

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2022] SGHCF 22

District Court Appeal No 164 of 2021

Between

WBI

... Appellant

And

WBJ

... Respondent

FOUNDATIONS OF DECISION

[Family Law — Matrimonial Assets — Division]

[Family Law — Maintenance — Child]

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**WBI
v
WBJ**

[2022] SGHCF 22

General Division of the High Court (Family Division) — District Court
Appeal 164 of 2021
Choo Han Teck J
29 June, 2 August 2022

11 August 2022

Choo Han Teck J:

1 The parties married on 2 December 2014. Divorce proceedings commenced on 1 July 2020 and interim judgment was granted on 13 November 2020. The Husband, aged 42, is a Singapore Citizen and the Wife, aged 39, is a Malaysian Citizen and a Singapore Permanent Resident. Both are teachers by profession. They have two children who are six years old and four years old respectively.

2 Orders regarding the ancillary matters were made on 30 November 2021. The District Judge (“DJ”) ordered the matrimonial flat to be sold in the open market within 24 months from the date of the orders, and the net sale proceeds, less the outstanding mortgage loan, Central Provident Fund (“CPF”) refunds to parties’ respective accounts with accrued interest and all sales-related expenses to be apportioned as follows: (i) 67.3% of the sale proceeds to be given

to the Husband; and (ii) the remainder to the Wife. The DJ held that the parties' indirect contributions ratio should be 50:50. Following *ANJ v ANK* [2015] 4 SLR 1043, the DJ exercised her discretion to set the weightage by determining the relative importance of the parties' direct and indirect contributions. Further, relying on *UJF v UJG* [2019] 3 SLR 178 ("*UJF v UJG*"), the DJ was of the view that a weightage of 70:30 in favour of the parties' direct contributions was appropriate. The DJ also ordered the Husband to pay the Wife a monthly sum of \$1,400 as maintenance for both children, commencing 1 December 2021 and thereafter on the first day of each month, to be paid into the Wife's designated bank account. The parties were ordered to pay the children's school fees in the same proportion of their income, which the DJ found to be 52:48. The DJ also found that the Wife had changed her mind regarding the agreement that parties reached during mediation in determining that the costs of the ancillary proceedings should be paid by the Wife.

- 3 The Wife appealed against the DJ's decision on the grounds that:
- (a) the DJ erred in finding that parties' indirect contributions ought to be 50:50;
 - (b) the DJ erred in according a weightage of 70:30 in respect of parties' direct and indirect contributions;
 - (c) the sale proceeds should be used to pay off the outstanding mortgage loan as well as all sale-related expenses, with parties making CPF refunds from their respective share of the net sale proceeds;

(d) the Husband should be ordered to pay 57.7% or 56.8% of the children's reasonable monthly expenses, in line with the parties' respective incomes; and

(e) the DJ wrongly considered the exchanges of draft consent orders between parties as offers to settle when determining that she should bear the costs of the proceedings.

4 On the issue of the parties' indirect contributions ratio, the Wife said that the DJ erred in attributing a ratio of 50:50. The Wife said that she was the primary caregiver of the children, a homemaker and the party who paid for the bulk of the household expenses. She also said that she made indirect financial contributions towards the family during the marriage, including purchasing furniture, home and kitchen appliances, paying for the children's daily expenses and for the babysitter. The Husband said that the DJ's decision should be upheld.

5 Contrary to what the Wife said, she was not a homemaker as she has a full-time job as a teacher. It was also not in dispute that from 2015 to 2018, the older child mostly stayed in Malaysia with the Wife's mother on weekdays while the parents were at work. From 2019 to 2020, the younger child would be placed in the care of her maternal grandmother in Malaysia for half the week, and the parties would drive to Malaysia to spend the weekend. The evidence shows that both parties had taken care of the children. The Husband sent the children back and forth from Malaysia and the Wife contributed to the children's expenses. In the circumstances, I found that the DJ was not wrong to order a 50:50 ratio to the parties' indirect contributions.

6 As to the weightage in respect of parties' direct and indirect contributions, the Wife said that the DJ erroneously relied on the decision in *UJF v UJG* in according a weightage of 70:30 in respect of parties' direct and indirect contributions respectively. She said that the case of *UJF v UJG* could be distinguished, as it concerned a marriage that was 4.5 years in length and there were no children to the marriage. The Wife said that an increased weightage ought to be given in respect of parties' indirect contributions and suggests that an equal weightage is appropriate. The Husband said that the DJ's decision should be upheld. In my view, the weightage assigned by the DJ is reasonable. The parties did receive a considerable amount of assistance in caring for the children – neither party had shown a substantial amount of care towards family life to justify a greater weightage on indirect contributions. Hence, a weightage of 70:30 in favour of the parties' direct contributions was fair, resulting in a final ratio of 67.3:32.7 in favour of the Husband. If the DJ had found that the parties' direct and indirect contributions are to be given equal weight, the ratio would be 62.35:37.65, which is not substantially different from what was determined. I am of the opinion that in future, the court should refrain from tinkering with the weightage of the parties' direct contributions, and, instead, adjust the ratio of the indirect contributions to achieve a just and equitable distribution. Direct contributions are invariably the actual financial contributions made by each party and are determined through findings of fact. Once determined, it is irrational to dilute or increase what had been determined to be the direct contribution of each party.

7 As to the CPF refunds, the Wife said that the parties ought to make their CPF refunds from their respective share of the net sale proceeds of the matrimonial home, as opposed to making the refunds from the gross sales

proceeds. Her counsel argued that this would be just and equitable because it will provide the Wife, the party with the comparatively lower salary and who has care and control of the two children, with funds to purchase a property for her to bring up the two children. Counsel referred to the case of *Tay Sin Tor v Tan Chay Eng* [1999] 2 SLR(R) 385 (“*Tay Sin Tor*”), which states (at [11]):

... I would like to address a recurring question – whether CPF moneys withdrawn should be refunded before or after a division is made of sale proceeds. The husband wanted the sums withdrawn from the parties’ CPF accounts to be refunded first, before the division (because he had withdrawn more than the wife had for this purpose), whereas the wife wanted the division to be made first, and for each party to make repayment to the CPF from its share in the division. The husband’s approach is wrong in principle. It is the flat that is subject to the division. If the flat is worth \$x, that value is to be taken into consideration. The value of the flat is \$x whether or not CPF funds are used. The CPF sums are not loans, they are the assets of the parties, like money in the bank, although they may only be withdrawn for authorised purposes, *eg* for the acquisition of real property or shares, and they have to be paid back into the accounts when those assets are sold. Inasmuch as the sums withdrawn from each party’s bank accounts are not required to be repaid before division, the same must apply to sums withdrawn from CPF accounts. The liability to repay to the CPF sums withdrawn is a personal obligation of each party to be discharged out of his or her share of the sale proceeds.

8 The Husband said that the parties’ CPF contributions were the joint contribution for the acquisition of the matrimonial flat and there is no reason to distinguish the refunding of parties’ CPF monies from other common deductions, such as the outstanding mortgage loan and sale-related expenses.

9 I agree with the DJ’s approach in ordering the CPF refunds to be made from the gross sales proceeds, before apportioning the sales proceeds between the parties. With respect, the reasoning in *Tay Sin Tor* is flawed. The court in *Tay Sin Tor* correctly held that CPF sums are “not loans” but “assets of the

parties”, but it then contradicted itself by likening CPF sums to personal loans, which are not required to be repaid before division. I respectfully disagree with *Tay Sin Tor* that the liability to repay CPF sums used for the continuing payment of a matrimonial home is a “personal obligation”. That description has no helpful meaning in determining whether CPF contributions ought to be paid before or after distribution of the gross proceeds of sale. When CPF monies have been used to buy the matrimonial home, they are used for the benefit of the family and are obligations undertaken for the joint benefit of the marriage. They are part of the matrimonial assets and should not be treated as a class separate from other deductions.

10 It seems to me that *Tay Sin Tor* is the only case attempting to explain why CPF proceeds should be paid after the proceeds of sale of the property have been divided, meaning, each party repays his or her CPF money from his or her own share of the proceeds. The courts have not been consistent in determining when CPF refunds are to be refunded before and when after the division of the sale proceeds. I have also on some occasions allowed CPF refunds to be paid from the parties’ share of the sale proceeds, without elaboration, probably because parties had not questioned the reasoning in *Tay Sin Tor*. I am now of the view that it is not desirable to have an arbitrary choice between dividing the proceeds of sale before or after repayment of CPF monies. To have that choice immediately raises the question, “Under what circumstances should a court order repayment of CPF monies before division of the sales proceeds, and when to pay after division?” No rational reason can be found to differentiate the two options. For the reasons above, I am of the view that repayment of CPF monies should always be paid before division of sale proceeds.

11 It appears that courts sometimes order the repayment of CPF after division of the proceeds of sale to help adjust one party's entitlement of the matrimonial assets overall. But that can, and in my view, should, be achieved without ordering the repayment of CPF after the division of sales proceeds. Section 112(2) of the Women's Charter (Cap 353, 2009 Rev Ed) empowers the court with a broad power to order the division of matrimonial assets in such proportions as it thinks just and equitable. And a court may have in the past, ordered the proceeds to be distributed after repayment of CPF, especially where one party has made substantially more CPF contributions to the matrimonial home than the other, thus avoiding unfairness to the party who has contributed less. And it seems unfair only because that party contributed much less, although that party had shared in the enjoyment of the matrimonial home during the duration of the marriage. There is, in fact, no unfairness in that sense. Nonetheless, if adjustments are needed, the court may make them by adjusting the indirect contributions upwards in that party's favour. In this way, we will have consistency of method without affecting the value of the matrimonial pool. Consistency is one of the hallmark strengths of the Common Law.

12 In the present case, no such unfairness arises or is evident. The Wife said that the DJ's approach would result in her receiving over \$15,000 less in sale proceeds as opposed to if the CPF refunds were made from the parties' share of the net sale proceeds. She said that she earns comparatively less in gross monthly income, has care and control of the children and would have to find an alternative place of residence for herself. In my view, her gross monthly income (\$5,591) is not significantly lower than that of the Husband's (\$7,356). The children also do not have any exceptional needs. In the circumstances, the

shortfall of \$15,000 is not sufficiently material to warrant disturbing the orders of the court below.

13 On the issue of maintenance for the children, the Wife said that the DJ erred in arbitrarily stating that the children's reasonable expenses were \$1,500 and \$1,200 respectively, without further explanation. Further, she said that the DJ erroneously determined the income ratio between parties to be 52:48, when in fact the ratio should be 56.8:43.2, based on their gross monthly income from March to May 2021. The Husband accepted that this ratio is more accurate.

14 In my view, the DJ's determination on the children's expenses was based on a reasonable assessment of the parties' means and standard of living, and is fair and justified. Since the parties seem to be in agreement that a more accurate income ratio is 56.8:43.2, I varied the order accordingly, and rounded up the income ratio to the nearest whole number, 57:43. The Wife wrote to court seeking clarification on whether the Husband is to pay 57% of the children's monthly expenses, or some other percentage and when the obligations are to commence. For clarity, the Husband is to pay 57% of the children's monthly expenses (*ie*, being 57% of \$2,700) and 57% of the younger child's monthly childcare or school fees once her Child Development Account funds are depleted. These obligations are to commence from 1 December 2021, as set out in the orders below.

15 The Wife said that the DJ erred in awarding costs against her by relying on correspondence between parties with respect to the prospective terms of a draft consent order on the division of the matrimonial home. The Wife said that the draft consent orders were not offers to settle and should not be taken into

consideration by the court in awarding costs. The Husband said that the DJ's decision should be upheld.

16 The DJ had referred to the Family Dispute Resolution minute sheet dated 14 May 2021 and was of the view that the Wife had changed her mind on a clause in the agreement. It was not unreasonable to have taken this into account, given the substantial time that could have been saved had the Wife not changed her mind after an agreement had been reached during the mediation proceedings. I did not think that the DJ saw this strictly as an offer to settle, as the Wife claimed.

17 For the aforementioned reasons, the Wife's appeal was dismissed to the extent stated above. I made no orders as to costs on the appeal.

- Sgd -
Choo Han Teck
Judge of the High Court

Samuel Ang Rong En (Sureshan LLC) for the appellant/wife;
Tan Anamah Nee Nagalingam (Ann Tan & Associates) for the
respondent/husband.
