

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2021] SGHCF 40

Divorce (Transferred) No 4619 of 2019

Between

VYP

... Plaintiff

And

VYQ

... Defendant

JUDGMENT

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

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VYP

v

VYQ

[2021] SGHCF 40

General Division of the High Court (Family Division) — Divorce
(Transferred) No 4619 of 2019

Choo Han Teck J

18 November 2021

21 December 2021

Judgment reserved.

Choo Han Teck J:

1 The parties were married in Singapore on 25 June 2011. The Father is currently 39 years old. He is the Chief Operating Officer of a local cybersecurity company. The Mother is 38 years old and works as an anesthesiologist in private practice. They have three young children from the marriage, [W], [R] and [X], who are seven, six and two years old respectively. The marriage of about nine years came to an end with the interim judgment of 10 March 2020. The issues before me concern the custody, care and control of the Children, the division of the matrimonial assets, and maintenance of the children.

2 The parties purchased their matrimonial home, which is a terrace house at [P Road], in February 2013. To date, the parties and their three children continue to reside in the matrimonial home.

3 Although parties agree to having joint custody of the children, they disagree as to the question of care and control. The interim arrangement allows the Father interim access to W and R from 9.30am to 7.30pm on Saturdays, and 9.30am to 7.30pm on Sundays on alternate weeks. The Husband has also access to all three children at the matrimonial home from 5.30pm to 7.30pm on Wednesdays without the Mother's presence. The Father subsequently applied, and was granted weekend access to X, the youngest child. He was not granted overnight access to the children since he was still living in the same matrimonial home as the children. But he claims that the Mother has been preventing him from having meaningful access to the Children.

4 The Father seeks to have sole care and control. He claims that he and his mother have always been the primary caregivers of the Children since birth. Further, his counsel submits that the Father is part of the senior management of his company, and has more flexibility to organize his work obligations to keep an eye on the children. He has also been an involved parent; he took W and R to enrichment activities every weekend, engaged in healthy outdoor activities with them, woke up early on weekends to take care of X. The Father claims that the Mother had embarked on aggressive gatekeeping of the Children to minimize the time spent by the Children with the Father and his family, such as by keeping the Children in her bedroom in the matrimonial home. This includes an incident where the Mother allegedly removed the EpiPen used by R for his allergies when the Father was exercising his access, so that the Mother could pin the blame on the Father for failing to bring along the EpiPen. The Father also relied on various statutory declarations of the Mother's former domestic helpers to show that the Mother did not have a close bond with the Children, or deliberately wanted the Children to hide from him when he was home.

5 Counsel for the Father urged the court to grant shared care and control, if not sole care and control to the Father. This would allow the children to spend time with both parents, and to maintain close familial ties with both sides of the family. If shared care and control is granted, the Father proposes that he be granted care and control from Wednesday 1pm to Saturday 8.30pm, with pick up done at the children's school, and drop-off at the Mother's residence, and the Mother would have care and control from Saturday 8.30pm to Wednesday 1pm.

6 The Mother, on the other hand, submits that she should be granted sole care and control as she has been the primary caregiver for the Children. The Father's prayer for sole care and control is a mere afterthought as he initially prayed for sole care and control to be granted to the Mother in his Statement of Claim when he commenced the divorce proceedings. It was only after the Status Conference in November 2019 did he amend the Statement of Claim to seek care and control. The Mother has always taken care of the Children by managing their medical appointments and allergies, and communicating with their teachers in school, attending their school events and arranging for enrichment classes. The Mother's counsel submits that it is also significant that the Father's Request for Interrogatories dated 22 July 2020 and 4 September 2020 included questions about the names of the Children's teachers, and the subjects they were teaching, as well as the timing of the Children's classes — this is therefore evident that the Father was not involved in the Children's education.

7 Regarding the EpiPen incident, she says that the EpiPen was still capable of being used past its expiry date. For the incident on 1 and 5 January 2020 where W spent time with the Father with an expired EpiPen, the Father only informed the Mother about the incident a week later through SMS. This only points towards the Father's case-building behaviour. As for the helper's statutory declarations, the Mother denies their allegations, and points out that

the Father did not address the circumstances under which the Statutory Declarations were obtained from the former helpers.

8 The paramount consideration in determining issues relating to the children is, of course, the welfare of the children, and stability and continuity of the care arrangements are, no doubt, important. Other factors include the need for both parents to have an involvement in the child's life, whether one parent shows greater concerns for the child, the maternal bond, the child's wishes and the desirability of keeping siblings together (*ABW v ABV* [2014] 2 SLR 769 ("*ABW*") at [23]). Where the court finds that the parent having care and control has been deliberately, or even unintentionally, interfering with the bond between the child and the other parent, the court may remedy the situation by switching the care and control order: see *ABW* at [27]. But whether there is a deliberate or unintentional attempt by one parent to alienate the child from another parent is an issue of fact that depends on the evidence before the court. Further, switching care and control for the purpose of reversing the effects of marginalization is only feasible where the parent being marginalized has a sufficiently close bond with the child: *TSH v TSE* [2017] SGHCF 21 at [114].

9 I turn to address whether shared care and control, as proposed by the Father, is a suitable arrangement. A shared care and control order means that the child spends time living with each parent, who then becomes the child's primary caregiver for the duration that the child lives with that parent. The child effectively has two homes, and two primary caregivers, and spends roughly equal amounts of time with each parent: *AQL v AQM* [2012] 1 SLR 840. But it does not mean that each parent has a mathematically exact equal time with the child. There is no legal presumption in favour of a shared care and control order, neither is there a presumption against granting a shared care and control order. The overall consideration remains that of the welfare of the child. As shared

care and control demands extensive co-parenting, hostility between parties may militate against such an order, as there may be more tussle over day-to-day matters, creating stress for the children who may find themselves caught in between such tussles. Another factor is the age of the children. If they are young and of schooling or near schooling age, it is in their best interest to maintain a sense of stability, and a shared care and control order that requires them to shuttle between two homes may be too disruptive.

10 Here, I agree with the Mother's counsel that parties' acrimonious relationship would pose difficulties in co-parenting. Leaving aside the truth of their allegations against each other, the fact that they raised numerous allegations against each other's parenting and character, suffices to show that at this stage, co-operative parenting is less than likely. But that is not to foreclose the possibility that they may eventually transcend their personal grievances, and prioritise the interest of their children. Until then, shared care and control is neither workable nor desirable.

11 Based on the evidence before me, I am inclined to award the Mother with sole care and control. The Mother has been the primary caretaker, and the Children were also comfortable with their current care arrangement, which allowed them to spend time with both their maternal and paternal grandparents.

12 The Father alleges that the Mother had engaged in gate-keeping conduct such as cloistering the Children in her room in the matrimonial home, to prevent the Father from having access to the Children. Those allegations are to support a case that there was alienation such that the court should remedy the situation by reversing the care and control to the marginalized parent. I find that he has not proven alienation so as to warrant an order in his favour — in spite of the Father's reliance on the statutory declarations of the Mother's former helpers,

as these helpers were not before me, and their evidence was untested. Secondly, the Father himself has adduced abundant evidence that he had interacted with the Children meaningfully. There were photographs of him supervising their home-based learning during the Circuit Breaker period, his parents spending time with the Children in parks, him playing with the Children in the pool. All of which took place after the interim judgment was granted. I do not find that there is alienation to an extent that the care and control arrangement should be reversed. In any event, a more liberal access order can allow the Father to spend time with the Children.

13 Therefore, I grant sole care and control to the Mother. For the two older children, W and R, I will allow the Father access from Thursday after school at 1.30pm to Saturday 5pm, with liberal weekday access from any time after school 1.30pm to 7.30pm. For X, who is only two years old, I do not think overnight access is suitable yet, but I will allow the Father liberal access on Saturday 8.30am to 6.30pm, and liberal weekday dinner access. Once X reaches 5 years old, she may join her siblings and the Father will have access from Thursday 1.30pm to Saturday 5pm.

14 For all three children, I make the following orders:

(a) The Father shall also have liberal daily remote access via Facetime, WhatsApp video or telephone calls, and alternate public holidays access from 8am to 5pm.

(b) For Chinese New Year, the Father has access on odd years from the eve of Chinese New Year at 5pm to the first day of the Chinese New Year at 5pm. For even years, he has access from after school to 5pm on the eve of Chinese New Year, and 5pm on the first day of Chinese New Year to 5pm on the second day of Chinese New Year.

- (c) For Christmas, the Father shall have access to the Children for Christmas eve dinner on even years.
- (d) For other public holidays, the Father has alternate public holiday access from 8.30am to 5.30pm.
- (e) For school holidays, the Father shall have access to the Children for half of the school holidays, with liberty to take the Children overseas, subject to the Father providing the details of the travel itinerary, including the flight details, accommodation and contact details, at least one month before departure. For holiday access, this includes two weeks of overnight access for each holiday for W and R starting from 2022, and for X starting from when she reaches 5 years old.
- (f) Parties are at liberty to make other access arrangements upon mutual agreement.

15 The next issue is how the matrimonial assets shall be divided. The operative date for determining the pool of matrimonial assets should be the date of interim judgment, and the operative date for determining the valuation of matrimonial assets should be the date of the ancillary matters hearing (“AM hearing”). As long as a property falls within the definition of a “matrimonial asset” under s 112(10) of the Women’s Charter (Cap 353, 2009 Rev Ed), it should be included in the pool of matrimonial assets regardless of whether it is jointly or separately owned.

16 For the purpose of dividing the matrimonial assets, I will refer to the Joint Summary submitted by parties as their final positions.

17 The pool of matrimonial assets includes the parties' matrimonial home at [P road], purchased around January 2013, as well as assets in their sole names acquired during the marriage or substantially improved during the marriage, as set out in s 112(10) of the Women's Charter. Parties agree that they shall each retain assets in their respective names. The assets in the Mother's sole name amount to \$1.55m, and the assets in the Father's sole name amount to around \$1.65m. Two major points of contention are the Netlink Trust shares and the parties' respective contribution to the matrimonial home.

18 The Mother claims that she is the beneficial owner of the Netlink Trust ("NLT") shares because she had entrusted \$200,000 to the Father to invest in these shares on her behalf in July 2017. The Father used \$160,000 to purchase the shares, but did not return the Mother the remainder of the money. The dividends received from the 188,000 NLT shares purchased using her monies were not given to the Mother. These shares were also not a gift to the Father. Hence, the Mother seeks a transfer of the value of the shares, as well as the dividends.

19 The Father's response is that he identified this investment opportunity, and because he had no liquid assets, he asked for the Mother for a lump sum of \$200,000 to cover the shortfall arising from his payment of the expenses through the years. This sum is thus a gift from the Mother, considering how he had expended. When he wanted to return the excess monies left over from investing in the NLT shares, the Mother then said there was no need to do so. The Father's counsel submits that the Mother is not the beneficial owner of the NLT shares.

20 I am of the opinion that the NLT shares are part of the pool of matrimonial assets for division. Matrimonial assets are the gains of the marital partnership, acquired by parties' cooperative effort. The Father has identified

the investment opportunity, the Mother has supported this investment by funding it, even if the \$200,000 was her own money. This is the sort of things married couples do, and at that point, were happy to consider the exercise an effort of the marriage. And even if it were a gift, as the Father claims, an interspousal gift which is acquired by one spouse during a marriage still falls under s 112(10)(b) of the Women's Charter. Hence, I will take the NLT shares into account as joint asset for the purpose of division. As at June 2020, the NLT shares are valued at \$186,120.

21 Besides assets held in their sole names, the Father claims that he has made direct financial contributions amounting to \$1,230,620.52, and the Mother contributed \$527,800. For the purchase of the matrimonial home, the Father allegedly contributed to 88.7% of the purchase price by contributing to almost all of the monthly mortgage payment and \$7,836 from CPF and cash. The Mother contributed \$1,000 to the monthly mortgage payment from CPF. The Father's position is that the matrimonial assets should be sold with sale proceeds divided 80% and 20% to the Father and Mother respectively, after payment of the outstanding loan, the agent's commission and the sale expenses, as well as the CPF refund for both parties. The Father wants the liberty to purchase the Mother's share in the matrimonial home for her 20% share at market price.

22 For indirect contribution, the Father claims that he was the party who was solely or mainly responsible for the administration of the household, and that he was in charge of the renovation and furnishing of the matrimonial home, and getting their weekly groceries. Thus, on those significant indirect non-financial contributions, he wants the indirect contributions to be expressed as 90% to the Mother's 10%.

23 The Mother, however, claims that she has made substantial indirect contributions to the marriage. She has paid the majority of the household and family expenses, including the children's expenses, the helpers' salary, the children's classes and grocery. She also went through assisted reproduction, paid for the costs of the tests and procedures for intrauterine insemination to start a family. When she conceived naturally while waiting for the IVF procedure, she had to undergo invasive testing for all her high-risk pregnancies. She also sacrificed her career opportunities by turning down a prestigious overseas fellowship training when she was pregnant with [W]. She took care of the Children since their births, managed their health issues and attended to their clinical appointments, supported the Father's MBA course which required him to travel frequently, and helped him attend to his family's medical care. Given her contributions, the Mother's counsel submits that the Mother's indirect contributions ought to be 80%.

24 Counsel further submits that the indirect contributions should be given a higher weightage in the Mother's favour in the overall computation, in contrast to the direct contributions:

	Father	Mother
Direct (40%)	57% (22.8%)	43% (17.2%)
Indirect (60%)	20% (12%)	80% (48%)
Overall contributions	34.8%	65.2%

25 The Mother also asks for the first option to purchase the Father's share in the matrimonial home so as to ensure stability for the children. The Mother proposes that the Husband refund his own CPF account using monies from his share, and the Mother will bear the costs and expenses of the transfer of the Father's shares to her, save for his legal fees.

26 This is a dual-income family. So, first, the court should ascribe a ratio which represents the parties' respective direct contributions towards the acquisition or improvement of matrimonial assets. Secondly, the court will find a second ratio that represents the parties' indirect financial and non-financial contributions towards the welfare of the family. At the third step, the court takes an average of the two ratios to derive each party's overall contribution to the family, unless it can be shown otherwise why I should ascribe a different weight to the first two ratios. The division of matrimonial assets is not a straightforward mathematical exercise, but one that requires a holistic view of each party's contributions against the backdrop of the realities of marriage, therefore, like many cases of similar situations, the court is compelled to apply a broad brush to cover the overall disintegrating canvas. Where, as here, documentary evidence is lacking, the court must make a "rough and ready approximation" of the figures.

27 That parties have agreed to exclude assets held in their sole name from the exercise of division is a laudable step. I will thus exercise my discretion to focus on parties' respective contributions to the matrimonial home as an overall barometer of their contribution to the matrimonial assets for the purpose of division, bearing in mind that the Mother has also made financial contribution to the acquisition of the NLT shares.

28 In terms of direct financial contribution to the matrimonial assets, I find that parties' contributions are as follows:

S/N	Items	Father's Contributions (\$)	Mother's Contributions (\$)
1.	Down Payment (Cash)	213,200.00	141,000.00
2.	Stamp Duties	84,600.00	-

3.	Option Fees	30,000.00	-
4.	Deposits	-	120,000.00
5.	Down Payment (CPF)	12,000.00	84,000.00
6.	Buyer's agent fee	-	-
7.	Renovation	114,900.00	190,800.00
8.	Mortgage (Cash) until June 2020	555,302.77	-
9.	Mortgage Payments (CPF)	89,000.00	89,000.00
Total		1,099,002.77	624,800.00
Ratio		64%	36%

29 For the cash down payment, the Father produced a cashier's order for a sum of \$354,220 paid from the DBS account under his name. Though the Mother claims that she can account for \$141,000 of the cash contributions for the down payment, she was unable to account for how she contributed an additional sum of \$106,500. In fact, her own record stated that she could "only show transfer of 141K out of [her] account". The burden is on her to prove otherwise, and she has not discharged such burden. Hence, in relation to the cash payment, I find that the Mother has contributed \$141,000 and the Father has contributed the remainder. For the agent fees, the Mother claims that parties have contributed to the payment of \$32,100 equally, but the Father claims that this is a misrepresentation. I find that there is no basis to attribute this sum to either parties. The sale and purchase agreement of the matrimonial home sets out that the seller of the house shall pay for the agent fees. There is no evidence from either of them that they had made such a payment.

30 As for the renovation costs, based on the cheque payments and the corresponding bank statements the Mother has submitted, I am satisfied that she has discharged her burden of proof and shown that she had paid for \$190,800. The Father has only shown the invoices issued to him, but not the proof of payments. As such renovation costs were incurred at the time the matrimonial home was acquired, and went towards improving the value of the matrimonial assets, I find that these are direct financial contributions to be taken into account. But as stated above, given the Mother's contribution to the acquisition of the NLT shares and the Father's receipt of the dividends that were not accounted for, I will give an uplift to her ratio of direct financial contributions, and as such the final ratio of parties' respective direct financial contributions is 60:40 in favour of the Father.

31 In terms of indirect contributions, this includes both financial contributions to the household expenses, which include property tax, fire insurance and furnishings, as well as non-financial contributions, such as parenting. As for the furnishings, unlike in the case of the renovation, the Father has proof of payments, and I accordingly find that he had contributed \$59,009.67 as he claims he did. I also accept that the Father has contributed to the payment of various household expenses such as the fire insurance, mortgage transaction fees and property taxes, amounting to around \$35,800. But this is not to disregard the Mother's financial and non-financial contributions, as she has paid for the helper's salary, levy, and other household expenses. Both are high-earning individuals, who contributed to the household expenses and to raising their children in their own right. I will therefore ascribe a ratio of 50:50 for their indirect contributions. I do not find any special reasons to give the parties' indirect contributions more weightage in the overall ratio, as the marriage is about nine years, and both parties are professionals; both have made

sacrifice and both were also fortunate to have the help of helpers and their parents in raising their children. Thus, I determine the average ratio for the division of matrimonial assets to be 55:45 in favour of the Father.

32 I grant the Mother the first option to buy the matrimonial home, and the Father the first option to buy the NLT shares. The respective options are to be exercised within three months, and the value of the respective assets shall be determined by the prevailing market price. If parties are unable to agree on the market price, they are to jointly appoint and bear the costs of a valuer. In the event that neither party exercises his or her option within three months from the Judgment, the assets are to be sold within six months from the expiration of the option, and the net proceeds of sale shall be divided in the proportion of 45% to the Mother, and 55% to the Father. Parties shall refund to their CPF accounts using their own share of the net proceeds.

33 As for maintenance of the children, the Mother submits that the monthly expenses of the children are as follows: \$5,889.82 for W, \$6380.53 for R and \$4,828.20 for X, including \$921 for each child's proportion of household expenses (the household expenses are estimated to \$6,448). This amounts to a total of \$17,098.55.

34 Parties have agreed that the children's expenses should be borne in equal proportions. The Mother's computation is that the Father ought to contribute the sum of \$8,549.28 per month. The Father has only contributed to a total of \$29,949.57, which averages \$4,991.59 per month for the period from 1 July 2019 to 31 December 2019. Hence, the Mother also seeks an order for the monthly maintenance to be backdated to the date of the Interim Judgment.

35 The Father submits that these expenses are inflated and exaggerated. I agree. R has yet to attend primary school, and X is only 2 years' old. However, as the Father did not dispute, in principle, that some expenses should be incurred, I will adopt the Mother's estimation of the children's expenses for medical expenses, insurance, dental visits, clothes, grooming, and school fees. However, for the children's enrichment classes, I will cap that at \$3,000 in total for W and R. This has factored in their swimming lessons, Learning Lab lessons, art classes, taekwondo activities and so on. Anything beyond that is excessive for young children who have limited time and energy. If the Mother wishes to enrol the children into additional activities that stretch beyond the cap of \$3,000, she is to seek the consent of the Father before claiming reimbursement. Holiday camps are not regular activities, but take place at best, on a yearly basis, the Mother is entitled to seek reimbursement from the Father based on the actual receipts or invoices. For children's major medical and dental expenses which are not covered by insurance, the Father shall reimburse the Mother within seven days upon receiving the medical/dental receipts. I find that the expenses of the three children amount to \$10,500 per month starting from 1 January 2022, as X will enrol in kindergarten. As for the household expenses, which include grocery, utilities and so on, I will add an additional \$1,500 for the three children's share of the household expenses. The Father is to bear half of the monthly expenses (a total of \$6,000) to be deposited into the Mother's bank account at the start of each month. For overseas trips, parties are to bear their own costs for the holidays. For maintenance from the date of interim judgment to the date of this Judgment, the Father is to pay the Mother a lump sum of \$95,000 for his share of the children's expenses.

36 Shortly before this judgment is to be released, counsel for the Father wrote a letter to the court which exhibited correspondence between the

solicitors, and did so without copying counsel for the Mother, who correctly pointed out that this is litigation by correspondence, and an acrimonious approach to ancillary matters contrary to the spirit of therapeutic justice. Further, it is wrong to do so because when a court has reserved judgment as I have done in this case, no new evidence should be presented without the leave of court. This is also not an invitation for parties to begin a practice of seeking leave after a court has reserved judgment. Leave would only be given in the most extreme cases in order that injustice can be averted.

37 I make no order as to costs.

- Sgd -
Choo Han Teck
Judge of the High Court

Tan Wen Cheng Adrian (August Law Corporation) for the Father;
Yap Teong Liang (T L Yap Law Chambers LLC) for the Mother.
