

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 35

District Court Appeal No 36 of 2023

Between

WMD

... Appellant

And

WMC

... Respondent

JUDGMENT

[Family Law – Matrimonial assets – Division – Operative date for determining matrimonial assets pool]

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WMD
v
WMC

[2023] SGHCF 35

General Division of the High Court (Family Division) — District Court
Appeal No 36 of 2023
Choo Han Teck J
20 July 2023

26 July 2023

Judgment reserved.

Choo Han Teck J:

1 The Appellant/husband in this appeal is a 62-year old draughtsman earning \$3,885 a month. His wife, the Respondent, is a 58-year-old lecturer earning \$8,600 a month. They married on 31 August 1996 and have a 24-year-old son. The Respondent commenced divorce proceedings on 17 June 2021, and Interim Judgment (“IJ”) was granted on 16 September 2021. The ancillary proceedings have stalled because the Appellant filed a summons in the court below requesting that the court decide the date on which the matrimonial assets ought to be determined and valued.

2 The Appellant wanted the matrimonial assets to be determined and valued as at 31 March 2013, this being the date of separation agreed by the parties in the Statement of Particulars. Mr John Vincent, counsel for the Respondent submitted that the operative date for determining and valuing the

matrimonial assets should not be decided at this stage of the proceedings by a separate summons, and in any event, the assets ought to be determined and valued as at 16 September 2021, the date of the IJ.

3 Mr Muhammad Hasif, counsel for the Appellant submitted that he was following the suggestion of the court in *CLD v CLE* [2021] SGHCF 12 (“*CLD*”) that the parties apply to the court first to ascertain the operative date for determining when the matrimonial assets should be assessed. With respect, although the court in *CLD* directed parties to make that application at the case conference, it did not suggest that parties do this in every case where the same question arises. A pre-trial determination of this question is the exception. The question as to when the assets ought to be determined and valued is a matter for the trial court to decide, and parties should generally not make such applications without being directed by the court. At which point the assets are to be valued is both a question of law as well as a question of fact. There is nothing to stop the court below from determining the issue at the full hearing of the ancillary matters. Indeed, it is more appropriate for this issue to be decided alongside the rest of the ancillary matters, as I shall now explain.

4 As a question of law, the point at which matrimonial assets should be determined and valued is when both parties accept that the marriage had ended. If parties are unable to agree (as in the present case), the trial judge has to find as a fact, when that date is. That point of time when matrimonial assets are determined and valued is important because a party who has come into possession of assets after the marriage has ended, need not share them with the other — by the same token that assets acquired by one party before the marriage need not be shared. In the absence of any evidence, or if the evidence is inconclusive as to when the marriage had ended, then the date of the IJ will be taken as the default date. This has been so held by the Court of Appeal (“CA”)

in *ARY v ARX and another appeal* [2016] 2 SLR 686 (“*ARY*”) at [31]-[32] because the IJ is the default operative date as it “puts an end to the marriage contract and indicates that the parties no longer intend to participate in the joint accumulation of matrimonial assets”. In other words, the marriage has definitively ended by the IJ date and in the absence of sufficiently convincing evidence of the marriage definitively ending earlier, the IJ date is the default operative date.

5 It follows that the question which has to be eventually decided as a question of fact is — when did the marriage end? The court has to determine the date when both parties had agreed that the marriage had ended, or, where they disagree, the court has to determine the date the marriage had ended on the evidence available to it. The mere fact of living separately is only one factor in this enquiry because if a spouse deserts the other, it may not follow that the other has accepted that the marriage had ended. Every case depends on its facts — facts that the trial judge must find.

6 The journey through the legal process must be expeditious without being rushed. And it must be a journey with as few stops as possible. It is not a holiday tour where the parties can take their time and revisit parts where they think they have not had enough of. That is why except in the exceptional case, the question as to the operative date on which the determination and valuation of the matrimonial assets is to be assessed, is best decided by the court hearing the ancillary proceedings. The court, having had the benefit of fuller information from the completed discovery process, will also have more information to help the court make a more equitable decision depending on the particular circumstances of each case. In this way, there will be only one appeal — not two, as is the result of this case having to come up for the determination of that

solitary question, only to have the ancillaries to be determined later, possibly followed by another appeal. Accordingly, I dismiss this appeal.

7 In any event, the Appellant has also not demonstrated on appeal that the DJ's assessment is "plainly wrong or manifestly against the weight of the evidence" (*Nambu PVD Pte Ltd v UBTS Pte Ltd and another appeal* [2022] 1 SLR 391 at [8]; *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [41]). I agree with the DJ that the Appellant bears the burden of proving that the marriage had been practically at an end in March 2013, and has not discharged his burden of proof. The mere fact of living separately is but one factor that is insufficient to evidence that parties had agreed that the marriage had ended. The dismissal of this appeal does not necessarily mean that all of the parties' assets acquired before IJ date will fall within the matrimonial assets for division. This depends on the exact circumstances of the case. For the reasons above, the parties are at liberty to adduce evidence for the trial judge to determine when the marriage ended, and which of the parties' assets are to be classified as matrimonial assets.

8 Each party is to bear its own costs of the appeal.

- Sgd -
Choo Han Teck
Judge of the High Court

Muhammad Hasif (A.W. Law LLC) for the appellant;
John Vincent (John Law Chambers LLC) for the respondent.