.72.[50] As for his own financial contribution, he estimated the quantum at around S$3.9m or S$3.98m, which included his salary from the 2002 to 2012.[51] No clear

48 Husband's Submissions dated 2 November 2016 at paras 199-200.

49 Husband's Submissions dated 2 November 2016 at para 178.

50 Husband's Supplemental Submissions dated 8 December 2016 at para 1.

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explanation is given for the difference in his estimates. Looking at the documents before me, the Husband appears to have understated a component of the Wife's contribution, which is the Wife's pre-marital savings, in his second submissions. It is not disputed between the parties that the Wife's pre-marital savings went into the purchase of the Thai Condo, which was an acquisition in the early stages of their marriage. To that end, the Wife's position is that she had financially contributed a total of around C$274,225.23 (around S$331,545.08 and B$8,643,555) to the acquisition of the Thai Condo.[52] It is not clear to me why the Husband's submissions arrived at a lower sum of C$184,000 (around S$195,166.96) for the Wife's pre-marital savings, despite having relied on the same numbers in the Wife's affidavit. Indeed, the Husband's estimates in his first submissions accord with the Wife's position, which to my mind is the correct value to be attributed to the Wife's pre-marital savings. Thus, based on what is before me, I accept the numbers in the Husband's first submissions, which were based on the Wife's affidavits, that the Wife's financial contribution in absolute terms was around S$541,085.53.

38 Based on the above, the Wife's financial contribution to the marriage is around S$541,085.53 whereas the total value of the matrimonial assets is S$1,458,665.18. Assuming all of the Wife's financial contribution went to the assets constituting the matrimonial pool, her direct contribution percentage would be around 37.1% (S$541,085.53 / S$1,458,665.18). A discount, however, must be applied to this percentage to account for the fact that not all of the Wife's income was in fact used for the acquisition of the matrimonial assets, *ie* not all of her *financial* contribution constitutes her *direct* contribution. By her own admission, some of her savings went into general

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51 Husband's Submissions dated 2 November 2016 at para 178; Husband's Supplemental Submissions dated 8 December 2016 at para 1.

52 Wife's 1st Affidavit of Assets and Means dated 28 June 2012 at paras 21.8-21.21.12.

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expenses for the family. Further, it is not disputed by the parties that the Husband was the main income earner during the course of the marriage and that, in absolute terms, he contributed the bulk of the monies that went directly to the matrimonial assets. In my judgment, therefore, it is realistic, fair and equitable to set the Wife's direct contribution to the matrimonial pool at around 20%.

39 For these reasons, based on the evidence and submissions that are before me, I find that the Husband's direct contribution is 80% while the Wife's direct contribution is 20%.

Indirect contribution

40 The Wife submits that her indirect contributions should be valued at 80% while the Husband's should be valued at 20%.[53] The Wife submits that she was a full-time homemaker since the marriage in 2002. While she gained employment in 2011, it was on a part-time basis because the children were still young. Further, she gave up her entire life in Canada to be with the Husband and to support him in his life and career in Asia. She maintains that she is has been and continues to be the primary caregiver of the children.

41 The Husband, on the other hand, submits that the parties contributed in equal terms towards the family.[54] He maintains that he has always been an actively involved father to the children. Further, the family had the benefit of a full-time domestic helper who would do all the household chores. Thus, realistically, the parties' only indirect contributions were to the children during the marriage and after it had broken down, in which case the parties spent an equal amount of time with them. Further, the Husband submits that as the first

[53] Wife's Submissions dated 21 October 2016 at paras 65-66.

[54] Husband's Submissions dated 2 November 2016 at paras 189-194.

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child of the marriage was born about four years into the marriage, the Wife had been able to enjoy an expatriate lifestyle for the first four years while he had to work to build up the finances of the family.

42 Observations that the Husband has been an involved father have been recorded in various decisions of the High Court and the Court of Appeal in relation to the Wife's attempt to relocate to Canada (see *eg BNS v BNT (Relocation CA)* at [5]). He has also made significant indirect financial contributions in absolute terms.

43 Nevertheless, the Wife has been the children's primary caregiver and spent a significant amount of time with the children after their birth. It is clear from the Child Representative's report that she has been diligent in her role, and the Husband has also not suggested otherwise. Further, I find relevant the fact that the Wife had given up employment for the sake of the family when the Husband, primarily for work purposes, relocated to Singapore in May 2002, moved to Bangkok in 2004 where the children were born, and then returned to Singapore in 2008 again. In multiple relocation cases, it can be convenient for the working spouse to contend, as the Husband does, that indirect contributions should be lower for the other spouse who enjoyed an expatriate lifestyle. Such contentions undervalue the sacrifices made by the other spouse in terms of the comforts of home; the security of gainful employment and financial independence; and familiar support networks, which in particular make raising young children easier.

44 For all these reasons, the Husband's indirect contribution is set at 40% and the Wife's indirect contribution is set at 60%. While this may appear lower for the Wife than in other cases where there are home-maker mothers,

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this is because I also took into account the Husband's very substantial indirect financial contributions in absolute and relative terms.

Weighted average ratio

45 Here, the simple average of the two ratios would yield a divisional ratio of 60:40 in favour of the Husband. In *ANJ*, the Court of Appeal opined that the relevant factors in determining if the weightage of the ratios should be adjusted include the size of the matrimonial pool, the duration of the marriage, and the nature and extent of the parties' contributions (at [27]). The Husband submits that it is fair to accord 75% weightage to direct contributions and 25% to indirect contributions.[55] The Wife submits that the two ratios should be given equal weight.[56]

46 In my view, having regard to the criteria set out in *ANJ*, there is no need for any adjustment to the weighted average ratio. While the marriage was not extremely long lasting, there are two children of the marriage. The matrimonial pool is also not exceptionally large. Although most of the financial contributions stemmed chiefly from the efforts of the Husband, this entailed, and was only enabled by, sacrifices on the part of the Wife. It was their collective effort – both direct and indirect, financial and otherwise – that built the family's pool of assets to what it is. Further, *ANJ* requires a consideration of the needs of the children in the final ratio adopted (at [28]). Here, the orders in relation to the children would require each of the parents to maintain their separate homes, and the 60:40 allocation makes appropriate provision for this. I therefore set the final ratio for division as 60% to the Husband and 40% to the Wife.

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[55] Husband's Submissions dated 2 November 2016 at para 275.

[56] Wife's Submissions dated 21 October 2016 at para 73.

47 The Husband adduced several authorities where homemaker wives in 10-year marriages received shares of lower than 40%. However, there is no strict rule as such, and in any event, those authorities are not analogous to our present case. The atypical factor in this case is that the Wife brought assets into the marriage – including the proceeds of a Canadian home she had purchased in 1998 prior to the marriage and sold in 2002 shortly after the parties were married – and thus had direct as well as indirect contributions to the pool of assets.

Implementation of asset division orders

48 The Wife's share of the total matrimonial assets is 40%. This translates to around S$583,466.07 (40% of S$1,458,665.18). Deducting the value of S$70,025.46 for the assets that are in the sole name of the Wife, a further S$513,440.61 is due to the Wife. This S$513,440 (nearest dollar sum) is to be paid out of the DBS Bank Account No. xxxxxxx84-20. The monies remaining in that account are to be disbursed to the Husband and that account is to be closed. On payment of the S$513,440 to the Wife, she is to transfer all of her title, rights and interest in the Canadian Cottage to the Husband. The Husband shall bear the costs and expenses of such transfer. Parties are to retain the assets held in their sole names.

Maintenance for Wife and Children

49 The Husband presently earns S$34,863 per month.[57] The Wife earns around S$2,500 a month. [58] The Wife obtained an order for interim maintenance on 5 July 2012 which remains in force with minor amendments. In essence, the Husband has to pay S$8,000 per month for the Wife's and the

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57 Husband's 2nd Affidavit of Assets and Means dated 10 June 2016 at para 88.

58 Joint Summary of Relevant Information tendered on 24 October 2016 at p 1.

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children's maintenance. In addition, the Husband would pay for the children's school fees and travel expenses to Canada for at least once every year. The Husband was also required to pay arrears for outstanding maintenance under a prior court order dated February 2012 in instalments of S$1,000.

50 The Wife submits that she should be awarded lump sum maintenance of S$3,000 a month for ten years, amounting to S$360,000 in total. The children should receive S$9,000 in maintenance per month. The Husband should also bear the children's school fees and their return economy ticket to Canada with the Wife once a year. The Wife says that an increase in maintenance from the S$8,000 ordered as interim maintenance is required because parties no longer own a car and transport expenses have increased. She also submits that the Husband must maintain her and the children in Singapore given his refusal to allow them to relocate to Canada.

51 The Husband submits that he should pay S$2,000 a month as maintenance for the Wife for one year, during which the Wife is expected to resume full-time employment. Maintenance for the children should be at S$6,000 a month and the interim orders in relation to travel and school fees should remain.

52 In relation to the Wife's maintenance, the Husband submits that the Wife has significant potential to gain employment with substantial remuneration. He says that she has a university degree and international experience as an Account Director in the Meeting/Incentive/Conference/Event sector. She is currently employed in a far more junior position than what she is qualified for. Further, she could earn S$5,000 a month but earns only S$2,500 because she opted for part-time employment.[59]

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[59] Husband's Submissions dated 2 November 2016 at paras 128-131.

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53 In relation to the children's maintenance, the Husband maintains that the Wife inflated the expenditure for the children. For example, the Wife attributes S$2,000 to rental for each child and for herself, totalling S$6,000, when she only appears to be paying S$5,000.[60] As another example, the Husband submits that under the interim access order, he spends roughly equal time with the children as the Wife, such that their respective expenses in relation to the children should be comparable. Yet, his list of expenses totals only about S$5,500 a month, while the Wife is seeking S$9,000 per month.[61] In these circumstances, the Husband submits that it is necessary to distinguish between the maintenance meant for the Wife and that for the children so as to preclude future litigation on the proper usage of the maintenance payments. Further, the Husband submits that, pursuant to the joint duty of parenting and s 68 of the WC, the Wife should bear some of the maintenance for the children by contributing 35% to their expenses.[62] However, he prefers to pay for the children's air tickets to Canada since they both have relatives in Canada for the children to visit.

54 In my judgment, bearing in mind the items set out in s 114(2) of the WC that the court should consider in determining the amount of maintenance payable, the need for parties to adjust to a new lifestyle and try to regain self-sufficiency, and the order I make on the division of matrimonial assets, the Wife should be awarded maintenance of S$2,000 per month for a period of two years. In two years' time, the daughter will be in middle school. The buffer period will allow the Wife to help the children transition this post-divorce period, while the parties iron out the longer term issues and new access hours. It is clear from the Child Representative's report that the Wife

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[60] Husband's Submissions dated 2 November 2016 at para 106.

[61] Husband's Submissions dated 2 November 2016 at para 109.

[62] Husband's Submissions dated 2 November 2016 at paras 125-127.

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was usually present when the children came home from school, and the children enjoyed that special time with their mother. In this time of transition, it would be best if they continue to have the full benefit of time with their mother. In two years, the children will have hopefully weathered the transition of the divorce proceedings and require less attention. Further, I agree with the Husband that the Wife should work towards financial independence. This is in keeping with the views of the Court of Appeal in *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506, at [16]. More recently in *ATE v ATD* [2016] SGCA 2, it was stressed that "the former wife ought to try to regain self-sufficiency and that an order of maintenance is *not* intended to create life-long dependency by the former wife on the former husband" (at [31]). In my view, a 2-year period will afford the Wife sufficient time to do so. The Husband submits that the Wife has sufficient assets (including funds in the Internaxx Account which I have excluded from division) at her disposal for this purpose. I agree: the Wife should use these sums to secure her long-term financial health.

55 I deal with two further issues raised in the Husband's submissions. The first issue is that the Wife is in a settled relationship and thus there should be no lump sum order. I agree. In addition, s 117 of the WC provides that maintenance generally expires upon remarriage:

> **Duration of orders for maintenance**
>
> 117. Except where an order for maintenance is expressed to be for any shorter period or where any such order has been rescinded, an order for maintenance shall expire —
>
> (*a*) if the maintenance was unsecured —
>
> (i) on the death of either spouse or former spouse;
>
> (ii) in the case of maintenance payable to a former wife, upon her remarriage; or

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(iii) in the case of maintenance payable to an incapacitated former husband, upon his remarriage; or

(*b*) if the maintenance was secured —

[…]

56 To obviate any argument that the present order for maintenance for two years is an order "expressed to be of any shorter period" within the meaning of that provision, I add a caveat to my order that it will lapse upon the Wife's remarriage should she remarry before the end of the two years.

57 The second issue is that the Husband asks the court to take into account the previous sums of maintenance already paid to the Wife. The order in this case, however, is similar to the sums ordered in the interim orders, and the amount going forward is low and of a short duration. As such, there is no need for any adjustment to account for maintenance that was previously paid.

58 As for the children, bearing in mind the relative income of the parties at the present, where the Wife earns less than 10% of the Husband's salary, it is not reasonable for the Husband to ask the Wife to bear 35% of their expenses. The Wife will require time to build up her career again. Nevertheless, the Husband makes a valid point that some of the Wife's stated expenses for the children are too high. In line with the Court of Appeal's guidance in *AUA v ATZ* [2016] 4 SLR 674 ("*AUA v ATZ*") on the principle of common but differentiated responsibilities, which states that "both parents are equally responsible for providing for their children, but their precise obligations may differ depending on their means and capacities" (at [41]), I think it is reasonable for the Husband to contribute S$3,000 for each child as he suggests and I so order. Given parties' standards of living, both the Wife and the Husband will no doubt supplement various items for the children's benefit when the children are with them. In addition, as the Husband suggests,

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the Husband is to continue paying for the school fees of the children and for an annual return economy ticket to Canada for the children.

Child orders

Context

59 The prevailing interim orders were made on 20 October 2011 pursuant to the Husband's application for interim care and control. The key aspects of this order are that the parties were to have joint custody of the children with the Wife having interim care and control. The Husband was also given weekday access from 7.15am to 7.30pm on Tuesdays and Thursdays, and weekend access from 3pm on Saturdays to 3pm on Sundays, with school vacation time equally divided. Orders were also made on 5 December 2011, 23 February 2012 and 9 October 2013 regarding minor variations to access, school vacations and for parties not to fix classes during the Husband's access time.

60 In considering the orders for the children, I bear in mind two key principles summarised succinctly by the High Court in *AZZ v BAA* [2016] SGHC 44 ("*AZZ v BAA*") (at [28]):

> (a) The first is the welfare principle. In deciding arrangements for children, I must have regard to the welfare of the children as my first and paramount consideration, to be analysed on all the facts of the individual case: s 3 of the Guardianship of Infants Act (Cap 122, 1985 Rev Ed) and s 125(2) of the Women's Charter.
>
> (b) The second is the principle of joint and enduring parental responsibility. The status of being a parent carries with it a complex and interlocking web of rights, duties, responsibilities and expectations which parents bear in relation to each other, in relation to the child and in relation to society at large. Parents remain subject to their parental duties, responsibilities and expectations throughout the entirety of their children's childhood…

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Custody

61 In my judgment, there should be an order for joint custody. Both parents have played an active role in the children's lives and this should continue in respect of decisions that carry long-term consequences for the children. This is undoubtedly in the interests of the children and it gives effect to the principle of joint and enduring parental responsibility (see *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 ("*CX v CY*") at [24] and [36]).

Access

62 I deal here with access as it has bearing on the Husband's arguments on care and control.

63 The Husband's interim access is as described above (at [59]). It is clear from the evidence and the Child Representative's report that the Husband is an involved father who wants to, and can be, a greater part of the children's lives. I therefore find that it is in the best interests of the children that more time be given for them to spend with their father. In this regard, I am also guided by *BG v BF* [2007] 3 SLR(R) 233, where the Court of Appeal stated (at [13]):

> … A child who understands that both his parents have custody of him and continue to be involved in his life is likely to feel more secure. The same must surely apply to access orders. As far as possible, the child should be allowed to interact with both parents so that, despite the breakdown in relations between the parents, he is assured, to the greatest extent possible, of a normal family life with two parents.

64 When parties first appeared before me in November 2016, they agreed that arrangements which mirror the new access order I set out below (at [65]) would best suit the children's needs and activities. Parties lived close to each other and the children were already familiar with seeing their father on

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Tuesdays and Thursdays under the interim access order. Thus, overnight extensions built around Tuesdays were a better alternative than cutting the week in half as the father initially suggested. Parties also agreed to the appointment of a parenting co-ordinator to assist them to work out various long-term issues (see below at [78]). Access thereafter commenced in December 2016 on the same footing. Unfortunately, that agreement broke down. With the issue before me again, the Husband asks for 5 extra hours on alternate Sunday evenings compared to what he had under the agreed arrangements, returning the children at bedtime rather than 3pm, so that he will have an equal amount of time as the Wife. In response, the Wife seeks to maintain the agreed 3pm return time on Sunday so that the children can have consistent school preparation hours, which I think is a reasonable request for a school night ahead of the school week. The children's interests are better served by an opportunity to review homework issues with their mother and an early night ahead of a school week. Thus, the new access orders I impose mirror the parties' agreed arrangement, as I am of the view that they are the best way for the Husband to have more liberal access to the children at present.

65 Accordingly, the new hours of access for the Husband are as follows:

(a) From after school on Monday until the Husband brings the children to school on Wednesday.

(b) From Saturday at 3.00pm until Sunday at 3.00pm, when the Husband shall bring the children to the Wife's residence.

(c) Public holidays which fall on Mondays (commencing at 8.00am), Tuesdays and, alternating with the Wife, on Wednesdays commencing at 8.00am.

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66 I also make these additional orders to ensure the smooth transition of access:

(a) With respect to the children's medical records and government documents, including but not limited to passports, identity cards/student passes, Thai birth certificates and Canadian citizenship cards (collectively, "the Important Documents"):

(i) The Wife shall retain possession of the daughter's Important Documents;

(ii) The Husband shall retain possession of the son's Important Documents; and

(iii) Parties shall cooperate with each other for the purpose of renewal of any of the Important Documents or wherever they are needed for the purposes of the children's medical needs, including but not limited to inoculations.

(b) Parties shall evenly split the school holidays, namely, Spring, Summer, Fall and Christmas school holidays ("School Holidays"):

(i) In even years commencing 2018, the children shall spend the first half of School Holidays with the Wife and the second half with the Husband.

(ii) In odd years commencing 2017, the children shall spend the second half of School Holidays with the Wife and the first half with the Husband.

(iii) If the party with access has not elected to travel overseas and the children are in Singapore on Christmas Day, the party with the other half of the Christmas school holiday

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shall have access to the children from 11.00am on Christmas Day until 11.00am on 26 December, such access day to be taken into account when determining the even split of the Christmas school holiday.

(iv) Any days in which both children are at overnight camp during the summer school holidays are not access days for either party when determining the even split of the summer school holiday.

(c) Upon providing at least 2 weeks' notice to the other party of the travel itinerary, accommodation and contact details, each party shall be entitled to take the children overseas:

(i) During their access half of a School Holiday; and

(ii) For weekend trips during the school term (such weekends starting at the end of school on the last school day before the weekend and ending at 9.00pm on the night before school recommences) and such travel shall take precedence over the usual schedule during the school term with the children set out above.

(d) The non-traveling party shall provide the traveling party with the passport and identity card/student pass of the child that he or she retains possession of at least 3 days before the children travel overseas. Within 2 days of the children's return to Singapore, the traveling party shall return the relevant passport and identity card/student pass of the child to the non-traveling party.

(e) Neither party shall enrol the children in activities, or cancel the children's activities, during the other party's access without that other

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party's consent. The party with access during the scheduled activity shall take the children to and from the activity unless expressly agreed otherwise. Without regard to which party has access, either party can attend the children's birthday parties, school functions and sporting events.

Care and control

67 The person granted care and control is the children's daily caregiver and is responsible for the day-to-day decisions concerning the child's upbringing and welfare (*CX v CY* at [31]-[32]). In this regard, the welfare principle and the principle of joint and enduring parental responsibility are central to the courts' decision on who should be granted care and control (see above at [60]).

68 The Husband submits that an order for shared but split care and control, operating within the respective periods of each parent's time with the children, should be made. The Husband places reliance on English jurisprudence. For example, in *Re A (A Child: Joint Residence/Parental Responsibility)* [2008] EWCA Civ 867 ("*Re A*"), the English Court of Appeal stated that the shared residence order was to be used as a strong signal to warring spouses, to bring across the message of collaboration, and to mark the fact that "both parents are equal in the eyes of the law" and had "equal duties and responsibilities" (at [76] and [85]). In *A v A* [2004] All ER (D) 54, the English High Court stated that (at [118]):

> [T]he essence of the decision in D v D seems to me as follows. It is a basic principle that, post separation, each parent with parental responsibility retains an equal and independent right and responsibility to be informed and make appropriate decisions about their children.

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69 The Husband thus submits that a shared care and control order would send a strong signal to the Wife on the importance of cooperation towards securing what is best in the interests of the children. He also points to the Child Representative's report dated 17 October 2016, which states:

> To the credit of both parents, it was observed that the children are well insulated from the fallout of the breakdown of the marriage. Both the children are well adjusted to their new "normal" of shuttling between their parents' respective households.

70 The Wife submits that an order for sole care and control in her favour is in order. She argues that English cases cited by the Husband have no footing in Singapore law, and that shared care and control is the exception rather than the norm. Further, the Wife cites the acrimony between the parties as the primary reason why shared care and control would be unworkable, as parties have not been able to agree on anything, including relocation, access schedules and schools for the children. The Wife also submits that shared care and control would assist the Husband in pushing the boundaries, such as by changing the children's school without consultation and applying for their permanent residency in Singapore without her consent.

71 I make some brief comments about parties' submissions on the issue of shared care and control, before applying the relevant principles to our case.

72 First, in respect of the English jurisprudence cited by the Husband, it is important to note that, although there are common principles that undergird both our jurisprudential systems, such as that of joint parental responsibility, we do not share the same legislative context. The cases cited by the Husband concerned residence orders made under the Children Act 1989 (c 41) (UK), which is explicitly stated in *Re A* to be the genesis of UK courts' increased recognition of shared residence orders (*Re A* at [66]). There is no equivalent

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legislative indication in Singapore, and the relevant legislation in UK has also been amended since that time. But the more important point here is that "residence" and "care and control" are not identical concepts. The former has been explained as no more than "an order settling the arrangements to be made as to the person with whom a child is to live" (B. Hoggett, "The Children Bill: the Aim" [1989] Fam Law 217) whereas care and control, as explained in *CX v CY*, concerns a broader basket of duties relating to the day-to-day decision-making of all matters related to the child (at [31]-[35]). The English cases therefore reflect a different statutory context and cannot be directly transplanted into Singapore. As a further example, in *Re A*, the father, not being a biological or stepfather or guardian, could only acquire parental responsibility through a residence order: without the shared residence order made, he would have lost all parental responsibility for the child he had helped to raise for two years on the assumption that he was the biological father. In contrast, in the present case as is the general position in Singapore, the outcome of a care and control order has no impact on the court's grant of a joint custody order.

73 A second point relates to the Wife's contention that shared care and control is the exception to any rule in favour of sole care and control.[63] I do not agree. The decision must depend on the facts of each case; the court's emphasis on each child's best interests necessitate this. Where conditions are right for such shared care and control, the court will order as such. The Court of Appeal's guidance in the context of relocation in *BNS v BNT (Relocation CA)* is apt in this instance (at [22]):

> To be clear, what we are effectively saying, at a broader level, is that there can be *no pre-fixed precedence or hierarchy* among the many composite factors which may inform the

[63] Wife's Supplemental Submissions dated 20 December 2016 at para 7.

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> court's decision as to where the child's best interests ultimately lie: where these factors stand in relation to one another must depend, in the final analysis, on *a consideration of all the facts in each case.*
>
> [emphasis original]

Notably, the best interests of a child is measured by a multitude of factors, the relative importance of these being ultimately dependent on the facts of the particular case (see *ABW v ABV* [2014] 2 SLR 769 at [23]-[24]).

74 A third point relates to the parties' contrasting arguments on the impact of mutual acrimony on the courts' determination of whether to grant a shared care and control order. In our present case, it is not disputed that parties dislike each other intensely. This issue of the conflict between them is, however, submitted as a point in their favour by both parties. The Husband argues, in line with the English cases, that shared care and control would send a signal to the other parent that both parents have equal rights. The Wife argues that the high level of conflict will make shared or cooperative arrangements unworkable.

75 In my view, neither party's submission fully addresses the nuances of the issue before me. I am not persuaded by the Husband's submission that a shared care and control order should be made for signalling effect. In *CX v CY*, the Court of Appeal recognised the potential signalling effect of an order for joint custody (at [20]), but expressly differentiated custodial orders from care and control orders, which it recognised as being "of a different nature" (at [29]). Indeed, given the nature of the responsibilities and the kinds of decisions that have to be made under a care and control order, courts are far more concerned with the issue of workability and the potentiality for stress on the children when dealing with care and control than when dealing with custody.

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76 There is therefore some measure of good sense in the Wife's submission that hostility between the parties may result in practical difficulties with the execution of a shared care and control order. As the Court of Appeal in *CX v CY* observed, "[i]t is obvious that a joint care and control order, requiring the parties to agree on every day-to-day decision relating to the child, is unworkable where the parties have a bitter relationship with each other" (at [29]). Such an unworkable order that is superimposed upon hostile parties will create a great deal of stress for the children at the centre of the tussle. It will also likely result in the parties returning to court to litigate on that order, reopening a new chapter in their long adversarial history and taking away time and resources which could have been better spent on the welfare of their children. A court order, in and of itself, cannot create the behavioural and mind-set changes in specific individual parents necessary for them to co-parent well together.

77 At the same time, however, conflict cannot automatically rule out greater participation of the other parent who does not yet have care and control. As pointed out by the High Court in *AZZ v BAA*, doing so indiscriminately could give parties the "perverse incentive to gain a tactical advantage by ratcheting up the acrimony in the run up to a custody decision" (at [40]). Conversely, with the divorce behind them, the passage of time could also improve parties' ability to work together (*CX v CY* at [37]). Accordingly, in determining whether a shared care and control order should be made, much would depend on the facts, and in seeking to find an arrangement that accords with the best interests of the child, courts will have to tread a fine line between the perverse incentive of artificial acrimony and the perverse outcome of an unworkable order.

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78 Of relevance in the present case is the fact that parties have serious longer term issues within the joint custodial sphere to work out between themselves and together with the children. The first, which is already becoming urgent, is the issue of the daughter's choice of middle school – whether a more comfortable international school as suggested by the Wife, or a more intellectually demanding and cost-efficient local school as suggested by the Husband, or a local international school as suggested by the Child Representative as a compromise. The same choices accompany the issue of the son's middle school. The decision for each child should take into consideration each child's personalities, educational bent, and interests. Parties would need to discuss the options with the children in the next year, and their needs and strengths should be taken into consideration. In doing so, educational assessments may also be apposite, as part of the process of ascertaining the educational system best suited for each child. A second critical issue is the Husband's wish for the children to take up permanent residence in Singapore and for the son to do national service. Permanent residency brings longer term consequences, privileges and responsibilities. National service, in particular, is not a decision that should be taken without thorough consideration of the son's interests and views, obtained through discussion and with the requisite background information. These are issues within the parties' joint custodial sphere. Despite sharing joint custody, the Husband and the Wife have not been able to collaboratively discuss the various issues and options. Originally, parties agreed to appoint a parenting coordinator to help them work through these issues, but the Husband decided otherwise after it was highlighted that the Child Representative should not take on that role arising from conflict of interest concerns. Nevertheless, I encourage the Husband and the Wife to seek third party assistance, if

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necessary, to have the appropriate co-parenting dialogue and discussion between themselves and together with the children.

79 These disagreements over long-term decisions mirror the contentions that the parties have in relation to day-to-day matters. One illustration is the Husband's application for a court order, which was obtained in December 2011, providing that "neither party shall plan activities during the other parties' access". A further example is when parties sought and obtained permission to sit in at the hearings on ancillary matters, and their hostility towards each other was palpable from their interaction in court. The Husband in his various submissions was also highly critical of the Wife and felt justified in his contentions by various incidents that led up to *BNS v BNT (Relocation CA)*. However, he was not particularly helpful or cooperative himself despite seeking shared care and control. Although he was himself sure what school arrangements would suit his children, it seems that he had not discussed any of the options with the children or the Wife, nor ascertained how to implement his suggestions. While he explained that he did not want to discuss issues with the children that he wished to put before the court, the fact remains that the children are fast coming to their teenage years and ought to be able to play a part in their own educational choices, which involve issues of academic or sporting interest, friendships and mental resilience. They are past the age where children are simply expected to comply. These are issues that are best discussed within the family, rather than adjudicated in court without proper evidence as to academic ability, individual interests and the potential impact of various options on the children's wellbeing. In light of the above, putting in place shared care and control will more likely than not result in gridlocks and further conflict that will be prejudicial to the welfare of the children.

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80 In the present case, consistency in care is important to the children's sense of stability, particularly so here where the children are young and the interim care and control order in favour of the Wife has been in place for the past 6 years. The Husband explains that he seeks shared care and control at [13] of his submissions, in line with comment made in *D v D (Shared Residence Order)* [2001] 1 FLR 495 at [23], to prevent the Wife from interfering with his exercise of parental responsibility. But the proposed plan for going forward cannot be one of each parent doing as he or she pleases in his or her time allocated. The children must, broadly speaking, experience consistency in care regardless of which parent they are spending time with. While I intend by my new access orders to give the Husband more time with the children, it cannot be in the interests of the children if, during those hours, guidance from the Wife is ignored. Day-to-day issues could potentially have significant longer term impact on children: such matters include care during illness (which is common in growing children) and examination preparation schedules (which is especially important to the children as they approach middle or secondary school). In this context, a shared care and control order would not aid the Husband in the manner that he conceives it is able to; such an order may instead be disruptive to the children's sense of stability in a crucial period of their lives.

81 Further, the increase in time given by the newly expanded access hours to the Husband is not, as the Husband contends, marginal. It significantly increases his weekday overnight time, when he has thus far largely had only overnight access during weekends and school vacation. The structural change also means the parties move broadly to sharing the week, whereas in the past the Husband's access was limited to small pockets of time on Tuesdays and Thursdays before school and until bedtime. These changes entail changes to school-night and school-week routines, which are transitions that both parents

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have to manage with due care and attention. Maintaining the status quo vis-à-vis care and control for the immediate future gives the children a familiar platform on which the changes may be made. Further, I disagree with the Husband that both parties have had *de facto* shared care and control of the children. While he enjoyed liberal access, it is clear that the mother has been their primary caregiver. This is the context in which his access is increased. Similar views were expressed by the High Court as recently as 2014 in *BNT v BNS* [2014] SGHC 187 at [24] and the Court of Appeal in *BNS v BNT (Relocation CA)* at [29].

82 In the final analysis, while the Husband's desire to be actively involved in the children's lives is admirable, a shared care and control order is neither the only nor the most appropriate manner by which his intentions should be given effect. In *AUA v ATZ,* the father there enjoyed similarly liberal access time with his daughter and the parties also lived close to each other. The Court of Appeal agreed with the High Court that an award for shared care and control would destabilise and be disruptive to the child at that point. In response to counsel's contention that that shared care and control would "recognise the role played by the father", the Court of Appeal advised:

> 62. Furthermore, as we remarked during the hearing, one should not emphasise "form over substance". It is laudable that the husband wants to be a good father to the child, and we commend him for this. However, the sound and sensible way to achieving that is by continuing to take an active interest in the child's life during the periods of access, such that when the child comes of age, it will be enduring ties of love and affection rather than a court-ordered apportionment of her time, that forms the substratum of an enduring father-daughter relationship…

83 For the foregoing reasons, I am of the view that shared care and control is neither necessary in the circumstances nor justified as being in the best interests of the children.

84 I make a final observation. In *AUA v ATZ*, the Court of Appeal referred, in relation to the legislative regime on child maintenance, to the "principle of common but differentiated responsibilities", under which "both parents are equally responsible for providing for their children, but their precise obligations may differ depending on their means and capacities" (at [41]). In my view, this same principle aptly applies to the issue of care and control, with reference to the following three principles which may thereby be derived. First, joint parental responsibility is deeply rooted in our family law jurisprudence (*CX v CY* at [26]). Second, the welfare of the child is best advanced by his or her having two active and involved parents with common but differentiated responsibilities (*AUA v ATZ* at [41]-[45]). In emphasising the first two points, a third principle becomes fundamental: it is the best interests of the *child* that remains of utmost importance. This is clear from our Court of Appeal's guidance in *BNS v BNT (Relocation CA)*. Drawing these strands together, it may be inimical to a child's interest to say, as in the English decision of *A v A*, that "post separation, each parent with parental responsibility retains an equal and independent right and responsibility to be informed and make appropriate decisions about their children" (at [118]). The language of parental *rights* is not in keeping with the modern paradigm of parental *responsibility*. Equal responsibility should not be framed in terms of parties' abilities to exercise their respective baskets of rights, but in terms of *a joint duty on the part of parents*, to work *with a singular purpose* towards the best interests of their children. Cooperation is critical, as it is in any kind of mutual venture in pursuit of a sole object, which is why appreciating differences and the concept of differentiated responsibilities is all the more important. As a practical matter, it is inevitable that each parent, loving and concerned, comes into the parenting space with different skills, thought processes, values and approaches. It is thus their common responsibility to

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ensure that their children benefit from the full measure of their differentiated abilities. Such responsibility, coupled with the welfare principle, could conceivably require the relegation of perceived parental rights on occasion.

85 I should add that I am grateful to the Child Representative for his views on care and control, which were given due weight. As explained to the Child Representative when he attended, shared care and control is certainly an end state that these parties can and ought to work towards, for the good of their children. Here, the children have two loving and concerned parents, and they will benefit immeasurably if their parents are able to work together, with respect for and in cooperation with each other. I am hopeful that, if they are able to manage the new increased access and resolve the long-term uncertainties of school and permanent residency, they will be in a stronger position to share care and control. The children will also in time grow older and more independent and mature, with a better capacity to manage their parents' expectations.

Conclusion

86 Prior to the transfer of proceedings to the High Court, the Husband filed two summonses which the Registry fixed to be heard together with the ancillary matters: (a) FC/SUM 2274/2015 seeking, *inter alia*, a downward variation of the interim maintenance, that he be permitted to withdraw a sum of S$100,000 from parties' joint bank account which may be taken into consideration at the final ancillary hearing, and that the Wife provide him with certain monthly statements and invoices for medical expenses; and (b) FC/SUM 2346/2015 seeking, *inter alia*, variations to the interim access orders to take into account changed circumstances. In view of the orders made here, these matters have been overtaken and I accordingly make no order in respect of the two summonses.

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87 To recap, the orders for the ancillary matters are as follows:

(a) Parties are to retain all assets held in their sole names.

(b) The Wife may draw S$513,440.61 from the DBS Bank Account No. xxxxxxx84-20. The remaining monies in the account will go to the Husband and the account shall be closed thereafter.

(c) Upon payment of S$513,440.61 to the Wife, she is to transfer all of her title, rights and interests in the Canadian Cottage to the Husband, with the Husband to bear the costs and expenses of such transfer.

(d) The Wife is to receive maintenance of S$2,000 per month with effect from 1 March 2017 and thereafter on the 1st day of each month for another 23 months, save in the event that the Wife remarries, this maintenance order shall expire on such date.

(e) Each child is to receive maintenance of S$3,000 per month with effect from 1 March 2017 and thereafter on the 1st day of each month. In addition, the Husband will continue to pay for (i) the children's school fees, which is to be paid directly to the relevant school(s), and (ii) a return economy ticket to Canada each year for each child.

(f) There will be joint custody of the children, with care and control to the Wife. The Husband shall enjoy liberal access to the children per the schedule I have set out at [65]-[66] above.

(g) Liberty to apply.

88 I shall hear parties on costs and any consequential orders.

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Valerie Thean
Judicial Commissioner

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