IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2024] SGHCF 27

District Court Appeal No 12 of 2024

Between

WWM

… *Appellant*

And

WWN

… *Respondent*

District Court Appeal No 13 of 2024

Between

WWN

… *Appellant*

And

WWM

… *Respondent*

JUDGMENT

[Family Law — Matrimonial assets — Division]

WWM
v
WWN and another appeal

[2024] SGHCF 27

General Division of the High Court (Family Division) — District Court Appeals Nos 12 and 13 of 2024
Choo Han Teck J
25 July 2024

5 August 2024 Judgment reserved.

Choo Han Teck J:

1 The appellant in HCF/DCA 12/2024 ("DCA 12"), and the respondent in HCF/DCA 13/2024 ("DCA 13") is the wife in the marriage ("the Wife"). The respondent in DCA 12, and the appellant in DCA 13, is the husband in the marriage ("the Husband"). The Wife is 69 years old and the Husband is 72 years old. They were married on 16 May 1981. They have two adult children. The Wife is working as a personal assistant in the Ministry of Health, earning $4,311. The Husband retired as an operation supervisor with Exxon Mobil in 2020. He has not given his last-drawn salary. The Wife filed for divorce on 11 April 2022. Interim Judgement ("IJ") was granted on an uncontested basis on 27 October 2022.

DCA 12

Whether the Wife should have received a higher proportion for indirect contributions

2 In DCA 12, the Wife argues that the District Judge below ("the DJ") should have given her a higher percentage of indirect contributions, based on the evidence in the affidavits provided by the parties' children ("the Children's Affidavits"). However, the DJ struck out the Children's Affidavits because they were filed without leave of court as required under r 89(3) of the Family Justice Rules 2014 ("FJR").

3 The Wife's counsel argues that on a purposive interpretation of r 89 FJR, no leave is required for non-parties to file affidavits in court. First, she argues that that r 89(2) FJR allows parties to file and exchange two rounds of ancillary matters ("AM") affidavits as opposed to a total of two AM affidavits each. Second, she says that if the court interprets r 89(3) FJR to mean that parties may only file without leave an affidavit of means and a subsequent reply affidavit, this would lead to an absurd result because the Wife could circumvent the rule by exhibiting the Children's Affidavits in her second AM affidavit (for example, as a statutory declaration) rather than filing them separately.

4 First, I agree with counsel for the Husband that the plain wording of rr 89(2) and 89(3) FJR provides for a total of two AM affidavits by each party and any further affidavits beyond the two require leave of court. Nothing in the wording of r 89 FJR supports the Wife's interpretation for two rounds of affidavits. Second, had the Wife exhibited the Children's Affidavits in her second affidavit, the court could have likewise expunged those exhibits. I thus do not accept the Wife's interpretation of r 89 FJR. The affidavits of means

envisaged under that rule are intended to be those of the parties themselves. Any others may be filed only with leave.

5 The next question is whether the Children's Affidavits should not have been struck out despite the Wife's contravention of r 89(3) FJR. This question arises because the court may excuse a party's non-compliance with the FJR (see r 10(2)(*b*) FJR). In my view, one key consideration pertains to the relevance and necessity of the Children's Affidavits to the AM hearing. The DJ also recognised this, which is why she asked the Wife's counsel about how the Children's Affidavits were relevant and necessary to the AM proceedings. The DJ opined that the Children's Affidavits were not necessary because for a marriage as long as 41 years, the automatic assumption is that the ratio for indirect contributions is 50-50 unless otherwise proved. I find this reasoning confusing, not least because the DJ ultimately decided that the ratio for indirect contributions was 60-40 in favour of the Wife. I thus do not agree with the DJ's reason for finding that the Children's Affidavits were irrelevant.

6 However, the Wife is asking for an increase of her indirect contributions to 70%. In this regard, an appellate court "will not interfere in the division orders made by the judge below unless it can be demonstrated that the judge had erred in law or had clearly exercised his discretion wrongly or had taken into account irrelevant considerations or failed to take into account relevant considerations": *Chan Tin Sun v Fong Quay Sim* [2015] 2 SLR 195 at [19]. Calculating the ratio of indirect contributions is an exercise of discretion. From the Wife's written submissions in the proceedings below, the Children's Affidavits seem to mostly provide additional support to the Wife's claims and her rebuttals against the Husband's factual allegations. There is nothing to suggest that the DJ placed less weight upon the Wife's various allegations and rebuttals just because she did not consider that these allegations and rebuttals were corroborated by the

Children. In any event, having gained a flavour of the contents of the Children's Affidavits through the parties' written submissions filed in the proceedings below, I do not think that they warrant an increase of the Wife's indirect contributions which the DJ found to be 10% in her favour. I thus decline to admit the Children's Affidavits or increase her proportion for indirect contributions.

Whether $130,000 ought to have been returned to the matrimonial pool

7 In DCA 12, the Wife also argues that the DJ erred in adding $130,000 back into the matrimonial pool. Of the $150,000 which the Wife withdrew from her CPF on 30 August 2021, it is undisputed that $118,840 was given as a gift to the parties' daughter to help finance the latter's condominium purchase, and the remaining $20,000 was returned to her CPF. The Wife says that the remaining $11,160 was left in a bank account jointly held by the Wife and her daughter ("the mother-daughter POSB account"), although the Husband's counsel says that this is evidence from the bar.

8 Where a spouse expends a substantial amount of matrimonial money when, among other things, divorce proceedings are imminent, and the other did not consent to it, the expended sum must be returned to the matrimonial asset pool (see *TNL v TNK* [2017] 1 SLR 609 ("*TNL v TNK*") at [24]). In the DJ's grounds of decision, she did not appear to make a finding on whether divorce proceedings were imminent when the Wife withdrew $150,000 on 30 August 2021 and gave $118,840 to her daughter on 6 and 23 October 2021. Nonetheless, I find that divorce proceedings were imminent on those dates. The parties had signed a Deed on 21 August 2021 ("the Deed"), which was supposedly to facilitate reconciliation. But the Deed also ensured that the Wife would be entitled to rely on what she viewed was the Husband's improper

association with another woman ("B") to show that she could not be reasonably expected to live with him. This was done through cl 2.1 of the Deed which provides that one of the parties will move out of the matrimonial home for six months while the parties take steps to reconcile. Clearly, the purpose of cl 2.1 is to ensure that s 95A(3) of the Women's Charter ("WC") would not bar the Wife's reliance on the Husband's association with B. Section 95A(3) WC provides:

> (3) For the purposes of subsection (1)(*b*), if *Y* continues to live together with *X* for a total of 6 months or less after the most recent instance of the relevant behaviour by *X*, the fact that *Y* continued to live together with *X* must be ignored in deciding whether *Y* can reasonably be expected to live with *X*.

9 Essentially, the Wife wanted to preserve her avenue for divorce arising from the Husband's past association with B, even if, over the next six months, the Husband did not meet B or did not otherwise behave in a way which would make it unreasonable for the Wife to live with him. Hence, the prospect of divorce would have been on their minds from 21 August 2021 onwards.

10 However, I am of the view that the Husband had consented to the gift of $118,840, and the DJ erred in finding otherwise. In the Husband's first affidavit of assets and means, he says that he believed that the Wife had used $100,000 to pay the downpayment for their daughter's condominium. At the time, he did not raise any objections, and even told the Wife that if their daughter needed help financially to purchase the condominium, he would support her financially and had absolutely no intention of treating this as a loan. In this appeal, the Husband's counsel argues that "whilst the Husband might have believed in mid-2021 that the Wife had used a sum of $100,000.00 for the downpayment for Theodora's condominium, he was not aware of the withdrawal by the Wife of her CPF monies on 30 August 2021, nor had he consented to the same". He also

says that he did not know about or consent to the Wife's "dissipation of $150,000". This argument is contrived, because much of the money in each parties' sole-name accounts, including CPF accounts, are matrimonial assets. The Wife's gift to the parties' daughter, to which the Husband raised no objections, would very likely consist of matrimonial money. He cannot now resile and claim that he did not know of or consent to the gift of $118,840.

11 As for the sum of $11,160, the Wife's counsel claims that this sum was deposited into the mother-daughter POSB account. This, however, is not supported by affidavit and is thus evidence from the bar. Nonetheless, my view is that the sum is not substantial and could conceivably have been used for daily, run of the mill expenses (see *TNL v TNK* at [24]). I therefore exclude the $130,000 from the matrimonial pool.

DCA 13

12 The Husband argues that the DJ made the following errors:

(a) excluding the balances of the 2 joint bank accounts that the Wife had held jointly with her daughter;

(b) wrongly apportioning the parties' direct contributions;

(c) apportioning indirect contribution of 60% to the Wife and 40% to the Husband; and

(d) failing to consider the Husband's current prostate cancer and other medical ailments such as hypertension, diabetes, coronary issue (stent in his heart), high protein in the urine and to give the Husband an uplift of 5% in the division of the matrimonial assets in the final computation.

I deal with each of these in turn.

Whether the two joint accounts between the Wife and daughter ought to have been included in the matrimonial pool

13 Both parties agree that the DJ had erred in law by holding that the moneys in the two joint accounts between the Wife and daughter ("the mother-daughter joint accounts") belonged to the daughter by reason of the rule of survivorship. The Wife's counsel submits that the mother-daughter joint accounts should, nonetheless, be excluded from the matrimonial assets. First, both the Wife and the daughter operated the joint accounts, as seen from the transaction history of those accounts. Second, the daughter and son had made deposits into the joint account, the funds have been commingled and "it is not possible to ascertain (from the available evidence before the Court) which monies beneficially belong to the Wife or [the daughter]".

14 I disagree with the Wife. The assets of parties to the marriage are generally treated as matrimonial assets unless a party can prove, on a balance of probabilities, that any particular asset was either not acquired during the marriage or was acquired through gift or inheritance and is therefore not a matrimonial asset: *USB v USA* [2020] 2 SLR 588 ("*USB v USA*") at [31]. The Wife herself is unable to ascertain how much of the moneys belong to her. Moreover, she admits that the moneys in the mother-daughter POSB account was utilised for household expenses. She has thus not satisfied her burden of proof. Nonetheless, only half of the monies in the mother-daughter joint accounts should be returned to the matrimonial pool in such circumstances (see *VQF v VQG* [2024] SGHCF 4 at [11]). The other half is deemed to belong to the other joint owner, namely the daughter. The money in the mother-daughter joint accounts amount to $20,863.96. I thus order that half of that sum (*ie*, $10,431.98) be added to the matrimonial pool and attributed to the Wife.

Whether the DJ erred in apportioning the parties' direct contributions

The parties' direct contributions to certain joint bank accounts

15 The Husband's counsel submits that the DJ erred in finding that the parties contributed 50-50 to certain joint bank accounts because the parties had agreed that (a) the amount of $14,156.39 in the joint DBS Account No. XXX-XXX03-0 was contributed solely by the Husband; (b) the amount of $6,540.64 in the joint DBS Account No. XXX-X-XXX605 was contributed solely by the Wife; and (c) the amount of $5,831.26 in the joint Citibank Maxisave Account No. XXXXXXX007 was contributed equally by the parties. The DJ adjudged these joint bank accounts as "joint assets" and attributed them to the parties equally.

16 It is unclear as to how the DJ arrived at the overall direct contributions ratio of 31.55 (Wife): 68.45 (Husband). Using her own figures, and assuming that she had attributed the joint assets equally to the parties, the ratio should be 37.72: 62.28 (Husband). Given the lack of clarity regarding how the DJ arrived at her ratio for direct contributions, I re-calculated the matrimonial pool as well as the ratio for direct contributions. I take the Husband's counsel's submissions here into account when re-calculating the parties' direct contributions later.

17 I reject the submission by the Wife's counsel that the DJ had already taken the Husband's claim into account. The DJ ordered the closure of the joint bank accounts and the terms as to which party would retain the money in each of these bank accounts, but the parties' direct contributions to the joint bank accounts needed to be taken into account as that affect the calculations for the overall direct contributions.

The parties' direct contributions to the matrimonial home

18 In this appeal, the parties agree that the DJ erred by failing to take into account the parties' direct contributions towards the purchase of the matrimonial home. Although they agree on their respective CPF contributions, they disagree as to their respective cash contributions to the matrimonial home. The Wife says that she contributed $10,000 and the Husband contributed $31,455 in cash, but the Husband says that he contributed $143,485.19 in cash.

19 The Husband says he used the sale proceeds of the former matrimonial home, amounting to $128,244.91 to pay the following for the matrimonial home:

(a) 5% booking fee amounting to a sum of $30,485.00 on or around 19 June 1998

(b) $51,455.00 as part payment on or around 17 September 1997;

(c) stamp fees amounting to the sum of $12,893.00 on or around 27 August 1997;

(d) legal fees amounting to the sum of $1,945.59 on or around 17 September 1997;

(e) AIA housing premium of $8,780.75 for insurance amount worth $250,000.00 in the event of the Husband's unfortunate demise on or around 17 November 2007; and

(f) renovation and upgrading costs of the matrimonial home.

20 The above sums add up to $105,559.34. The Husband has no receipts to support the renovation and upgrading costs. The AIA housing premium does not go towards the matrimonial home's value and so I exclude the $8,780.75.

The Husband's proven contributions to the matrimonial home is thus $96,778.59. The Wife says that she contributed $10,000 to the matrimonial home, with her sister loaning another $10,000, both by way of bank transfer as evinced by the Husband's receipt of those monies in his bank account on 6 and 11 September 1997. The Husband says that the Wife could not show that those amounts came from her or were paid towards the matrimonial home. Nonetheless, the Husband is also not fully able to account for the $143,485.19 for which he supposedly paid. His proven contributions are only $96,778.59. This is not surprising. Married people may not fastidiously maintain records of every expenditure. Using a broad-brush approach, I accept that the Wife paid $10,000, her sister paid $10,000 by way of loan, and the Husband paid $123,485.19, the latter which is derived from the proceeds of the former family home.

21 The Husband claims that the proceeds of the former matrimonial home belongs solely to him because he paid entirely for its purchase, The Wife disputes this, claiming that she had contributed $16,257.12 for the renovation of the former matrimonial home, as well as indirectly contributed both financially and non-financially. The Husband does not appear to have disputed this. I therefore find that Wife is entitled to 11.25%, *ie*, 16,257.12 / (128,244.91 + 16,257.12) x 100%, of the sale proceeds of the former matrimonial home. Accordingly, the Wife's financial contribution to the matrimonial home is $23,892.08 (*ie*, 10,000 + 11.25% x 123,485.19), while the Husband's is $109,593.11 (*ie*, 143,485.19 – 10,000 – 23,892.08).

Whether the DJ erred in her apportionment of indirect contributions

22 The Husband takes issue with the DJ's 40 (Husband): 60 (Wife) ratio for indirect contributions. In the Appellant's case, the Husband's counsel

repeated his entire submissions on indirect contributions tendered to the court below, and argued that the DJ should have given greater consideration to the Husband's indirect financial and non-financial contributions. I find nothing to suggest that the DJ had failed to consider the Husband's arguments on his indirect contributions. There is no basis to interfere with the DJ's decision on the parties' indirect contributions.

Whether the DJ should have given an uplift to the Husband for his prostate cancer and other medical ailments

23 The Husband says that the DJ ought to have given him an uplift of at least 5% in the final division of matrimonial assets on account of his prostate cancer and other medical conditions such as hypertension, diabetes, a coronary issue (stent in his heart), and high protein in the urine. This uplift, his counsel argues, would give him "financial comfort, albeit cold comfort to see him through his continued cancer treatments and the need to employ a domestic helper or a full-time nurse to take care of him".

24 The apportionment of matrimonial assets must generally be based on the contributions of the parties, not on account of their health unless exceptional circumstances are present. The DJ had considered the Husband's medical condition and found that the Husband had not shown that he lacked the means to maintain himself. Furthermore, the DJ noted that he was receiving the sum of $2,740 per month under the Retirement Sum Scheme, an amount more than the declared total monthly expenses for his needs, and that he would retain a substantial amount from the division of the total pool of assets. These considerations equally apply against the Husband's claim for an uplift of at least 5%.

The revised calculations for direct contributions

25 My re-calculations are as follows. The value of the matrimonial pool ought to be $3,863,471.75 + $10,431.98 – $130,000 = $3,743,903.73. The direct contributions of parties towards the matrimonial assets are as follows:

Asset	Wife's direct contributions	Husband's direct contributions
Matrimonial home (CPF)	$284,966.14	$571,190.78
Matrimonial home (Cash)	$23,892.08	$109,593.11
Rest of joint assets	$2,915.63	$2,915.63
DBS Account No. XXX-X-XXX605	$$6,540.64	$0
The mother-daughter joint accounts	$10,431.98	$0
Remove $130,000 from matrimonial pool	- $130,000.00	$0
DJ's decision on the rest of the Wife's assets after deducting liabilities	$811,281.85	$0
DBS Account No. XXX-XXX03-0	$0	$14,156.39
DJ's decision on the rest of the Husband's assets after deducting liabilities	$0	$1,759,939.95
Total:	$1,010,028.32	$2,457,795.86
Ratio:	29.1	70.9

26 The final ratio is as follows:

	Wife	Husband
Direct (50% weightage)	29.1%	70.9%

	Wife	**Husband**
Indirect (50% weightage)	60%	40%
Final ratio (with rounding)	**45%**	**55%**

27 From the pool of $3,743,903.73, the Wife would receive $1,684,756.68 and the Husband would receive $2,059,147.05.

28 After all the parties' efforts and legal expenses, the Husband's entitlement was reduced by $27,127.70 and the Wife's entitlement was reduced by $92,440.32. However, since the Wife has regained 54% of her $130,000, she has only lost $22,240.32. In my view, the parties should not have appealed to adjust the sums received by less than 1% of the original asset pool. Time and time again, such appeals have met with judicial disapproval: *USB v USA* at [80]. Going through the mass of evidence and submissions, some calculations below had to be adjusted and the orders below are thus varied accordingly. These two appeals are therefore allowed in part, but in miniscule part. The parties are therefore to bear their own costs in these appeals.

Choo Han Teck
Judge of the High Court

Nevinjit Singh J (Sureshan LLC) for the appellant/wife in DCA 12 of 2024;
Mrs Aye Cheng Shone and Natasha Choo Sen Yew (A C Shone & Co) for the appellant/husband in DCA 13 of 2024.