IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2023] SGHCF 9

District Court Appeal No 42 of 2022

Between

VOW

… *Appellant*

And

VOV

… *Respondent*

JUDGMENT

[Family Law — Matrimonial assets]
[Family Law — Maintenance]

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v
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9 November, 8 December 2022, 20 January 2023

3 March 2023 Judgment reserved.

Teh Hwee Hwee JC:

Introduction

1 This is an appeal against the decision of the learned District Judge ("DJ") in FC/D 580/2020. The appeal concerns the issue of division of matrimonial assets and maintenance for the two children from the marriage.

Background

2 The appellant wife (the "Wife") and the respondent husband (the "Husband") were married on 3 June 2006 in Singapore.[1] The Wife was 39 years old when the Statement of Claim for Divorce was filed in 2020; the Husband

[1] Record of Appeal ("ROA") Vol 2 at p 10.

was 42 years old.[2] The Husband was a French citizen and a Singapore permanent resident while the Wife was a Singapore citizen.[3] Shortly after they were married, the Wife left her previous job as an air stewardess[4] and the parties moved to Australia in August 2006 for the Husband's work as a consultant.[5] In Australia, the Wife managed to find work at a call centre.[6] Slightly over a year later, in November 2007, the parties relocated back to Singapore when the Husband found work as a project manager in Singapore.[7] Upon the return to Singapore, the Wife did not work, and instead pursued a degree in Banking and Finance with the University of London, which the Husband asserts was funded by him.[8] The Wife returned to the workplace around August 2010 and has been in continuous employment since.[9] Both parties have done well professionally. As of 2020, the Husband held a senior position in a company as a solution architect[10] while the Wife was a sales consultant in an insurance brokerage company.[11] Taking into consideration each party's Notice of Assessment for 2019, 2020 and 2021, the Husband's average monthly salary was $18,877 and the Wife's average monthly salary was $15,249.[12] The parties' matrimonial assets were sizable, and comprised, amongst other things, a matrimonial home (a condominium apartment), bank accounts, an investment portfolio largely

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2 ROA Vol 2 at p 10.

3 *VOV v VOW* [2021] SGFC 10 at [3].

4 Appellant's Case ("AC") at para 59; Respondent's Case ("RC") at p 38.

5 RC at para 48 and p 38.

6 AC at para 59; RC at p 38.

7 RC at para 48 and p 38.

8 ROA Vol 3A at p 103.

9 ROA Vol 3C at pp 35–39.

10 ROA Vol 3A at p 161; ROA Vol 3H at pp 67 and 554; RC at pp 46–47.

11 ROA Vol 3A at p 5.

12 ROA Vol 1 at p 97.

held in the Wife's name, insurance policies, and Central Provident Fund ("CPF") savings.[13]

3 The parties have two children from the marriage, born in 2012 and 2014.[14] The children attended primary school in Singapore.[15] By July 2017, the marriage had started to break down.[16] The Husband subsequently moved out of the matrimonial home with the children in January 2020,[17] while the Wife remained in the matrimonial home.[18]

4 Interim Judgment ("IJ") was granted on 3 September 2020.[19] On 2 November 2020, the learned DJ ordered the Wife to pay interim maintenance for the two children.[20] The divorce proceedings were contentious. On 14 January 2020, the Husband filed an application for a Personal Protection Order ("PPO") against the Wife for his own benefit and on behalf of the two children, on the ground of family violence.[21] On 12 October 2020, after a hearing where the Husband withdrew the application for a PPO for himself but continued with his PPO application for the two children, a PPO was granted against the Wife for the protection of the two children.[22]

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13 ROA Vol 1 at pp 66–79.

14 ROA Vol 2 at p 11.

15 ROA Vol 4 at p 173.

16 *VOV v VOW* [2021] SGFC 10 at [4].

17 AC at para 72.

18 RC at paras 18 and 44vi.

19 ROA Vol 1 at pp 108–109.

20 ROA Vol 3I at p 256.

21 RC at para 3i; *VOV v VOW* [2021] SGFC 10 at [4]–[5].

22 RC at para 3i; *VOV v VOW* [2021] SGFC 10 at [5].

Decision of the learned DJ

5 The ancillary matters ("AM") were heard by the learned DJ on 3 November 2021, 18 January 2022 and 11 February 2022. The learned DJ issued her judgment on 17 March 2022 and ordered that the Wife and Husband have joint custody of the children, with sole care and control to the Husband.[23] The learned DJ also granted the Wife access to the children.[24]

6 The learned DJ determined the total value of the pool of matrimonial assets to be $2,010,487.47.[25] Applying the approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*"), she found the ratio of the parties' direct contributions to be 45 (Husband) : 55 (Wife) and the ratio of the parties' indirect contributions to be 60 (Husband) : 40 (Wife), which gave an average ratio of 52.5 (Husband) : 47.5 (Wife).[26] Thereafter, the learned DJ adjusted the average ratio to 55 (Husband) : 45 (Wife) in consideration of the needs of the children and the Wife's rent-free occupation of the matrimonial home.[27]

7 To give effect to the final ratio, the learned DJ ordered the Wife to transfer (other than by way of sale) her share and interest in the matrimonial home to the Husband, in consideration of the Husband paying into her CPF account, as a partial refund, a sum of $57,385. The moneys in the parties' joint bank account were to be transferred to the Husband and the account closed

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23 ROA Vol 1 at p 105.

24 ROA Vol 1 at p 105.

25 ROA Vol 1 at p 79.

26 ROA Vol 1 at pp 85–87.

27 ROA Vol 1 at p 87.

thereafter. The parties were to retain the assets held in their respective sole names.[28]

8 The learned DJ also determined the amount of maintenance for the children, and ordered the parties to contribute in proportion to their earnings.[29] The expense attributable to the children for the rental apartment that they shared with the Husband was included in the amount of maintenance payable by the Wife until such time that the matrimonial home was handed over to the Husband.[30]

Issues on appeal

9 The Wife raises the following issues on appeal:[31]

(a) whether there were double counting or other errors in the computation of the pool of matrimonial assets;

(b) whether the learned DJ erred in her division of the matrimonial assets in the ratio of 55 : 45 in favour of the Husband;

(c) whether the learned DJ erred in her division of the matrimonial assets in ordering the Husband to retain the matrimonial home after paying $57,385 to the Wife; and

(d) whether the amount of maintenance for the children ordered by the learned DJ to be paid by the Wife was reasonable.

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28 ROA Vol 1 at pp 87–88.

29 ROA Vol 1 at p 97.

30 ROA Vol 1 at pp 98 and 106–107.

31 AC at para 14.

Errors in determining and valuing matrimonial assets

10 The learned DJ used the IJ date as the operative date for determining the assets that fell within the pool of matrimonial assets, and the closest possible date to the AM hearing as the operative date for valuing the assets, except for CPF and bank account moneys, which were valued on the date of the IJ.[32] This approach accords with the authorities (*ARY v ARX and another appeal* [2016] 2 SLR 686 at [31]; *TND v TNC and another appeal* [2017] SGCA 34 at [19]; and *UBD v UBE* [2017] SGHCF 14 at [12]–[14]) and is not disputed on appeal. In summary, the learned DJ found that the matrimonial pool comprised:[33]

(a) in joint names: a matrimonial home and a joint bank account;

(b) in the Husband's sole name: Bank accounts, CPF savings, an investment account and insurance policies; and

(c) in the Wife's sole name: Bank accounts, CPF savings, insurance policies and investments in equities and cryptocurrencies.

Some of the assets listed above, all of which are in the Wife's sole name, are in contention in this appeal.

Parties' cases on appeal

11 In the Appellant's Case, the Wife raises the issue of "[w]hether there was double counting or other errors in the assets computed by the [l]earned

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32 ROA Vol 1 at p 66.

33 ROA Vol 1 at pp 66–79.

DJ".[34] The Wife contends that "some double counting occurred in this case".[35] She further contends that "[e]ven more egregious" is the fact that some of the equity investments that the learned DJ counted as matrimonial assets held in the Wife's sole name were only acquired after the IJ, and so should not have been included in the learned DJ's computation.[36] In particular, the Wife contends that errors were made in respect of the ten assets tabulated in Table 1:

Table 1

S/No	Description	Value of Asset (in Singapore Dollars)
1.	Cash in Bank Citibank Global Foreign Currency	$7,918.33
2.	Cash in Bank Citibank Step-Up	$30,955.76
3.	Cash in Bank CIMB Fixed Deposit Account	$50,927.53
4.	Interactive Brokers Account	$9,982.80
5.	Tiger Brokers Account	$85,172.99
6.	Tokenize Exchange Account	$12,168.90
7.	Blockfi Account	$69,594.60

[34] AC at para 14(a).

[35] AC at para 19.

[36] AC at para 21.

8.	Binance Account	$8,343.99
9.	Insurance - Tokio Marine	$2,952.61
10.	Insurance - Manulife	$5,350.69

12 The Wife contends that:

(a) In relation to Items 1 and 2 – moneys from the Citibank Global Foreign Currency Account (Item 1) were transferred into the Citibank Step-Up Account (Item 2).[37] There was therefore a double-counting error.

(b) In relation to Items 3 to 6 – moneys from the CIMB Fixed Deposit Account (Item 3) were used to fund the investments in the Interactive Brokers Account, the Tiger Brokers Account and the Tokenize Exchange Account (Items 4 to 6).[38] There was therefore a double-counting error. In addition, the Tiger Brokers Account (Item 5) and the Tokenize Exchange Account (Item 6) did not exist as at the IJ date.[39]

(c) In relation to Items 7 and 8 – the Blockfi Account (Item 7) and the Binance Account (Item 8) both did not exist as at the IJ date.[40]

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37 AC at para 23 (S/Nos 1 and 2 in table).

38 AC at para 23 (S/Nos 3 to 6 in table).

39 AC at para 23 (S/Nos 5 and 6 in table).

40 AC at para 23 (S/Nos 7 and 8 in table).

(d) In relation to Items 9 and 10 – the insurance policies were valued using the wrong date. The Tokio Marine insurance policy (Item 9) should be attributed a lower value of $1,797.64, with the valuation date being 29 September 2020.[41] The Manulife insurance policy (Item 10) should be attributed a value of $2,724, with the valuation date being 9 September 2020.[42]

13 Therefore, the Wife seeks to exclude Items 1 and 4 to 8 from the pool of matrimonial assets, and to attribute lower values to Items 9 and 10.[43] After re-calculation, the Wife contends that the actual value of the assets in her sole name, which constitute part of the pool of matrimonial assets, should be $650,277.63.[44]

14 The Wife relies on Rule 828(4)(*b*) of the Family Justice Rules 2014 ("FJR 2014") to support her contention that as long as any new argument sought to be raised on appeal is mentioned clearly in the appellant's case, the appellate court can grant leave for the new point to be argued.[45] She also relies on the cases of *BOR v BOS and another appeal* [2018] SGCA 78 ("*BOR v BOS*") and *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2018] 1 SLR 76 ("*Grace Electrical*") which, the Wife submits, support the proposition that "counsel are always allowed to refine and present new arguments on appeal, as long as these are substantiated by existing facts".[46] The Wife does not seek to

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41 AC at para 23 (S/No 9 in table).

42 AC at para 23 (S/No 10 in table).

43 AC at para 23 (penultimate row in table).

44 AC at para 23 (final row in table) and para 67.

45 Appellant's Written Submissions dated 23 November 2022 ("AWS") at paras 8–10.

46 AWS at paras 2 and 14–15.

tender any fresh evidence on appeal. Insofar as the position that the Wife takes departs from that which she had taken in the third and final Joint Summary of Relevant Information ("Joint Summary"), which was signed by the Wife's former solicitors on 2 November 2021 and the Husband's solicitors on 26 November 2021[47] and submitted to the court for the AM hearing, the Wife argues that the Joint Summary is simply a procedural tool designed to assist the court,[48] and that the parties should not be "held too strictly to what is argued or not argued in the Joint Summary".[49]

15 The Husband contends that the values of eight out of the ten assets in Table 1 were submitted by the Wife in the third and final Joint Summary and repeated at the AM hearing.[50] The documents that the Wife relies on in this appeal to make her case for the alleged double counting and other errors were already before the learned DJ.[51] Those figures earlier submitted by the Wife in the proceedings below were the ones that the learned DJ had placed reliance on when determining the value of those assets.[52] As the Wife's former solicitors had signed the third and final Joint Summary and acknowledged that the parties would be bound by the positions stated in the Joint Summary, the Husband argues that the Wife should be held to her position.[53]

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47 ROA Vol 3D at p 192.

48 AWS at para 27.

49 AWS at para 26.

50 RC at para 30(1).

51 RC at para 30(3).

52 RC at para 30(2).

53 RC at paras 15–16, 25–26 and 37–40.

16 The Husband further argues that in relation to the disputed Tokenize Exchange Account, Blockfi Account and Binance Account (Items 6–8 in Table 1), the Wife has adduced insufficient evidence to prove that these assets were non-existent as at the IJ date.[54] In relation to the disputed insurance policies (Items 9 and 10 in Table 1), the Husband argues that the learned DJ's valuation ought to be affirmed as that valuation was based on a date that is as close to the AM date as possible.[55]

Analysis

17 On the issue of whether an appellant should be allowed to raise new points on appeal which differ from the position the appellant took in the court below, the Court of Appeal held that there is no legal impediment as such, even if those points contradict the appellant's pleaded case. Rather, the court would carefully consider whether to grant leave to the appellant to introduce new and even contradictory points on appeal, having regard to the following factors (*BOR v BOS* at [36], citing *Grace Electrical* at [36] and [38]):

(a) the nature of the parties' arguments below;

(b) whether the court had considered and provided any findings and reasoning in relation to the new point;

(c) whether further submissions, evidence, or findings would have been necessitated had the new points been raised below; and

(d) any prejudice that might result to the counterparty in the appeal if leave were to be granted.

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54 RC at paras 33–35.

55 RC at para 36.

18 The Court of Appeal held in another case that there is a requirement that "leave to introduce a new point be sought and obtained, and that the relevant party must clearly state in its case that it is applying for such leave" (*SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 ("*SGB Starkstrom*") at [34]). In that case, the appellant sought to submit on the doctrine of substantive legitimate expectations before the Court of Appeal, when this doctrine was not raised in the court below. The Court of Appeal noted that the appellant did not comply with the requirement to state in its case that it is applying for leave to introduce the new point, but nonetheless held that it was clear that the parties had notice of the new issues, and the appellant was therefore allowed to attempt to raise the new point (*SGB Starkstrom* at [34]).

19 The holdings of the Court of Appeal in *Grace Electrical* and *SGB Starkstrom* were made in the context of considering O 57 r 9A(4) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) as in force immediately before 1 April 2022 ("ROC 2014"). As O 57 r 9A(4)(*b*) of the ROC 2014 is *in pari materia* with Rule 828(4)(*b*) of the FJR 2014, the holdings with respect to O 57 r 9A(4) of the ROC 2014 apply with equal force here.

20 In the present appeal, the Wife relies on Rule 828(4)(*b*) of the FJR 2014 in responding to the Husband's objections to her contentions on the items in Table 1. The Wife argues that the items in Table 1 are new points that she is entitled to raise on appeal. It is, however, not stated in the Appellant's Case that the Wife is applying for leave to introduce these points. As the Husband raises no issue on that account, the Wife presents her arguments for the new points without any objection on that basis from the Husband. As mentioned at [15]–[16] above, the Husband's main contention in relation to the new points is that the Wife should be held to the position that she took in the third and final Joint

Summary, and that in any event, the Wife is unable to discharge her burden of proving the new points.

21 I first turn to examine the evidence that the Wife relies on to advance her arguments in relation to the new points before turning to make some observations regarding a party deviating from his or her stated position in the Joint Summary which the court relied on in making the AM orders.

22 For a start, I note that all the ten disputed assets in Table 1 were included in the third and final Joint Summary submitted for the AM hearing as part of the pool of matrimonial assets for division.[56] In addition, both the Husband's solicitors and the Wife's former solicitors had signed on the Joint Summary immediately below the lines which state, "The [Plaintiff/Defendant] accepts the Joint Summary to be [his/her] binding position."[57] On the same page in the Joint Summary, there is text which further reads:

> The parties understand that the Court will rely on the parties' respective positions in this Joint Summary when determining the ancillary matters. Where this Joint Summary discloses material facts or questions of law which are agreed between the parties, the Court may make such orders on the agreed facts or questions of law.

23 Furthermore, in the present case, the learned DJ had relied on *both* the Joint Summary and counsel's submissions in coming to her decision at the AM hearings, as follows:[58]

> (a) In relation to Items 1 and 2 in Table 1 (ie. the cash in the Citibank Global Foreign Currency Account and the Citibank Step-Up Account),

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56 ROA Vol 3D at pp 156–226.

57 ROA Vol 3D at p 192.

58 ROA Vol 1 at pp 11, 23 and 35.

the parties canvassed the issue of whether the moneys in the account in Item 1 (Citibank Global Foreign Currency Account) were transferred into the account in Item 2 (Citibank Step-Up Account), and both the Husband's counsel and the Wife's former counsel agreed at the AM hearing before the learned DJ that the balance in Item 1 was $0.[59] As noted in Table 1 above, the learned DJ attributed a value of $7,918.33 to Item 1 and $30,955.76 to Item 2.

(b) In relation to Item 3 (CIMB Fixed Deposit Account), the Wife asserted in the third and final Joint Summary that it should have a $0 value, while the Husband asserted that it should have a value of $50,927.53.[60] However, at the AM hearing, when the Wife's former counsel was queried on the Wife's position on this account, he stated that he "do[es] not know if it should go into the pool or should form part of the investment asset".[61] As noted in Table 1 above, the learned DJ attributed a value of $50,927.53 to Item 3.

(c) In relation to Item 4 (Interactive Brokers Account), the Wife gave two values for this account in the third and final Joint Summary – a value of $9,982.80 with valuation date of 31 December 2020 and a $0 value with valuation date of October 2021.[62] The Husband in the third and final Joint Summary asserted that the account had a value of $9,982.80.[63] At the AM hearing, the Wife's former counsel was queried about the Wife's position on this asset, and he was unable to produce

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59 ROA Vol 1 at p 41.

60 ROA Vol 3D at p 170.

61 ROA Vol 1 at p 42.

62 ROA Vol 3D at p 172.

63 ROA Vol 3D at p 172.

documentary evidence to justify the Wife's attribution of a $0 value to this account.[64] As noted in Table 1 above, the learned DJ attributed a value of $9,982.80 to Item 4.

(d) In relation to Item 5 (Tiger Brokers Account), the Husband in the third and final Joint Summary gave this account a value of $85,172.99 (in SGD), as converted from the US$63,194.10 in the account.[65] The Wife in the third and final Joint Summary asserted that this account had a value of $63,194.10 (in SGD) as of October 2021, but the Husband pointed out that the Wife's former counsel had inadvertently stated the currency to be SGD when it was USD.[66] As noted in Table 1 above, the learned DJ attributed a value of $85,172.99 (in SGD) to Item 5.

(e) In relation to Item 6 (Tokenize Exchange Account), both the Husband and Wife attributed a value of $12,168.90 to this account in the third and final Joint Summary.[67] As noted in Table 1 above, the learned DJ attributed a value of $12,168.90 to Item 6.

(f) In relation to Item 7 (Blockfi Account), the Husband in the third and final Joint Summary gave this account a value of $69,594.60 (in SGD), as converted from the US$51,635.71 in this account.[68] The Wife asserted that this account had a value of $51,635.71 (in SGD), but the Husband pointed out that the Wife's former counsel had inadvertently

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64 ROA Vol 1 at p 43.

65 ROA Vol 3D at pp 172–173.

66 ROA Vol 3D at pp 172–173.

67 ROA Vol 3D at p 173.

68 ROA Vol 3D at pp 173–174.

stated the currency to be SGD when it was USD.[69] As noted in Table 1 above, the learned DJ attributed a value of $69,594.60 (in SGD) to Item 7.

(g) In relation to Item 8 (Binance Account), the Husband in the third and final Joint Summary gave this account a value of $8,342.85.[70] The Wife in the third and final Joint Summary gave two different values to this account – a value of $8,343.99 as of 17 May 2021, and a value of $1.14 as of October 2021.[71] At the AM hearing, the Wife's former counsel conceded that $8,343.99 was the figure attributable to this account based on the documents before the court.[72] As noted in Table 1 above, the learned DJ attributed a value of $8,343.99 to Item 8.

(h) In relation to Items 9 and 10 (the Tokio Marine and Manulife insurance policies), the Husband and the Wife attributed the same values to these assets ($2,952.61 and $5350.69 for the two policies respectively, with a minor typographical error in the Wife's figure) in the third and final Joint Summary.[73] As noted in Table 1 above, the learned DJ attributed a value of $2,952.61 and $5,350.69 to Items 9 and 10 respectively.

24 From the foregoing, it can be seen that in relation to Items 1 and 2, the parties agreed that Item 1 should be given a value of $0 as the funds in Item 1 were transferred into Item 2. It is unclear why the learned DJ did not factor it

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69 ROA Vol 3D at pp 173–174.

70 ROA Vol 3D at p 174.

71 ROA Vol 3D at p 174.

72 ROA Vol 1 at p 45.

73 ROA Vol 3D at 178.

into her decision. But other than for Item 1, the learned DJ was not provided with clear submissions or evidence as to why any of the other items should not be included in the pool of matrimonial assets. The learned DJ had also attributed to the said assets values with the parties' inputs. This ought to be made clear as it is not obvious from the Appellant's Case that any of the "errors" arose because the Wife is taking a different position on appeal relative to the position that she took in the proceedings below. The Wife did, however, state in the Appellant's Case that the issues were "not really flagged to the Learned DJ".[74]

Concessions by the Parties

25 At the hearing before me on 8 December 2022, both the Wife and the Husband made various concessions in respect of the assets in Table 1.

(a) The Husband agreed with the Wife that:[75]

(i) Item 1 should be excluded from the pool of matrimonial assets, while Item 2 should remain, as there was double-counting, since the moneys in the account in Item 1 were transferred to the account in Item 2.

(ii) Items 4 and 5 should be excluded from the pool of matrimonial assets, while Item 3 should remain. In relation to Items 3 and 4, there was double-counting, since a portion of the moneys in the account in Item 3 was used to purchase the investment in Item 4.

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74 AC at para 24.

75 Minutes of hearing on 8 December 2022.

(b) The Wife withdrew her appeal in respect of Items 9 and 10, as she had made an error in the identification of the relevant date for the valuation of the assets.[76] I note that the Wife's concession was rightly made, as the correct method for valuing insurance policies is to take the surrender value of the insurance policies as at the date of the ancillary matters hearing, or any other date agreed by the parties (*UTS v UTT* [2019] SGHCF 8 at [19]).

26 The court will step in to correct computational errors in appropriate instances, particularly where both parties are agreed that such errors exist (*TOT v TOU and another appeal and another matter* [2021] SGHC(A) 9 at [3]). Accordingly, I order Items 1, 4 and 5 to be excluded from the pool of matrimonial assets as agreed by the parties, and Items 2, 3, 9 and 10 are to stand as ordered by the learned DJ.

27 I turn to deal with Items 6, 7 and 8, which remain disputed.

Disputed Assets

28 I first examine the evidence that the Wife relies on before turning to make some observations regarding a party deviating from the position in the Joint Summary.

Analysis

(1) Item 6: Tokenize Exchange Account

29 For Item 6, the Wife's Tokenize Exchange Account, the Wife asserts on appeal that: (a) the account did not exist as at the IJ date; and (b) there was

[76] Minutes of hearing on 8 December 2022.

double counting in that moneys from the CIMB Fixed Deposit Account (Item 3 in Table 1) were used to fund the Tokenize Exchange Account.[77]

30 In relation to the contention that the Tokenize Exchange Account was created after the IJ date, the only piece of evidence the Wife refers to is an e-mail from Tokenize dated 3 December 2020 which states:[78]

> …
>
> Your identity verification is successful. Your membership has been updated to **Normal**.
>
> Deposit your funds to buy cryptocurrencies. Here is a guide.
>
> …
>
> [emphasis in the original]

31 The e-mail only shows that the membership of the account holder had been updated to "Normal". That appears to suggest that the membership existed before the date of the e-mail and was updated on the date of the e-mail. It is, however, unclear what the status of the account was before the "update" and what it means to have one's membership updated to "Normal". More specifically, there is no indication that the account did not exist as at the date of the IJ, as alleged by the Wife. There is also no evidence on the circumstances under which such an email would be sent by Tokenize Exchange and what it means insofar as the status of the membership is concerned.

32 In relation to the contention that the Tokenize Exchange Account was funded using moneys from the CIMB Fixed Deposit Account (Item 3 in Table 1), the Wife asserts that the following transactions took place:[79]

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77 AC at para 23 (S/No 6 in table).

78 ROA Vol 3D at p 629.

79 AC at para 23 (S/No 3 in table).

(a) The fixed deposit in CIMB Fixed Deposit Account amounting to $50,927.53 was redeemed on 2 October 2020.

(b) The $50,927.53 was transferred to a CIMB FastSaver Account, then to a CIMB StarSaver Account, and then to a Citibank Step-Up Account.

(c) On 16 November 2020, $10,000 was transferred from the Citibank Step-Up Account to the Wife's DBS MyAccount.

(d) From the DBS MyAccount,

(i) $5,000 was transferred into the Tokenize Exchange Account on 13 December 2020; and

(ii) $5,000 was transferred into the Tokenize Exchange Account on 22 December 2020.

33 After considering the documents presented by the Wife, I find that the Wife did not adduce sufficient evidence necessary to support her assertion that a total of $10,000, traceable from the CIMB Fixed Deposit Account, was transferred into the Tokenize Exchange Account. The Wife has produced a bank statement dated 31 December 2020 for her DBS MyAccount, which shows a $5,000 withdrawal on 13 December 2020 and a $5,000 withdrawal on 22 December 2020 for "Investment & Securities",[80] and has relied on that bank statement as proof of the source of the funds in her Tokenize Exchange Account. There is, however, no document from DBS to show that the funds were transferred to the Tokenize Exchange Account. Given the Wife's somewhat prolific investment activities, it is unclear whether the moneys from the DBS

[80] ROA Vol 3A at pp 50–51.

MyAccount withdrawn for "Investment & Securities" had been used to fund other investments and buy other securities, or the ones in the Tokenize Exchange Account. I am therefore unable to conclude, from the evidence available, that the Wife's Tokenize Exchange Account was funded using moneys from the CIMB Fixed Deposit Account (Item 3 in Table 1).

(2) Item 7: Blockfi Account

34 For Item 7, the Wife's Blockfi Account, the Wife refers to her Blockfi Account statement for January 2021[81] and what appears to be transaction records.[82] According to the Wife, a comparison of the sums in the account statement against those in the transaction records, as well as reference to the transaction dates in the transaction records, gives rise to an inference that the transactions started only shortly before January 2021, and therefore the account was opened after the IJ date, which was 3 September 2020.

35 I find the evidence to be similarly lacking. The transaction records and statement from Blockfi show that there were transactions in January 2021. Nowhere in the Blockfi Account statement for January 2021 does it indicate that the Blockfi Account was opened only in January 2021. Similarly, while the transaction records may indicate that there were transactions involving the Blockfi Account in January 2021, the transaction records do not state that there were no transactions involving the Blockfi Account before January 2021. It is incumbent on the Wife to produce proper evidence, such as a confirmation or statement to prove what seems to be a straightforward matter of when the Blockfi Account was opened. The Wife did not produce such evidence.

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81 ROA Vol 3D at p 630.

82 ROA Vol 3D at pp 625–628.

(3) Item 8: Binance Account

36 For Item 8, the Wife's Binance Account, the Wife refers to an e-mail dated 20 January 2021 from Binance which states:[83]

> …
>
> Your Advanced Verification has been approved. Your Binance account can now:
>
> Withdraw cryptocurrency up to a 100 BTC value per day. Buy crypto instantly …
>
> To further increase these account limits, you can perform Address Verification by …

The Wife also points to what appears to be records of her transactions with Binance.[84]

37 I also view these documents as insufficient evidence to prove that the Binance Account did not exist as at the date of the IJ and was not a matrimonial asset. The e-mail from Binance does not indicate that the Binance account did not exist as at the IJ date. All the e-mail shows is that the account holder's "Advanced Verification" had been approved and that the Binance account had the capabilities listed. In fact, the existence of an "Advanced" verification suggests that there may well be another verification status that had already existed before. As for the transaction records, while they may indicate that there were transactions involving the Binance account in March and April 2021, the transaction records do not state that there were no transactions involving the Binance Account before then.

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83 ROA Vol 3D at p 707.

84 ROA Vol 3D at p 628.

38 Having examined the available evidence, I find no reason to disturb the learned DJ's decision in holding that the accounts in Items 6, 7 and 8 in Table 1 were matrimonial assets, with the values attributed to them by the learned DJ.

The Joint Summary

39 My evaluation of the evidence in the section above is sufficient for disposing the appeal in respect of the disputed assets, but it is apposite that I make some observations here on the use of the Joint Summary in the determination of ancillary matters.

40 The arguments of the Wife in relation to the Tokenize Exchange Account and Blockfi Account (Items 6 and 7 in Table 1) are not entirely "new points" as such. In her affidavit filed on 9 June 2021 in response to an order for discovery, the Wife stated that these accounts were opened in December 2020.[85] The Wife, however, took another position in the third and final Joint Summary that was submitted to the court[86] and at the AM hearing before the learned DJ.[87] At the AM hearing, the court explicitly asked the Wife's former counsel to articulate the Wife's position on the Tokenize Exchange Account and Blockfi Account, and said counsel did not dispute that the Tokenize Exchange Account and Blockfi Account should be included in the pool of matrimonial assets; instead, he explicitly confirmed that they should be valued at $12,168.90 and $69,594.60 respectively.[88] In relation to the Binance Account (Item 8 in Table 1), from the third and final Joint Summary[89] and the submissions of the

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85 ROA Vol 3D at p 430.

86 ROA Vol 3D at pp 173–174.

87 ROA Vol 1 at pp 44–45.

88 ROA Vol 1 at pp 44–45.

89 ROA Vol 3D at p 174.

Wife's former counsel at the AM hearing,[90] the dispute then was over the quantification of the value of the account, instead of whether the account existed as of the IJ date.

41 It has been noted above, at [22], that the parties acknowledge the Joint Summary to set out their "binding position". The statement, "[t]he [Plaintiff/Defendant] accepts the Joint Summary to be [his/her] binding position", was inserted into the Joint Summary form through Amendment No. 2 of 2020 to the Family Justice Courts Practice Directions, which amended the form prescribed by Amendment No. 1 of 2016. The fact that the Joint Summary involves an acceptance by the parties that it represents his or her binding or final position has been acknowledged by the General Division of the High Court (see, for example, *VPH v VPI* [2021] SGHCF 22 at [14]; *WAS v WAT* [2022] SGHCF 7 at [3]).

42 The Joint Summary facilitates the fair disposal of the disputes between the parties and serves to avoid protracted litigation and unnecessary delays. The parties are put on ample notice by the words on the face of the Joint Summary that the position they take will be relied upon by the court in coming to its decision. Every effort should be made by the parties and their counsel to ensure that the Joint Summary is clear and accurate. This is so that each party will be able to treat the position stated by the other party as the final position and respond to it as such. The court will, in turn, consider the positions taken by the parties and arrive at a decision in reliance on the Joint Summary. This whole process is aimed at helping the parties save costs and time, and at making the best use of scarce judicial resources and public moneys to achieve a fair outcome in every case. In the final analysis, it is in the interests of the parties

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90 ROA Vol 1 at p 45.

and their families to put an end to their differences without unnecessary delay and litigation. Therefore, where the parties have stated their binding positions in the Joint Summary and the court has relied on those positions, there is a strong reason to hold the parties to their signed binding positions (as modified or supplemented by any considered positions taken at the AM hearing) in the interests of certainty and finality. While an appellate court, as noted above at [17]–[19], may allow new points to be raised on appeal in an appropriate case, even if the points represent a substantial departure from the position taken below, the party who has been granted leave to raise the new points must still address the issue of why the party should be allowed to deviate from a signed binding position taken in the Joint Summary. Departures from the Joint Summary that lead to re-litigation will otherwise be treated with reservation by the court.

43 In this case, the Wife did not adequately explain why she is taking a different position from that taken in the third and final Joint Summary for Items 6, 7 and 8 in Table 1. My decision to affirm the learned DJ's decision with respect to those disputed items is therefore further fortified as the Wife did not offer any cogent reason to persuade the court that she should not be held to the binding position signed by her former solicitors.

44 To summarise, the learned DJ's decision in respect of Items 1 to 10 remains undisturbed, save that Items 1, 4 and 5 are to be taken as personal assets of the Wife and excluded from the pool of matrimonial assets by consent of the parties. The total value of Items 1, 4 and 5, as tabulated in Table 1 and as determined by the learned DJ,[91] is $7,918.33 + $9,982.80 + $85,172.99 = $103,074.12. The learned DJ had determined the value of the Wife's assets that

[91] ROA Vol 1 at pp 75–76.

constituted part of the pool of matrimonial assets to be $847,190.90. After deduction of the values of Items 1, 4 and 5, the correct sum for the Wife's assets that constitute part of the matrimonial pool is $744,116.78.

Ratio for division of the matrimonial assets

45 I turn to the issue of the division of the matrimonial assets.

Decision below

46 At the AM hearing, the parties agreed to using the structured approach for division of matrimonial assets as outlined in the case of *ANJ v ANK*.[92] The learned DJ determined the parties' direct contributions to the matrimonial assets in the following manner, with the values as reproduced below:[93]

Contribution	**Amount from Husband**	**Amount from Wife**
Matrimonial Home	$475,260	$267,334
BOC multi-currency account	$792.78	$339.77
Personal Assets	$419,569.60	$847,190.90
Total	$895,622.38 (45%)	$1,114,864.67 (55%)

47 As for the parties' indirect contributions, the learned DJ found that the Husband paid for the majority of the family's expenses for the larger part of the

92 ROA Vol 1 at p 79.

93 ROA Vol 1 at pp 83–85 (working comments of the learned DJ omitted).

marriage before the parties separated.[94] Also, after the separation and before the interim maintenance order was made, the Husband bore all the expenses for the children.[95] As for the indirect non-financial contributions, the learned DJ found that the parties probably did share responsibility for the children before the separation, but after the separation, it was the Husband who had made the major indirect non-financial contributions.[96] Taking the above into consideration, and considering the length of the marriage, the learned DJ determined the appropriate ratio for indirect contributions to be 60 : 40 in favour of the Husband.[97]

48 The learned DJ thereafter adjusted the average ratio of the direct and indirect contributions by adding 2.5% in the Husband's favour, to 55 (Husband) : 45 (Wife) in consideration of the needs of the children of the marriage, as well as the fact that the Wife has had rent-free occupation of the matrimonial home, as follows:[98]

	Husband	**Wife**
Direct Contributions	45%	55%
Indirect Contributions	60%	40%
Average Ratio	52.5	47.5

94 ROA Vol 1 at pp 81 and 86.

95 ROA Vol 1 at p 86.

96 ROA Vol 1 at p 86.

97 ROA Vol 1 at p 86.

98 ROA Vol 1 at p 87.

Adjustment	2.5%	-2.5%
Final Ratio	55	45

Parties' cases on appeal

49 The Wife argues that the learned DJ erred in her determination of the ratio for division of the matrimonial pool by placing excessive weight on (a) the Husband's indirect financial contributions; and (b) the Husband taking over the role as primary caregiver from January 2020 onwards.[99]

50 In terms of indirect financial contributions, the Wife contends that although the family's expenses, such as "fixed expenses" like tuition and school fees, were paid from a DBS joint account that was mainly contributed to by the Husband,[100] she paid for "variable expenses" such as dining, outings and transport when the children were out with her.[101] Further, she bore expenses such as the domestic helper's salary, groceries, family holiday expenses and expenses related to the children's needs.[102] The Wife also contends that she made greater indirect non-financial contributions for almost 14 years from the time the parties were married in June 2006. According to the Wife, the children were primarily under her care prior to January 2020, and she took on the bulk of the household chores from the time that the parties were married until the time that the first

99 AC at para 51.

100 AC at para 53.

101 AC at para 54.

102 AC at para 55.

child was born.[103] In summary, the Wife argues that at least 60% of indirect contributions should be attributed to her.[104]

51 Additionally, the Wife argues that the adjustment of 2.5% made by the learned DJ was "wholly unnecessary" because the pool of matrimonial assets was large enough to cater to the children without the adjustment, and the Husband had voluntarily left the matrimonial home as opposed to being forced out.[105] As the Wife had continued to contribute towards mortgage payments up till July 2022, she argues that the rent-free period should not be taken into account.[106] The Wife submits that, in totality, the final ratio for the division of the matrimonial assets should be 55.5 : 45.5 in favour of her.[107]

52 The Husband argues that the learned DJ rightly considered the Husband to have made more indirect financial contributions to the marriage than the Wife. The Husband asserts that throughout the marriage until December 2017, the Husband had deposited his entire salary into the parties' DBS joint account while the Wife had refused to do so. It was from that account that the bulk of the family's expenses were paid.[108] Even after the Husband ceased depositing his entire salary in the parties' DBS joint account after December 2017, it was the Husband who paid for the majority of the family's expenses.[109] The Husband further contends that the extent of the Wife's withdrawals from the parties' DBS

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103 AC at paras 57 and 60.

104 AC at para 65.

105 AC at paras 70–72.

106 AC at para 72.

107 AC at paras 69 and 72.

108 RC at para 44i.

109 RC at paras 44ii and 44iv.

joint account exceeded what she had contributed to that account.[110] Moreover, after separation until the interim maintenance orders were made, all expenses for the children were borne solely by the Husband.[111] In fact, the Wife has enjoyed rent-free occupation of the matrimonial home for at least two years and eight months,[112] while the Husband has had to incur hefty rental costs by living outside of the matrimonial home with the children.[113]

53 In respect of the indirect non-financial contributions, the Husband disputes the Wife's assertion that she was the primary carer of the children until separation.[114] According to the Husband, the Wife had worked long hours as a successful insurance broker.[115] The family had engaged a domestic helper when the first child was born in September 2012, and the family has had a domestic helper to-date.[116] The Husband also points out that he had adopted a hands-on approach to taking care of the family, including looking after the children and doing things with the children that piqued and nurtured their interests in science.[117]

54 The Husband therefore argues that in the light of his contributions, relative to the Wife's, and in the light of the factors under s 112(2) of the Women's Charter 1961 (2020 Rev Ed), including the young ages of the children and the Wife's long rent-free occupation of the matrimonial home, the final

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110 RC at para 44v.

111 RC at para 45.

112 As at the date of the filing of the RC, 6 August 2022.

113 RC at para 44vi.

114 RC at para 47.

115 RC at para 50.

116 RC at para 50.

117 RC at para 51.

division ratio of 55 : 45 ordered by the learned DJ in his favour ought not to be disturbed.[118]

Analysis

55 I have no reason to disturb the learned DJ's finding that the Husband had made substantially more indirect financial contributions.[119] The Wife did not show how the learned DJ erred in finding that it was the Husband who paid for the majority of the family's expenses for a large part of their marriage before the parties separated. In particular, the Wife does not dispute the Husband's assertion, and the learned DJ's finding, that throughout the marriage until December 2017, the Husband had deposited his entire salary into the parties' joint DBS account while the Wife made periodic transfers into that account,[120] and that it was from that account that the bulk of the family's expenses were paid.[121] The Wife also does not dispute the Husband's assertion that even when the Husband ceased depositing his entire salary in the DBS joint account after December 2017, it was the Husband who paid for the majority of the family's expenses.[122] The Husband's assertion that the Wife had withdrawn more moneys than she had paid into the parties' DBS joint account is also not challenged by the Wife.[123] The learned DJ's finding that the Husband had contributed the "lion's share of the indirect financial contributions"[124] and all the expenses of the children after the separation and before the interim maintenance order

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118 RC at para 54.

119 ROA Vol 1 at pp 81–82 and 86.

120 ROA Vol 1 at p 20; ROA Vol 3A at pp 165–167.

121 AC at para 53; ROA Vol 1 at p 86.

122 ROA Vol 3A at p 167.

123 ROA Vol 3A at p 172; ROA Vol 1 at p 86.

124 ROA Vol 1 at p 86.

appears to be consistent with the financial position of the parties at the end of their marriage (see [59] below); the value of the assets that were held in the Wife's sole name was substantially more than the value of the assets that were held in the Husband's sole name although the Husband was the higher income earner throughout the marriage.

56 As for the indirect non-financial contributions, I also find no basis to interfere with the learned DJ's finding that the parties had shared responsibility for the children during their marriage before their separation. Both parties contributed to the welfare of the family. For example, the Husband points out that he helped with changing diapers, was very hands-on with the children when he was at home instead of delegating their care to the domestic helper, and arranged for their extracurricular activities.[125] As for the Wife, she highlights that she gave up her job as an air stewardess shortly after the marriage to accompany the Husband to Australia for his work.[126] She also bore the burden of household chores, especially before the employment of the domestic helper, breastfed both children, and took care of the schedules, activities and homework of the children.[127] Towards the later part of the marriage, even though both parties were in continuous full time employment, it appears that they both remained involved in caring for the children with the assistance of their domestic helper.

57 The learned DJ took into account the Husband's role as sole caregiver after the children left the matrimonial home together with the Husband.[128] In this

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125 ROA Vol 3A at pp 192–193; ROA Vol 3C at pp 49–50; ROA Vol 3G at pp 52–57; RC at paras 51–52.

126 ROA Vol 3G at pp 92–93; AC at para 59.

127 ROA Vol 3A at pp 10–13; AC at paras 58, 60 and 61.

128 ROA Vol 1 at p 86.

regard, the Wife contends on appeal that the learned DJ had placed excessive weight on the role of the Husband as the sole caregiver after the parties' separation in January 2020.[129] It appears that the Wife is not satisfied that due credit had been given to the many years that she had spent caring for the children and the family before the parties separated in January 2020. The Wife highlights that the Husband was the primary caregiver "for only a short period of 9 months" until the IJ.[130] I am unable to agree that the learned DJ had placed excessive weight on the role of the Husband as the sole caregiver after the parties' separation. The learned DJ had in fact considered that the parties shared responsibility for the children, and specifically mentioned that she had the length of the marriage in mind, when she determined the appropriate ratio to be applied for the indirect contributions.[131]

58 Given the Husband's substantially greater indirect financial contributions to the family before the separation and his greater indirect non-financial contributions after the parties' separation, together with his consistent partnership with the Wife in making indirect non-financial contributions throughout the marriage, I decline to interfere with the learned DJ's determination of the appropriate ratio for indirect contributions at 60 : 40 in favour of the Husband.

59 As I have varied the pool of matrimonial assets by excluding some of the Wife's assets, the average ratio for division of the matrimonial assets will have to be re-calculated. Referring to the values arrived at by the learned DJ as

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129 AC at paras 5 and 57.

130 AC at para 52.

131 ROA Vol 1 at p 86.

reproduced at [46] above, the revised calculation, with the changes relative to the learned DJ's calculation marked out in italicised font, is as follows:

Contribution	**Amount from Husband**	**Amount from Wife**	**Total**
Matrimonial Home	$475,260	$267,334	$742,594.42
BOC multi-currency account	$792.78	$339.77	$1,132.55
Personal Assets	$419,569.60	*$744,116.78*	*$1,163,686.38*
Total	$895,622.38 (*47%*)	*$1,011,790.55* (*53%*)	*$1,907,412.93*

Contributions	**Husband**	**Wife**
Direct Contributions	*47%*	*53%*
Indirect Contributions	60%	40%
Average ratio	*53.5*	*46.5*

60 I now consider whether appellate intervention is warranted in respect of the 2.5% adjustment that the learned DJ made in favour of the Husband.

61 As noted at [22] of *ANJ v ANK*, the court has to consider whether adjustments need to be made to the parties' average percentage contributions to

take into account, amongst other factors, the factors enumerated in s 112(2) of the Women's Charter. The two factors cited by the learned DJ, namely the needs of the children of the marriage and the rent-free occupation of the matrimonial home by one spouse, are listed in ss 112(2)(*c*) and (*f*) of the Women's Charter.

62 In my judgment, the learned DJ had acted within the bounds of her discretion. The learned DJ did not err in law or fact in considering the needs of the two young children of the marriage. In relation to the Wife's rent-free occupation of the matrimonial home, the fact that "one party occupies [the matrimonial home] to the exclusion of any benefit to the other" has been considered as relevant under s 112(2)(*f*) of the Women's Charter even where there is no indication that the other spouse had been ejected and barred from returning (see, for example *TRS v TRT* [2017] SGHCF 3 at [15]). As for the Wife's argument that she had continued to pay for the mortgage of the matrimonial home even after the Husband and children have moved out, and therefore the adjustment to account for her rent-free occupation ought not be made, I note that the learned DJ had given credit to the Wife for the mortgage payments she made throughout the marriage until 11 February 2022, which was the date of the AM hearing when submissions on mortgage payments were heard, in computing the direct contributions of the parties towards the acquisition of the matrimonial home.[132]

63 Based on the adjusted calculations at [59] above, if a 2.5% uplift in favour of the Husband is applied, the final ratio for division would be 56 : 44 in favour of the Husband. Taking a broad-brush approach, I am of the view that it is fair for the final (post-adjustment) ratio for division of matrimonial assets to remain at 55 : 45 in favour of the Husband. In any case, it is the Husband's

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132 ROA Vol 1 at pp 54–56 and 85.

position that the final ratio ordered by the learned DJ ought not to be disturbed.[133]

Retention of the matrimonial home by the Husband

64 I turn to the issue of the learned DJ's order for the Husband to retain the matrimonial home.

Decision below

65 In effecting the division of the matrimonial assets in the ratio of 55 : 45 in favour of the Husband, the learned DJ ordered that the parties retain the assets held in their respective sole names.[134] The moneys held in the parties' joint account were to be transferred to the Husband.[135] The Wife was ordered to transfer (other than by way of sale) her share and interest in the matrimonial home to the Husband within six months from the date of the certificate of Final Judgment,[136] and the Husband was ordered to pay into the Wife's CPF account a sum of $57,385.[137] Finally, as the learned DJ found that the Husband's parents had given him a loan of $31,259.77 for the purchase of the matrimonial home, she further ordered the Husband to repay the loan from his share.[138]

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133 RC at para 54.

134 ROA Vol 1 at p 106 para 5f.

135 ROA Vol 1 at p 106 para 5d.

136 ROA Vol 1 at p 106 para 5a.

137 ROA Vol 1 at p 106 para 5a.

138 ROA Vol 1 at p 106 para 5e.

Parties' cases on appeal

66 The Wife argues that the learned DJ erred in the manner in which she ordered the matrimonial assets to be divided.[139] The Wife submits that the parties should instead be left to work out the mechanics of the division of the matrimonial assets.[140] In the alternative, the Wife seeks an order for a valuation report for the matrimonial home to be obtained, for the matrimonial home to be sold within six months from the date of the order at or above the valuation price,[141] for the Husband to have the first option to purchase the property at the valuation price,[142] for the parties to have joint conduct of the sale and for each party to be entitled to appoint his or her own property agent to market the property,[143] and for any increase in the value of the matrimonial home to be divided in the same ratio as the division of assets.[144]

67 The Wife argues that no basis was given by the learned DJ as to why the Husband should retain the matrimonial home.[145] Moreover, the manner in which the learned DJ divided the pool of matrimonial assets has given rise to seemingly arbitrary results.[146] This is because the Wife's share of the matrimonial assets consisted mainly of the equity investments which were held in her sole name and which were "largely volatile with marked-to-market

139 AC at para 48.

140 AC at para 49.

141 AC at para 50(a).

142 AC at para 50(b).

143 AC at para 50(c).

144 AC at para 48(d).

145 AC at paras 43 and 48(a).

146 AC at para 36.

instantaneous valuations".[147] The Wife asserts that since the AM hearing, the value of the matrimonial home had increased by $305,000, and this increase would accrue solely to the Husband based on the learned DJ's order.[148] In contrast, the market value of shares and cryptocurrencies, which made up a significant portion of the investments that were held in the Wife's sole name and which were ordered by the learned DJ to be retained by the Wife, had plummeted in value.[149] The Wife adds that the parties had always contemplated a sale of the matrimonial home and division of the net proceeds,[150] and the learned DJ's decision took her by surprise such that she did not have an opportunity to prepare a valuation report.[151]

68 The Husband in reply contends that it was within the court's discretion to decide which party keeps which asset, and that it is sensible and logical to order the Wife to keep all the equities under her sole name and for the Husband to retain the matrimonial home upon payment of the shortfall to the Wife.[152] Furthermore, it has always been the Husband's stand that he wishes to move back to the matrimonial home with the children, and this had been communicated to the Wife and her former counsel from the start of the proceedings.[153] In addition, the ordering of a sale of the matrimonial home would not be in the best interests of the children.[154] As the Husband has no

147 AC at para 38.

148 AC at para 42.

149 AC at para 42.

150 AC at para 44.

151 AC at paras 46–47.

152 RC at paras 17 and 56.

153 RC at paras 18 and 57.

154 RC at para 57.

intention of selling the home but instead wishes to resume staying there with the children, whether the Husband would receive a windfall from the sale of the matrimonial home is purely theoretical.[155] As for the valuation of the matrimonial home, the Husband contends that the Wife had agreed in her third and final Joint Summary and at the AM hearing on the valuation of the matrimonial home, and the valuation is supported by Urban Redevelopment Authority ("URA") sale transactions data involving similar properties.[156] That valuation should not be disturbed as there is an interest in the finality of court proceedings.

Analysis

69 As explained in *Fong Wai Har v Seah Boon Chai and another* [2016] SGHCF 4 at [4], under s 112 of the Women's Charter, the court aims to reach a just and equitable division of the matrimonial assets in the light of all the circumstances of the case, particularly the factors enumerated in s 112(2) of the Women's Charter and "the court decides on the most practical and fair way for each party to obtain the portion of assets determined to be their just and equitable share". Section 112(2)(*c*) of the Women's Charter expressly provides that it is the duty of the court to have regard to "the needs of the children … of the marriage" in exercising its powers of division. The courts have ordered the matrimonial home to be retained by the party having care and control of the children in past cases. In *Tham Khai Meng v Nam Wen Jet Bernadette* [1997] 1 SLR(R) 336 ("*Tham Khai Meng*") at [38]–[39], the Court of Appeal reasoned that the needs of the young children, aged ten and eight, was an important consideration and found that the house should not be sold but be transferred to

155 RC at para 60iv.

156 RC at para 58.

the wife so that she and the children would have a roof over their heads. *Tham Khai Meng*'s case was cited with approval by the Court of Appeal in *ANJ v ANK* at [48]. In *Koo Shirley v Mok Kong Chua Kenneth* [1989] 1 SLR(R) 244 ("*Koo Shirley*") at [27], the High Court similarly ordered the husband to transfer all his interest in the matrimonial property, and the wife to forego all her claims on the other assets, so as to give the wife and children a permanent roof over their heads and afford them some security.

70 In this case, the learned DJ made the order with a view to the Husband and children moving back to the matrimonial home after the Wife transfers her share to the Husband. This is evident from her order that the expense attributable to the children for the rental apartment that they share with the Husband should be excluded from the amount of maintenance payable by the Wife at such time the matrimonial home was handed over by the Wife to the Husband,[157] since the children would not incur such rental expenses after moving back to the matrimonial home. This manner of division is well within the learned DJ's discretion.

71 As regards the Wife's contentions about the relative volatility of her assets and the change in the value of the matrimonial home, it would not be principled for the court to re-assess the division as the values of the assets shift. Unless there are special circumstances or compelling reasons, the mere change in the value of an asset between the date of the ancillary orders and that of the hearing of the appeal *per se* should not be a ground to revisit the division made by the court below: *ATT v ATS* [2012] 2 SLR 859 at [25]. Here, no special circumstances or compelling reasons are provided to justify a review of the

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157 ROA Vol 1 at pp 89–90 and 101–102.

division ordered by the learned DJ on account of changes in the valuation of the matrimonial assets.

72 Further, in relation to the matrimonial home, the value was agreed at the AM hearing before the learned DJ,[158] and stated in the third and final Joint Summary signed by both parties' solicitors.[159] The method of valuation agreed upon by both the Husband and the Wife was to use the average of transaction values from June to September 2021 (ie. agreed dates that were close to the date of the AM hearing) in relation to similar properties,[160] in a manner that accorded with well-established principles (*BPC v BPB and another appeal* [2019] 1 SLR 608 at [49]). In addition, given that the Husband and children will be moving back to the matrimonial home, there is no reason for the court to order a re-valuation of the matrimonial home or to prefer any particular date over the AM hearing date to account for changes in the value of the property. It is a given that assets are susceptible to fluctuations in value over time. It cannot be the case that the valuations of the matrimonial properties have to be revisited on appeal just because one party asserts that the values of some of the properties have risen or fallen.

73 I also do not accept the Wife's argument that the court should only order the division of the matrimonial assets according to a certain ratio but should not make pronouncements as to how the parties should divide the assets, or that the parties should be left to work out the mechanics of the division themselves. In a case such as this, where the parties have demonstrated that they have

158 ROA Vol 1 at p 13.

159 ROA Vol 3D at p 161.

160 ROA Vol 3D at p 161.

difficulties in coming to an agreement, such an arrangement will likely result in even more protracted litigation.

74 To summarise, I find no basis to disturb the learned DJ's orders in respect of the manner of division. I will, however, have to make revisions to the sum the Husband must refund into the Wife's CPF account when the matrimonial home is transferred to him, in the light of the variation in the pool of matrimonial assets. The revised calculation, with the revisions relative to the learned DJ's calculations[161] marked out in italicised font, is as follows:

(a) Husband's share of matrimonial home:

(i) *$1,907,412.93* x 55% = *$1,049,077.11*

(ii) *$1,049,077.11* - $419,250.60 = *$629,826.51*

(b) Wife's share of matrimonial home:

(i) *$1,907,412.93* x 45% = *$858,335.82*

(ii) *$858,335.82 - $744,116.78 = $114,219.04*

75 Accordingly, the Wife is ordered to transfer her share and interest in the matrimonial home, free from encumbrances, and deliver vacant possession of the matrimonial home, to the Husband within three months of this judgment. The Husband is ordered to pay into the Wife's CPF account a sum of $114,219.04, being part of the CPF refund. As ordered by the learned DJ, the Husband is also to repay the loan taken from his parents to finance the purchase of the matrimonial home from his share of the matrimonial assets.

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161 ROA Vol 1 at p 87.

76 An issue that has not been raised as a matter for appeal, concerning which party ought to bear the recurrent payments such as the mortgage and other outgoings of the matrimonial home after the orders for ancillary matters were made by the learned DJ, arose after the hearing of the appeal.[162] The parties should address the court and make full submissions with reference to the relevant authorities and the facts of this case if they are still unable to resolve the issue when they settle the accounts after the delivery of this judgment. I give the parties liberty to apply.

Maintenance for the children

77 I turn finally to the issue of maintenance for the children.

Decision below

78 The learned DJ determined the monthly expenses of the elder child to be $4,450 (including rent) and $3,250 (excluding rent) and that of the younger child to be $4,290 (including rent) and $3,090 (excluding rent).[163] The learned DJ determined that parties were to share the expenses in proportion to their earnings, which was 55 (Husband) : 45 (Wife).[164] She thus ordered the Wife to pay to the Husband maintenance for the two children as follows: for the elder child, $2,000 prior to handover of the matrimonial home and $1,460 after handover; for the younger child, $1,930 prior to handover of the matrimonial home and $1,390 after handover.[165]

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162 Appellant's Further Submissions dated 15 December 2022 ("AFS") at paras 20–23.

163 ROA Vol 1 at p 96.

164 ROA Vol 1 at p 97.

165 ROA Vol 1 at p 107.

Parties' cases on appeal

79 The Wife argues that she should pay maintenance of only $858.61 and $824.44 for the older and younger child respectively, with a total of $1,683.05 for the maintenance of the two children.[166] She contends that the learned DJ erred in using the parties' average annual income from 2019 to 2021 in determining maintenance. Instead, she argues that the parties' basic salaries should be used.[167] Based on the basic salaries of the parties, the ratio for sharing the children's expenses should be 33.5 : 66.5, with the Husband to bear the larger share.[168] Moreover, the Husband has a property in France that could be rented out, and that should be factored in to determine the Husband's ability to provide for the children.[169]

80 The Wife also argues that the learned DJ erred when considering certain expenses expected to be incurred by the children. Firstly, the Wife asserts that the learned DJ erred in determining the expenses for the children's tuition and extracurricular activities (being $412 and $414 per month for the elder and younger child respectively). Instead, she seeks an order that the parties are to discuss and agree on the children's enrolment in tuition and extracurricular activities, and the parties will bear the expenses in the ordered ratio for the children's maintenance.[170] Secondly, the Wife argues that the learned DJ erred in including expenses for medical and life insurance (being $277 and $215 per month for the elder and younger child respectively). She submits that there are no documents to prove that the children have any such insurance and the

166 AC at para 94.

167 AC at para 80.

168 AC at paras 80–83.

169 AC at paras 77–79.

170 AC at paras 85–87.

inclusion of "life insurance" suggested that the beneficiary of the policies is the Husband such that it would not be appropriate to make the Wife contribute to the policies.[171]

81 The Husband in reply contends that the children's previous standard of living, prior to the breakdown of the marriage, is relevant in determining maintenance, and such a standard of living would necessitate higher maintenance payments.[172] The expenses to be incurred for the children's activities, such as tuition and extra-curricular activities, are reasonable and will continue to be incurred for the foreseeable future.[173] The Husband adds that the Wife had submitted higher figures in relation to the children's expenses in earlier proceedings when she was still asking for care and control of the children but lower figures after she conceded that the Husband should get care and control of the children.[174]

82 In relation to the parties' financial resources, the Husband asserts that he had disclosed ample information about the poor state of his French property, which demonstrated that the Husband was unable to get rental income from the property.[175] Moreover, the Wife has failed to consider her significant financial resources and income when considering her own ability to contribute in terms of maintenance payments for the children.[176] The Husband contends that even if the Wife's bonuses and commissions fluctuate, such income should be taken

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171 AC at paras 89–92.

172 RC at paras 74 and 81.

173 RC at para 91.

174 RC at paras 75–77.

175 RC at para 82.

176 RC at paras 83–85.

into account when considering maintenance, and any changes in the Wife's personal circumstances can be dealt with in an application for variation of maintenance.[177]

Analysis

83 I first consider whether the amount of maintenance ordered by the learned DJ is reasonable. Going by what the Wife had asked for the maintenance of the children before the Husband was granted sole care and control, I do not find the learned DJ's assessment of the maintenance required by the children to be unreasonable. In this regard, I note the following observations made by the learned DJ in her Grounds of Decision:[178]

> It is also worth noting that the Defendant's position on the children's expenses varied drastically. In her OSG [Originating Summons (Guardianship of infant)] application where she was contesting the issue of care and control, she had indicated that the children's reasonable expenses were $4,818 and $4,766 respectively on the assumption that the children were living with her. Now however where she has consented to granting care and control of the children to the Father, she takes a revised position that the children's expenses including domestic helper but excluding household expenses should only amount to approximately $2,000 each. When questioned about the disparity in positions, the Wife's response was that this is her assessment of what the children actually need and in the OSG application, that was the position she was taking in pleadings …

84 The Wife contends that her previous claims for maintenance for the children must be understood in the context of her seeking maintenance from the Husband who was consistently earning more than $18,000 per month.[179] Someone in her shoes earning less "would naturally request for a higher figure"

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177 RC at para 86.

178 ROA Vol 1 pp 96–97.

179 AFS at para 14.

and that "just because care and control was awarded to the Husband does not mean that the same figure should be applied the other way around".[180] I am unable to agree with the Wife. In determining the maintenance that a child requires, the court will consider the needs of the child and the child's standard of living. This will be objectively assessed and should not vary simply based on who is paying for the maintenance. I find no reason to disturb the learned DJ's assessment of the maintenance required by the children.

85 In relation to how much each parent should contribute to the maintenance that has been assessed by the court, the law is clear that each parent is equally responsible for maintaining their child or children, and the court may order one parent to bear more of the maintenance in cases where both parents are unable to contribute equally. I refer to the oft-cited passage in *TBC v TBD* [2015] 4 SLR 59 ("*TBC*") at [27], which provides useful guidance:

> … Each parent stands in the same parent-child relationship with the child or children and each parent has the duty to maintain the child or children. Against that backdrop, the starting point should be that the parents bear the financial burden equally. One parent's burden should not be decreased just because the other parent is wealthier, and one parent's burden should not be increased just because the other parent is less well off. However, this should not be an inflexible rule; if one parent is unable to contribute equally with the other parent, then that parent should contribute what he or she can, and the other parent should make up the shortfall, so that the child will receive the full measure of maintenance. The norm should not be that parents contribute in proportion to their means because that will place unequal burdens on them for no good reason.

86 I turn to consider the ratio in which the learned DJ ordered the parties to bear the children's expenses with these principles in mind.

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180 AFS at para 14.

87 I first note that the learned DJ did not order the parties to make equal contributions to the maintenance of the children even though both parties are high income earners. She ordered the parties to contribute in the proportion of their average annual income, which was 55 (Husband) : 45 (Wife). The Wife is still dissatisfied because the learned DJ arrived at the proportion of the parties' earnings using their average annual income as opposed to their average annual basic income, which would yield a ratio of 66.5 (Husband) : 33.5 (Wife). It is clear from the evidence that a significant portion of the Wife's income accrued from commissions and bonuses. As these commissions and bonuses constitute part of the Wife's financial resources, they should be considered when determining her ability to contribute to the maintenance for the children. There is no principled reason why commissions and bonuses should not be treated as income.

88 In relation to the Husband's property in France, I first note that the Husband has provided some evidence showing that the property is "neither marketable nor tenantable".[181] The Husband refers to his voluntary discovery and interrogatories affidavit dated 7 April 2021, where, the Husband submits, he had detailed the dire state of disrepair of the property.[182] Secondly, and more importantly, having regard to the sum of maintenance ordered and the parties' significant financial resources, I do not consider that any potential rent from the property in France would have a significant impact on the learned DJ's decision as to how much of the children's expenses each party should be expected to bear. Thirdly, the Wife has other assets which may be analogised to the Husband's French property, and which had not been considered when calibrating the Wife's ability to pay maintenance. For instance, there is some

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181 ROA Vol 3A at pp 136–137; ROA Vol 3C at p 56.

182 RC at para 82; Husband's affidavit dated 7 April 2021 at paras 6–8 and Tabs 27–28.

evidence that the Wife has assets in Malaysia that are not part of the matrimonial pool.[183] The Wife's personal assets have also increased now as a result of the revisions made earlier in this judgment to exclude some of the Wife's assets from the matrimonial pool. As a matter of parity, if the Husband's French property is considered in determining his maintenance contributions, then the Wife's personal assets should also be factored in. Therefore, even if the Husband's French property could be rented out, I am not satisfied that this would increase the financial resources of the Husband, *relative to the Wife's*, to such an extent that the learned DJ's decision on maintenance for the children should be disturbed.

89 I will next deal with the specific items disputed by the Wife, namely, the expenses related to the tuition and extracurricular classes, and the insurance coverage.

90 As regards the Wife's argument on the tuition and extracurricular expenses, I find that she has not shown how the learned DJ has erred. I note that the Wife acknowledges that tuition and extracurricular activities serve the function of "educating and equipping the children to ensure that they are future-ready".[184] The expenses for the children's tuition and extracurricular activities fixed by the learned DJ are not excessive in the circumstances of this case. As for the Wife's contention that the parties should first agree on specific tuition activities and that she would then contribute 33.5% for the agreed activities, I am not persuaded that the arrangement is practical given the acrimony between the parties. There comes a point when a court-imposed requirement for consultation and agreement on smaller details in day-to-day life may lead to

183 ROA Vol 3A at p 23; RC at para 83.

184 AC at para 86.

unnecessary friction or even deadlock. There is, in any event, nothing in the learned DJ's order to stop the Husband and the Wife from discussing the types of tuition and extracurricular activities that the children might be enrolled in as their needs and interests evolve.

91 Finally, in respect of the Wife's argument on the children's medical and life insurance policies, I find the insurance coverage for the children to be a reasonable expense and the amounts are also reasonable. The expenses for the children's insurance coverage as fixed by the learned DJ is also commensurate with the Wife's own estimates in the affidavits that she filed for the Originating Summons (Guardianship of infant) hearing.[185] The learned DJ is therefore not wrong to have allowed them. I note that the Husband has since provided details of the children's medical and life insurance policies to the Wife.[186]

92 For the above reasons, I decline to disturb the learned DJ's orders on maintenance for the children.

Conclusion and orders made

93 I summarise my orders as follows:

(a) The learned DJ's decision in respect of Items 1 to 10 in Table 1 remains undisturbed, save that Items 1, 4 and 5 are to be excluded from the pool of matrimonial assets.

(b) The final ratio for division of the pool of matrimonial assets remains as 55 : 45 in favour of the Husband.

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185 Wife's Affidavit dated 27 February 2020 at pp 44 and 49; Wife's Affidavit dated 2 July 2020 at pp 283 and 285; ROA Vol 1 at pp 92 and 95.

186 Respondent's Further Written Submissions dated 15 December 2022 at Annex B.

(c) The Husband is to retain the matrimonial home on the terms ordered by the learned DJ in relation to the division of matrimonial assets,[187] save that –

(i) the Wife is to transfer (other than by way of sale) her share and interest in the matrimonial home, free from encumbrances, and deliver vacant possession of the matrimonial home, to the Husband within three months of this judgment;

(ii) The Husband is to pay into the Wife's CPF account a sum of $114,219.04, being part of the CPF refund.

(d) The orders of the learned DJ for the maintenance of the children are to stand.

94 I urge the parties to start working together on the issues that they may face to bring closure to this chapter of their lives, including the issue of costs of this appeal. I hope that the parties can come to an amicable resolution but will hear the parties separately on the issue of costs if they are unable to come to an agreement.

Teh Hwee Hwee
Judicial Commissioner

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