

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 51

Divorce Transferred No 1331 of 2022

Between

WRZ

... Plaintiff

And

WSA

... Defendant

JUDGMENT

[Family Law — Matrimonial assets — Division]

[Family Law — Maintenance — Child — Earning capacity of both parties
must be taken into account]

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WRZ

v

WSA

[2023] SGHCF 51

General Division of the High Court (Family Division) — Divorce Transferred
No 1331 of 2022

Choo Han Teck J

11 October 2023

24 November 2023

Judgment reserved.

Choo Han Teck J:

1 The plaintiff (the “Wife”), aged 46, worked as a regional talent and workforce planning manager until 1 April 2023. The defendant (the “Husband”), aged 46, is a director in his own company ECM Pte Ltd. ECM Pte Ltd is the latest of several companies that he had started and closed. The parties married on 29 November 2008 and have two daughters to the marriage (the “Children”), aged nine and six. The Wife commenced divorce proceedings on 30 March 2022. Interim judgment (“IJ”) was granted on 19 October 2022. The custody issues were settled in the consent order dated 11 November 2022. The remaining ancillary matters concern the division of matrimonial assets, and maintenance for the Children.

Division of matrimonial assets

2 Although counsel for both sides disagreed as to whether this was a dual-income marriage, the answer is moot because they agree on the principles to be applied for the division of assets. The date for ascertaining the matrimonial assets is to be IJ date (19 October 2022), and the assets are to be valued at the date of the ancillary matters (“AM”) hearing (11 October 2023), or at the closest available date. Bank accounts and Central Provident Fund (“CPF”) account balances are to be valued at IJ date.

3 I shall first deal with the valuation of matrimonial assets which are undisputed, and those with minor differences:

| S/N | Asset | Wife’s Case | Husband’s Case | Court’s Decision |
|---|---|----------------------------------|-------------------------------------|------------------|
| Assets that are jointly held by Wife and Husband | | | | |
| 1 | POSB Passbook Savings account xxx-xxx02-1 | - | \$0 | \$0 |
| 2 | Children’s POSBkids accounts | - | \$25,322.48 (as at 9 Feb 2023) | \$25,322.48 |
| Wife’s assets | | | | |
| 3 | CPF accounts | \$406,361 (as at 14 Jul 2022) | \$429,289.82 (as at 28 Jan 2023) | \$417,825.41 |

| | | | | |
|-------------------------|---------------------------|------------------------------------|------------------------------------|--|
| 4 | Bank accounts | \$134,699 | \$144,111.34 | \$12,959.81 + \$93,295 + \$2,173 + \$3,773.63 + \$28,643.70 + \$1 = \$140,846.14 |
| 5 | Investments | \$334,056 | \$333,225.05 | \$18,311 + \$184,466 + \$64,360.53 + \$37,218 + \$29,285 = \$333,640.53 |
| 6 | POSB Child Devt accounts | - | \$12,936.46 | \$12,936.46 |
| 7 | Outstanding mortgage loan | -\$1,669,203 | - | \$0 (Already accounted for under joint assets below) |
| 8 | Other loans | -\$22,022 | -\$22,022 | -\$22,022 |
| Husband's assets | | | | |
| 9 | CPF accounts | \$35,238 | \$35,238.78 | \$35,238.78 |
| 10 | Investments | \$13,068.00 (as at 29 Nov 2022) | \$13,112.75 (as at 31 Jan 2023) | \$13,068 |
| 11 | Bank accounts | \$21,882.00 (as at 12 Dec 2022) | \$16,360.33 (as at 31 Jan 2023) | \$21,882 |
| Total | | | | \$978,737.80 |

4 The parties only dispute the date of the valuation of the assets. I accept those valuations that are closest to the IJ date. For the Wife’s CPF accounts, since the Wife’s valuation is just three months prior to the IJ date, and the Husband’s is about three months after IJ date, I will apply the median. There are minor differences due to rounding and exchange rates. For the former, these are nominal differences and I accept the more exact figures. For the latter, I take average of the two values. As for the joint bank accounts with the Children, since they are jointly held by at least one party, these accounts have to be included in the matrimonial assets as well, unless parties agree otherwise.

5 Next, my decision regarding the rest of the matrimonial assets is as follows:

| S/N | Asset | Wife’s Case | Husband’s Case | Court’s Decision |
|---|--|--------------|------------------------------------|--|
| Assets that are jointly held by Wife and Husband | | | | |
| 1 | Matrimonial home at xx BT (“BT”) | \$5,200,000 | \$5,500,000 | \$5,200,000 |
| 2 | Outstanding loan (mortgage for matrimonial home) | -\$1,669,203 | -\$1,652,304.17 (as at 7 Jan 2023) | -\$1,652,304.17 + \$72,289 + \$13,500 (estimated cash and CPF component paid in 2023) = -\$1,566,515.17 (Estimate of mortgage outstanding as of AM date) |

| Wife's assets | | | | |
|-------------------------|---|--|--|--|
| 3 | Jewelry and watches | - | \$43,650 | \$35,350 (Excluding certain items which are not matrimonial assets) |
| 4 | Refund of sums Wife paid for mortgage of BT | Refund all sums paid by Wife for mortgage repayments from Jan 2022 (when Wife left matrimonial home) to date of division | Operative date to value matrimonial assets is IJ date | -\$7,948 – \$25,119 – \$77,416 = -\$110,483 (Refund all sums Wife paid for mortgage of BT after IJ date) |
| 5 | Severance package Wife received from retrenchment | - | Severance package Wife received would be relevant to the determination of matrimonial assets | \$0 (Not a matrimonial asset even if severance package exists) |
| Husband's assets | | | | |
| 6 | Personal loan from Husband's father | No such loan | -\$30,000 | -\$30,000 (Evidence supports the existence of this loan) |

| | | | | |
|-------|--|--------------|--------------|--|
| 7 | Personal loan from Husband's aunt | No such loan | -\$100,000 | \$0 (Legal fees not claimable from matrimonial assets. Evidence goes against Husband's claims here.) |
| 8 | Unrealised loss from Philip Securities | - | -\$16,165.18 | \$0 (New asset obtained by Husband after IJ date. Losses are his to bear alone.) |
| Total | | | | \$3,528,351.83 |

6 The main asset in dispute between parties is the matrimonial home, BT. I accept the Wife's valuation since it is backed up by a valuation report from a licensed appraiser. In comparison, the Husband's valuation is from a website, SRX, and it is unclear to me how reliable this website is. There is an outstanding mortgage to consider. The mortgage as of 7 January 2023, according to the documents provided by the Husband, is \$1,652,304.17. This needs to be adjusted to account for further payments by the Wife, namely, \$85,789. This is based on the mortgage and payment statements available. At the date of the AM hearing, the outstanding mortgage is about \$1,566,515.17.

7 The Wife wants a refund of what she paid towards the mortgage from January 2022 (after she had left the matrimonial home) to the date of the AM hearing. There is no legal basis for such an order. The default operative date for determining matrimonial assets is the IJ date. There is neither evidence nor law to justify the date of separation by the Wife (in December 2021) as the operative

date. The Wife's claim is based on the notion that the marriage had for all intents and purposes been terminated when she had left the matrimonial home in December 2021 with the Children. Thus, they no longer intended to accumulate matrimonial assets together. Although this may be true in exceptional cases, the parties must show that they had "put an end to the marriage contract" and "no longer intend to participate in the joint accumulation of matrimonial assets" (*WOS v WOT* [2023] SGHCF 36 at [3] citing *ARY v ARX and another appeal* [2016] 2 SLR 686 at [32]).

8 The Wife has only shown that she left the matrimonial home, but has not produced any evidence to show that the indicia of termination were present as at the time she left the matrimonial home in December 2021. Accordingly, it is my view that the operative date for determining the matrimonial assets remains the IJ date. In any event, it is not inequitable for the Wife's further payments to the outstanding mortgage up to IJ date to be counted towards the matrimonial assets because the money, if not paid by the Wife towards the mortgage repayments, remains as her matrimonial assets at IJ date. Payments by her after IJ date should be refunded to her. They were payments towards the reduction of their joint liabilities. Based on the mortgage and payment statements, I assess the refunds to the Wife at \$110,483.

9 The Wife submitted a list of her watches and jewellery, with details of the dates of purchase and cost. Excluding pre-wedding gifts such as her engagement ring and wedding ring, and items bought after the IJ date, the value of the Wife's valuables to be included in the matrimonial assets is \$35,350. The severance package the Wife received after being retrenched (from 1 April 2023), long after IJ date is not part of matrimonial assets.

10 The Husband's disputed assets relate to loans he claims his father and aunt had given him, and unrealised losses from a Philips Security stock portfolio. The Husband has provided evidence of the cheques amounting to \$30,000 corresponding to the renovation loans his father advanced to him. The Wife acknowledges that the Husband had indeed made a payment of \$15,000 towards the renovation of BT. As such, I allow his claim. I disallow the Husband's claim to deduct the \$100,000 loan from his aunt. There is evidence of a bank transfer of \$100,000 from his aunt (on 17 October 2022 which he says was used "towards paying for [his] current expenses, expenses for [the Children] and legal fees for the current proceedings". But it contradicts his claim that "since December 2022, [he had] also begun paying a monthly maintenance of S\$500 for the Children". His lawyer's letter to the Wife (dated 5 December 2022) suggests that before December 2022, he had not contributed to the Children's expenses. Legal fees of matrimonial proceedings should be borne by parties out of their own share of the matrimonial assets after division and not from the matrimonial assets. The alleged expenditure of \$100,000 on personal expenses is not proved. These factors strongly militate against the Husband's claim. The Husband's claim of unrealised losses from a Philips Security stock portfolio of \$16,165.18 has no merit. Based on the transaction history of the Philips Security stock portfolio disclosed in the Husband's first affidavit of assets and means (dated 12 December 2022), \$27,204.42 was only deposited into the account after IJ date (deposited on 27 October 2022). Before that, the account had nominal value. Therefore, this is an asset obtained by the Husband after IJ date. Any gains or losses associated with this stock portfolio are his alone to bear.

11 In summary, the overall value of the matrimonial assets are as follows:

| Subtotal for assets under Wife's name | Subtotal for assets under Husband's name | Subtotal for joint assets |
|--|---|----------------------------------|
| \$808,093.54 | \$40,188.78 | \$3,658,807.31 |
| Total: \$4,507,089.63 | | |

12 The parties dispute their direct financial contributions to the joint assets, the bulk of which comprise BT. The Wife says that she contributed \$1,358,376 and the Husband, \$38,560, to BT. The Husband says that he has contributed \$103,560 compared to the Wife's \$1,298,441.78. The differences arose from disagreement as to mortgage payments and renovation expenses, and also the valuation date for direct financial contributions towards BT.

13 With respect to the former, I agree with the Wife that there is no evidence of the Husband having contributed \$35,000 towards the mortgage payments of BT. The Husband only adduces as evidence a bank statement showing numerous fund transfers, of which, he claims, one of the transfers on 10 November 2017 was a payment to their joint account for the express purpose of mortgage repayment. The bank statement and the fund transfer on 10 November 2017 are ambiguous, and there is no corroborative evidence to support the Husband's claim. I reject his claim.

14 In relation to the payments towards renovation for BT, both the Wife and the Husband claimed to have contributed similar amounts of money (\$35,824 and \$30,000 respectively). However, unlike the Husband, who barely provided any evidence to support his claims (only a cheque to a contractor for \$15,000 and an invoice of \$3,430.42 for kitchen furniture), the Wife has a comprehensive compilation of receipts, invoices and bank statements in

support. Although the Husband may be correct in saying that the Wife's claim for renovation expenses should be reduced to exclude payments for furniture, in my view, the Husband too has not established that the sums he expended were not used for furnishing BT — much less that he had spent \$30,000 on renovations in total. In fact, the sole invoice he submitted is for kitchen furniture. Given the circumstances, I am of the view that it would not be fair to reduce the Wife's contributions towards the renovation expenses that were used to purchase furniture. I allow the Wife's claim for \$35,824 and the Husband's claim for \$18,430.42 (based on the available evidence) in relation to renovation expenses.

15 As for the valuation date of the direct financial contributions towards BT, I agree with the Husband and assess this figure as at IJ date, or the date closest to IJ date. I had (at [8] above) added back the sum of \$110,483 for payments by the Wife towards the outstanding mortgage for BT after IJ date. Using a later date after IJ would effectively be double counting in favour of the Wife. Altogether, I assess the Wife to have contributed \$1,319,723.70 and the Husband to have contributed \$56,990.42 towards BT. Given that BT has increased in value since purchase, I use the net value of BT of \$3,633,484.83 (after subtracting the outstanding mortgage of \$1,566,515.17 from the value of BT at \$5,200,000), and adjust the parties' direct contributions to BT proportionately, to arrive at the adjusted direct contributions of the Wife (\$3,483,073.19) and Husband (\$150,411.64) towards BT.

16 The direct contributions of parties towards the matrimonial assets are thus as follows:

| Asset | Wife's direct contributions | Husband's direct contributions |
|-------------------------------|------------------------------------|---------------------------------------|
| Net value of matrimonial home | \$3,483,073.19 | \$150,411.64 |
| Rest of joint assets | \$12,661.24 | \$12,661.24 |
| Rest of Wife's assets | \$808,093.54 | \$0 |
| Rest of Husband's assets | \$0 | \$40,188.78 |
| Total: | \$4,303,827.97 | \$203,261.66 |
| Ratio: | 95 | 5 |

17 As for the indirect contributions ratio, parties provide different descriptions about each other's role in the marriage. The Wife says that the ratio should be 90:10 in her favour. The Wife says that she bore the burden of most of the family expenses (including the Husband's expenses). She was the primary caregiver for the Children, she had managed BT, and the household. The Wife says that the Husband's contributions were minimal. He would be out "drinking and partying on the pretext of networking for business". The Husband disagrees and says that the ratio should be 70:30 in his favour. He claims to have contributed significantly to the family expenses and made significant non-financial efforts to acquire the matrimonial home. He was running the household and supporting the Wife so that she could focus on her work. He says that he was the primary caregiver of the Children since they were born. The Wife relied entirely on him "to carry out the caregiving duties, manage the household, oversee the helper, purchase the groceries, and send the children to and from their respective enrichment classes, school and other obligations".

18 I do not accept the Husband's account of his indirect contributions to the marriage. There is insufficient evidence to support his claims. Moreover, his

claims are inconsistent with the facts and contradicted by the evidence. First, he has always been running his own businesses throughout the marriage. Shortly after the youngest child was born on 5 October 2017, he incorporated three new ventures in the same month, two of which has since closed. One venture related to investments, another related to a joint venture with a Hong Kong stock brokerage owner, and the last related to a technology startup for queue management services for hospitals. The Wife's version is a more credible fit to the narrative.

19 Second, the Husband's claim that he contributed significantly to the financial aspects of indirect contributions to the marriage is not credible. He started five ventures since the start of the marriage, four have failed, and it does not appear that any of those ventures had ever generated any material income for the Husband. He also concedes that the current remaining venture is "not generating any profits" and that he is "not earning any fixed income from my businesses". And even if he had some income, which is unclear on the evidence, he has not shown evidence that he expended money for family expenses. On the other hand, the Wife has adduced bank statements supporting her expenditure of routine expenses of marriage, and some of the Husband's expenses as well. In fact, after she had moved out of the matrimonial home with the Children, the WhatsApp messages adduced by the Wife shows that the Husband continued to ask her to pay for his expenses. It is undisputed that the Wife had a stable job and income throughout the marriage, and that she was responsible for paying for much of the family expenses. I therefore accept that the Wife had borne the bulk of the family expenses.

20 Contributions the Husband made to the matrimonial home (such as renovation expenses) stemming from money loaned to the Husband by others (e.g. his father) do not count towards indirect contributions because they have

been accounted for in determining the matrimonial assets. The Husband's claim as the main person bearing the expenses of BT from August 2022 onwards, is exaggerated. After the Wife and the Children had moved out of the matrimonial home (in December 2021), the maintenance of BT, and the payment of the utility bills and other household expenses were for himself, and not that of the family, as he was the only one there.

21 Third, from the WhatsApp messages of both the Wife's group chat with her parents, and the group chat with her family and the Husband, it is clear that the Husband was not the primary caregiver of the Children. The grandparents (Wife's parents) were more involved with the day-to-day care of the Children, often at the last minute when the Husband is unavailable. I am of the view that the WhatsApp messages in the various chats show that the grandparents played a greater role than the Husband in taking care of the Children.

22 Fourth, the Husband was away on long overseas holidays during the period between September 2021 and March 2022 by himself. His travels were funded partly by the Wife. The Wife had confronted him on in contemporaneous WhatsApp messages that he had stolen money from her for his travels.

23 Fifth, the Husband wrote to the ministry of education ("MOE") to object to the Wife's enrolment of their younger daughter in a primary school that her older sister is currently studying in, and is near to where the Wife currently lives with the Children. The Husband insisted on sending the younger daughter to another primary school for unmeritorious reasons, such as sending her to a school near BT despite knowing that BT had to be sold. Even after the Wife pleaded with him on many occasions to withdraw his objection, he refused. He used the power of his veto to vent his past frustrations at the Wife, and to pressure her into agreeing to certain terms such as "getting your lawyer to write

to [the court] to agree on alternate week access”. In my view, this episode reveals who was the primary caregiver of the Children.

24 I reject the Husband’s account of having contributed significantly in financial and non-financial ways as indirect contributions to the marriage, to the extent that he would receive a majority of the indirect contributions of the marriage. In my view, the Wife had contributed most if not all of the family expenses during the marriage. She was, and still is, the primary caregiver of the Children since birth. She had been highly involved with running and managing the matrimonial home, until she moved out in December 2021. This was all done whilst she was holding down a full-time job and earning a substantial income to support the family. Nonetheless, I am unable to accept the Wife’s proposed indirect contributions ratio of 90:10. It cannot be disputed that the Husband had spent time (little as it may be) with the Children. He had helped out with some of the management of the household and the matrimonial property. As such, I am of the view that an indirect contributions ratio of 75:25 in favour of the Wife is more appropriate in the present case. Given the direct contributions ratio of 95:5 in favour of the Wife and the indirect contributions ratio of 75:25 in favour of the Wife, the overall division ratio is 85:15 in favour of the Wife. The Wife is thus entitled to \$3,831,026.19 and the Husband to \$676,063.44 as their share of the matrimonial assets.

Maintenance for Children

25 I deal first with the quantum of expenses for the Children, which are as follows:

| S/No. | Expense | Amount |
|--------------------------------------|------------------------------------|---------------|
| Expenses for older daughter | | |
| 1 | School fees | \$6.50 |
| 2 | Books and stationery/subscriptions | \$100 |
| 3 | Vitamins | \$50 |
| 4 | Food | \$200 |
| 5 | Toiletries | \$10 |
| 6 | Clothes/haircut/shoes/uniform | \$83 |
| 7 | Transport/school bus/private car | \$250 |
| 8 | Insurance/medical/therapy | \$1310 |
| 9 | Holiday programs | \$250 |
| 10 | School pocket money | \$37.50 |
| 11 | Extra classes | \$750 |
| 12 | Entertainment/parties/festivities | \$100 |
| | Total | \$3,147 |
| Expenses for younger daughter | | |
| 13 | School fees | \$545.70 |
| 14 | Books and stationery/subscriptions | \$37.50 |
| 15 | Vitamins | \$50 |
| 16 | Food | \$200 |
| 17 | Toiletries | \$10 |
| 18 | Clothes/haircut | \$83 |

| | | |
|----|-----------------------------------|---------|
| 19 | Transport/school bus/private car | \$200 |
| 20 | Insurance/Medical therapy | \$1,310 |
| 21 | Holiday Programs | \$83 |
| 22 | Extra classes | \$1,012 |
| 23 | Entertainment/parties/festivities | \$100 |
| | Total: | \$3,631 |

26 In relation to the Children's expenses claimed by the Wife, I accept generally the figures that the Wife has put forward but adjust them downwards slightly as some of the figures seem excessive. The school fees of the younger daughter, who is entering primary school in January 2024 cannot be \$545.70. In this connection, it must be remembered that the Wife has not made a separate claim for household expenses, the cost of which would be divided equally between her and her two children. I do not accept the Husband's objections to the Children's expenses, which mainly concern the Children's activities like tuition, ballet and music classes. All the Wife has to show is that the expenses for such extra activities are reasonable, and not that the Husband has agreed to them. Although the Husband is not responsible for luxuries the Wife wants for the Children, the activities she has listed are reasonable. I am of the view that \$6,000 per month in total is reasonable.

27 The next issue is the Children's maintenance. The Wife wants the Husband to pay \$1,000 per month for each child, while the Husband says that the Children's maintenance should be \$500 per month in total. The Wife was retrenched earlier this year and is currently unemployed, and the Husband's entrepreneurial efforts have yet to succeed and bear fruit. Counsel for the Husband submits that notwithstanding the Wife's unemployment, the Wife's

earning capacity should be considered in the determination of any apportionment exercise. Since the Wife had a high earning capacity in the past, as compared to the Husband's current meagre earnings from his entrepreneurial efforts, counsel submits that the Wife should be responsible for the bulk of Children's maintenance, with the Husband only being responsible for \$500 per month for both Children.

28 Counsel is partially correct. Both parties' earning capacities need to be taken in account, not just the Wife's. In my view, it is inequitable for the Husband to use his continued unsuccessful entrepreneurial efforts as a reason to be responsible for a smaller share of the Children's maintenance. The Husband is not a homemaker who cannot find full-time employment if he tries harder. Prior to his failed ventures, he was a private banking director, and last earned \$5,500 per month in 2009. The Husband's ability to contribute to the Children's maintenance must be measured against his earning capacity if he were to find full-time employment, just as counsel is asking for me to do with the Wife. There cannot be double standards where the Wife is expected to leave her state of unemployment now to find full-time employment, while the Husband is allowed to continue his unsuccessful entrepreneurial efforts (of more than a decade) and not find full-time employment — this is similar to unemployment. I am thus of the view that the Wife's claim of \$1,000 a month in maintenance for each child, for a total of \$2,000 a month in Children's maintenance is reasonable. She still bears the significantly greater burden of \$4,000 a month, and any extra expenses that may come along in the Children's daily lives. The maintenance for the Children is backdated to IJ date, save that the small sums of maintenance the Husband has occasionally paid to the Wife in goodwill have to be subtracted from the backdated maintenance payments.

