

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGHCF 7

High Court — District Court Appeal from the Family Courts No 150 of 2018

Between

UUV

... Appellant

And

UUU

... Respondent

In the matter of Divorce Suit No 3340 of 2017

Between

UUU

... Plaintiff

And

UUV

... Defendant

JUDGMENT

[Family Law] — [Divorce] — [Ancillary matters] — [Division of
matrimonial assets] — [Maintenance]

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**UUV
v
UUU**

[2020] SGHCF 7

High Court — District Court Appeal from the Family Courts No 150 of 2018
Tan Puay Boon JC
7 August, 15 October 2019; 1 November 2019

17 March 2020

Judgment reserved.

Tan Puay Boon JC:

Introduction

1 This is an appeal by the Defendant (“Husband”) against the decision of the District Judge (“DJ”) in the Ancillary Matters (“AM”) hearing of the divorce proceedings between him and the Plaintiff (“Wife”). The appeal concerns four issues: care and control of, and access to, the two children to the marriage (“Children”); maintenance of the Children; maintenance of the Wife; and the division of the matrimonial home (“the Flat”) (see *UUU v UUV* [2019] SGFC 37 (“GD”) at [1]).

Background facts

2 The parties were married in Singapore on 23 October 2010. The first child (“C1”) was born in March 2011, and the second child (“C2”) was born in November 2013. The parties lived in the house of the Husband’s parents from

the start of their marriage until June 2013, at which point they moved to a rented flat in Ang Mo Kio. The parties stayed in the Ang Mo Kio flat until February 2015, when they moved into the Flat that they purchased. The parties lived together until the Wife moved out of the Flat with the Children on 5 May 2017. The Wife filed the Writ of Divorce on 20 July 2017, before returning to the Flat with the Children in August 2017. Interim Judgment (“IJ”) was granted on 9 January 2018, on the ground that both parties have behaved in such a way that the other party could not reasonably be expected to live with him/her. It brought to an end a marriage of about seven years. The AM hearing took place on 28 September 2018 and 13 November 2018, and the AM Order was made on 29 November 2018.

3 The Husband is 37 years old this year. He is a full-time safety instructor, but he also takes on part-time jobs as a private car hire driver and a bartender. The Wife is 31 years old, and she works as a personal assistant. C1 is nine years old and C2 is seven years old.

4 The Flat, a Housing and Development Board (“HDB”) flat in Yishun, was purchased in August 2014 in the parties’ joint names.¹ There was a 5-year Minimum Occupancy Period (“MOP”) imposed on the Flat, which has expired in August 2019 (GD at [36]).

5 The Husband appealed against the following terms of the AM Order (see FC/ORC 6175/2018):

- (a) Care and control of the Children was granted to the Wife, and liberal access was granted to the Husband;

¹ Wife’s 1st Affidavit of Assets and Means dated 9 March 2018 (“W AOM1”) at p 48.

- (b) The Husband was to pay \$800.00 per month, along with other education fees, for maintenance of the Children;
- (c) The Husband was to pay a nominal sum of \$1.00 per month for maintenance of the Wife;
- (d) The Flat was to be divided in a 55:45 ratio between the Wife and the Husband; and
- (e) The Wife was given the first right to purchase the Husband's share of the Flat.

6 Regarding the order set out in [5(e)], the Husband has successfully obtained a stay on the disposal of the Flat pending the determination of this appeal (see FC/ORC 1746/2019). As a result, the Husband and the Wife are still living together at the Property along with the Children.

The appeal

7 The Husband raised the following issues in this appeal:²

- (a) The DJ erred in granting care and control of the Children to the Wife;
- (b) The DJ erred in ordering the Husband to pay \$800.00 monthly plus disbursement for maintenance of the Children;
- (c) The DJ erred in ordering the Husband to pay nominal maintenance to the Wife;

² Appellant's Case ("HC") at paras 10, 111.

(d) The DJ erred in dividing the Flat in a 55:45 ratio between the Wife and the Husband;

(e) The DJ erred in her valuation of the Flat.

8 Over the course of the appeal, the Wife filed HCF/SUM 118/2019 and the Husband filed HCF/SUM 145/2019 to seek to adduce further evidence. I have admitted the affidavits filed in both summonses for this appeal.³

9 I will deal with each of the issues raised by the Husband.

Care and control of, and access to, the Children

10 Under the AM Order, care and control of the Children was granted to the Wife and liberal access was granted to the Husband. The access terms include, *inter alia*, weekday access during the school term every Monday to Friday from after school to 9.00pm.

11 The Husband submitted that the AM Order should be amended to state that he be given the care and control of the Children, with no changes to the access arrangements made in the AM Order.⁴ In response, the Wife submitted that the AM Order should be amended to state that the Husband should only have weekday access on Monday and Friday (as opposed to Monday to Friday).⁵

12 It is unclear whether the Husband wanted care and control to be given to him solely, or shared between him and the Wife. In any event, I am of the

³ Minute Sheet 7 August 2019 at p 1.

⁴ HC at para 56.

⁵ Respondent's Case ("WC") at para 80.

view that care and control should be given to the Wife solely. I am also inclined to amend the AM Order, such that the Husband is only given weekday access on Monday and Friday.

Legal principles

13 Section 124 of the Women’s Charter (Cap 353, 2009 Rev Ed) (“the Charter”) provides that “[i]n any proceedings for divorce ... the court may ... make such orders as it thinks fit with respect to the welfare of any child”. Such orders which the court may make include orders for care and control, and access.

14 The parent with care and control is the daily caregiver with whom the child live with primarily. Consequently, that parent is generally responsible for making day-to-day decisions for the child (*CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690 at [31] and *TAU v TAT* [2018] 5 SLR 1089 (“*TAU*”) at [9]).

15 The parent with access, while not the child’s daily caregiver, would also spend regular periods of time with the child. Access can take many forms. When the parent with access is with the child, he or she can make some day-to-day decisions for the child, as it would be impractical for the parent with care and control to be consulted on every decision (*TAU* at [9]).

16 In making orders for care and control and access, the court’s paramount consideration is the welfare of the child: s 125(2) of the Charter.

Application***Care and control to the Wife***

17 As stated in [13]–[15] above, care and control should be given to a parent if it would be in the child’s best interest to have that parent be the primary, day-to-day caregiver. I am of the view that the DJ was justified in awarding care and control to the Wife for two reasons.

18 First, the Husband’s commitments in the earlier part of the marriage suggest that he could not have been the primary caregiver in the earlier years of the marriage. During the period from March 2011 when C1 was born to July 2014, the Husband worked as a flight attendant.⁶ The Husband also did not dispute the Wife’s claim that he was pursuing a university degree between 2011 and 2014.⁷ The Wife, on the other hand, stopped working as a flight attendant when she was pregnant with C1 in 2010.⁸ As a result, the Wife would more likely be the primary caregiver of C1 between 2011 and 2014, and of C2 between 2013 (when C2 was born) and 2014. While the parties did live in the house of the Husband’s parents until June 2013,⁹ the Husband’s parents did not claim that they took over the primary caregiver role.¹⁰ In any event, after the parties moved out of the house of the Husband’s parents in June 2013, the Wife

⁶ Husband’s 1st Affidavit of Assets and Means (“H AOM1”) at para 19(i).

⁷ Minute Sheet 7 August 2019 at p 2; WC at para 31; Wife’s 2nd Affidavit of Assets and Means dated 14 May 2019 (“W AOM2”) at para 46; WC at para 31.

⁸ Minute Sheet 7 August 2019 at p 5.

⁹ WC at paras 16–17; Joint Affidavit of Husband’s parents dated 12 November 2018 (“HPA”) at para 5.

¹⁰ HPA at para 6.

would have at least been the primary caregiver of both C1 and C2 from this point until July 2014.

19 Second, the parties’ conduct at the twilight of the marriage lends the inference that the Wife is the primary caretaker of the Children. The Wife moved out of the Flat with the Children in May 2017 (before returning three months later). This means that the Wife would be the primary caregiver of the Children during this period. Further, the Wife claimed that she reached an agreement for simplified divorce with the Husband on 23 March 2017, under which she had care and control of the Children.¹¹ She also furnished email correspondence of the agreement,¹² and the Husband did not dispute that there was such an agreement.¹³ In my view, this evidence supports the inference that there was an expectation between the parties that the Wife would be the primary caretaker of the Children when the parties separate.

20 I turn to address the arguments made by the Husband. He argued that the DJ erred in basing her decision on a statement that he made to the Wife in 2013 when the latter was nine months’ pregnant with C2, *viz*, “just tell the baby her father is dead” (GD at [19]). I am of the opinion that this statement was not the “determinative” factor behind the DJ’s decision.¹⁴ Nevertheless, this statement is “relevant” (GD at [19]) since it is inconsistent with the Husband’s position that he has been involved in the Children’s lives from when they were born.¹⁵

¹¹ W AOM2 at para 127.

¹² W AOM2 at pp 317–318.

¹³ Husband’s 3rd Affidavit dated 31 July 2018 (“H AOM3”) at para 29.

¹⁴ HC at para 27.

¹⁵ HC at para 36.

21 The Husband argued that his parents were more involved in the Children’s lives than the Wife’s mother.¹⁶ I agree with the DJ that this is a neutral factor (GD at [14]). The Husband’s parents¹⁷ and the Wife’s mother¹⁸ are equally capable of caring for the Children. The Husband’s claim that the Wife’s mother was preoccupied with caring for her other grandchildren in Malaysia is speculative.¹⁹ Even if the Wife’s mother was preoccupied, I am of the view that the Wife can rely on assistance from her domestic helper.²⁰

22 The Husband placed much emphasis on the Wife’s history of mental instability. In response, the Wife has furnished a report dated 12 February 2018 from the Institute of Mental Health (“IMH”) certifying that she was capable of caring for the Children.²¹ In rebuttal, the Husband claimed that the Wife contemplated self-harm as recently as 5 November 2018, after the parties got into an argument.²² In support of his claim, he furnished screenshots of WhatsApp messages from a mutual friend of the parties.²³ These showed a message from the Wife saying “I almost jump off”.²⁴ I note that the Wife’s message could be interpreted as an expression of her frustration and anger. Further, this was a one-off message from the Wife. Therefore, I am of the view

¹⁶ HC at paras 44, 54.

¹⁷ HPA at paras 11–14.

¹⁸ Affidavit of Wife’s mother dated 12 November 2018 (“WMA”) at paras 9–12.

¹⁹ WMA at paras 8–9.

²⁰ WC at para 48(e).

²¹ W AOM1 at pp 697–698.

²² Husband’s Affidavit for SUM 145/2019 dated 31 May 2019 (“HA 145”) at paras 6–9.

²³ HA 145 at pp 16–17, 20–24.

²⁴ HA 145 at p 17.

that the Husband's evidence is insufficient to show that the Wife contemplated self-harm on 5 November 2018.

23 I also note that both the Husband²⁵ and the Wife²⁶ raised allegations of improper sexual conduct with third parties against the other spouse. In my opinion, these allegations were not sufficiently substantiated. The evidence furnished by the parties, *ie*, screenshots of WhatsApp messages and online websites,²⁷ are sporadic, limited and without context. Therefore, I do not take these allegations into account in determining which party should be given care and control. I would add that even if the allegations against one party or the other party, or both parties, were true, there is no evidence that such conduct away from the presence of the Children would have any direct impact on the welfare of the Children, save for the fear that it may set a bad example to the Children if discovered by them. I am of the view that it is not a factor that would be determinative of which party should be given care and control of the Children.

24 Last but not least, the Husband claimed that he was deeply involved in the Children's lives since they were born. I accept that naturally, the Husband would have played an important role in taking care of the Children throughout the course of the marriage. However, this does not necessarily mean that he was the primary caretaker of the Children. Once again, I am of the view that the Husband's various commitments from 2011 to 2014 (see [18] above) meant that he would likely be less involved than the Wife in taking care of the Children for

²⁵ H AOM1 at para 28(i); H AOM2 at paras 29–30.

²⁶ W AOM2 at paras 104–109.

²⁷ H AOM1 at pp 244–249; W AOM2 at pp 265–266.

this period. For the period of 2014 onwards, the evidence did not clearly show that the Husband was more involved than the Wife in taking care of the Children. The activities raised by the Husband as evidence of this caregiving, *ie*, attending the Children’s curricular and extracurricular activities and looking after the Children’s day to day needs, were similarly done by the Wife. Moreover, the evidence shows that when both parties are not together, it was the Wife who was expected to look after the Children (see [19] above).

25 Considering all the factors stated above, even when the statement of the Husband at [20] above is disregarded, I decline to intervene with the DJ’s decision to grant sole care and control to the Wife.

Access to the Husband

26 The Wife also submitted that the terms of access to the Husband should be varied, so that he would only have weekday access on Monday and Friday (as opposed to Monday to Friday).²⁸

27 Even though she did not file a cross-appeal in this regard, I am satisfied that I have the power to amend the access order. Under the Family Justice Rules 2014 (S 813/2014) (“FJR”), the Family Division of the High Court can make orders as the case requires even if there was no notice of appeal filed: r 831(3)(b) read with r 831(4)(a) FJR.

28 In my view, the terms of weekday access should be varied based on three reasons. First, the Husband has not been fully exercising his weekday access as granted in the AM Order. The Wife claimed that nearly half of the Husband’s

²⁸ WC at para 80.

entitled weekday access was not utilised.²⁹ In response, the Husband explained that he only exercised access from Mondays to Wednesdays because he wanted to give the Wife the benefit of two weekdays with the Children.³⁰ I do not accept the Husband’s explanation. The Husband has failed to fully utilise his access since the AM Order was granted in November 2018 until May 2019. This consistent failure to fully utilise his access suggests that the Husband is, at the very least, unable to spend time with the Children.

29 Second, the implementation of the liberal access terms given to the Husband has proven difficult. The animosity between the parties has been exacerbated by the parties’ frequent contact, which was a result of the liberal access terms given to the Husband. This animosity is evidenced by the litany of allegations of misconduct raised by both parties.³¹ The continuation of this state of affairs would be inimical to the Children, who must bear witness to their parents’ incessant fighting.

30 Third, the parties will eventually stop staying together under the same roof when the stay on the disposal of the Flat (see [6] above) is lifted. In the circumstances, it would be disruptive to the Children to have them go from the Husband’s residence back to the Flat every weekday night.

31 Considering the Husband’s consistent failure to fully utilise his access, the difficulties in implementing the liberal access terms, and the eventuality of the parties not staying together under the same roof, I am of the view that the

²⁹ Wife’s Affidavit for SUM 118/2019 (“WA 118”) at paras 12–15.

³⁰ Husband’s Affidavit for SUM 118/2019 (“HA 118”) at paras 13 and 15.

³¹ For details on the allegations raised by the parties towards each other, see WA 118 and HA 145.

Husband's weekday access terms should be reduced. I amend the access order for the weekdays such that the Husband is now given access every Monday and Friday, as opposed to every Monday to Friday under the AM Order. Now that the younger child has also started formal schooling, the fewer number of days of access during the weekdays would also allow the Children to spend more time preparing for their school work. The rest of the orders regarding access (which involves access on weekends, birthdays, school and public holidays) can remain.

Maintenance of the Children

32 Under the AM Order, the Husband was to pay \$800 per month for maintenance of the Children, plus reimbursement for the Children's education and healthcare expenses.

33 The Husband submitted that if the Wife retain care and control of the Children, he should only be made to pay \$400 per month plus disbursements, or a flat sum of \$800 per month for maintenance.³² The Wife submitted that the Husband should be made to pay a flat sum of \$1,500.00 for maintenance.³³

34 Having considered the arguments and the evidence, I am of the view that the Husband should be made to pay a flat sum of \$1,000.00 a month for maintenance of the Children all in.

³² Minute Sheet 15 October 2019 at p 5.

³³ Minute Sheet 7 August 2019 at p 10.

Legal principles

35 The assessment of maintenance rests upon the principle of “common but differentiated responsibility”: *AUA v ATZ* [2016] SGCA 41 at [41]. This means that the starting point of equal financial contribution is not an inflexible rule: *TBC v TBD* [2015] 4 SLR 59 at [27]. Rather, the maintenance of the children should be apportioned in accordance with the financial capabilities of the parents: *TIT v TIU* [2016] SGHCF 8 at [62].

Application

36 I begin with the mode of payment. The Wife argued in favour of a flat monthly sum as the Husband has been late in reimbursing her for the Children’s expenses. However, she accepted that a flat monthly sum would not take into account any variation in the Children’s expenses.³⁴

37 Notwithstanding this difficulty with the payment of a flat monthly sum, I am still of the view that this is the preferable mode of payment. The relationship between the parties is fraught with difficulties, and the mechanism of reimbursement would be likely to aggravate the animosity between the parties. The payment of a flat monthly sum would minimise interaction, and friction, between the parties. In any event, the Husband was also content to pay a flat monthly sum, so long that the quantum is reasonable.

38 I turn next to the quantum of payment. The Wife has furnished her estimation of the Children’s monthly expenses, which amounted to \$3,783.00.³⁵ In my opinion, some of the expenses set out by the Wife are unreasonable. For

³⁴ Minute Sheet 7 August 2019 at p 10.

³⁵ WC at paras 92–93.

instance, dental expenses per child are set out at \$100.00 a month or \$1,200.00 per year, even though the Wife indicated that there is only one dental session per year.³⁶ Further, birthday expenses per child are set out at \$300.00 a month, or \$3,600.00 per year. Additionally, medical expenses per child are set out at \$300.00 per month or \$3,600.00 per year, even though the Wife can claim for these expenses from her employer. I decide to deduct these expenses, which means that the monthly expenses for the Children amounts to \$2,383.00.

39 I am of the opinion that the Wife should bear a slightly higher portion of the monthly expenses for the Children. The Wife's monthly salary is \$4,508.00³⁷ while the Husband's monthly salary is \$2,189.16.³⁸ If the parties are to bear the Children's monthly expenses in equal proportions (~ \$1,200.00), and the Husband is to continue paying for C2's insurance premiums at \$150.00 pm,³⁹ the Husband effectively has about \$850.00 for himself every month. The Husband also claimed that he has to pay a monthly renovation loan of \$344.00 and insurance premium of \$287.15.⁴⁰ I note that the renovation loan ended by November 2019,⁴¹ and it is unclear how the premium of \$287.15 was obtained.⁴² Regardless, a sum of \$503.66 (being \$2,189.16 - \$2,383.00/2 - \$150.00 - \$344.00) to \$847.66 (if he no longer has to pay the renovation loan of \$344.00) per month is, in my view, scarcely sufficient for him to maintain himself.

³⁶ WC at para 92, S/N 9 and para 93, S/N 77.

³⁷ W AOM1 at para 9(d).

³⁸ H AOM1 at p 5.

³⁹ Minute Sheet 15 October 2019 at p 1.

⁴⁰ HA 118 at para 61.

⁴¹ Minute Sheet 15 October 2019 at p 1.

⁴² Minute Sheet 7 August 2019 at p 11.

40 Accordingly, I am of the view that the Husband should be required to pay \$1,000.00 all in monthly in maintenance for the Children. The Wife would be paying \$1,383.00 (being \$2,383.00 - \$1,000.00) out of her pocket every month to maintain the Children. Considering the Wife's monthly income of \$4,508.00 and her monthly expenditure of \$2,952.00 (being her personal expenses of \$2,652.00⁴³ and her maintenance of her mother of \$300.00⁴⁴) or \$2,726.00 (being \$2,952.00 - \$226.00 if she no longer has to pay the renovation loan)⁴⁵, it would be within her means to pay the sum of \$1,383.00.

41 Thus, I amend para 2.1 of the AM Order such that the Husband is to pay the Wife \$1,000.00 in monthly maintenance on the third day of each month. Paras 2.3 to 2.6 of the AM Order are revoked. This new order on maintenance is to take effect from the date of this judgment. In making this maintenance order, I note that the Husband is well educated and does have a higher earning capacity than what is reflected by his current income. This maintenance order should therefore be reviewed once he obtains a better paying job.

Maintenance of the Wife

42 Under the AM Order, the Wife was granted nominal maintenance of \$1 per month until November 2020. The Husband submitted that order for nominal maintenance should be rescinded. I accept the Husband's position.

Legal principles

43 The principles concerning the grant of nominal maintenance have been

⁴³ W AOM1 at para 20.

⁴⁴ W AOM1 at para 23.

⁴⁵ W AOM1 at para 6 and para 20, S/No 6.

comprehensively summarised by the Court of Appeal in *TDT v TDS and another appeal and another matter* [2016] 4 SLR 145 (“*TDT*”). First, nominal maintenance is not awarded automatically or as a matter of course. Second, the court will not award nominal maintenance based on the wife’s bare assertion that her future situation may change. Third, the court must bear in mind the underlying rationale behind the grant of spousal maintenance, which is that of financial preservation (*TDT* at [71]).

Application

44 The DJ granted the Wife nominal maintenance until November 2020 so as to allow the Wife some time to stabilise her finances after the divorce (GD at [35]). In my view, there is no evidence to suggest that the Wife would need some time to stabilise her finances. In fact, her salary of \$4,508.00⁴⁶ is twice that of the Husband’s salary of \$2,189.16,⁴⁷ and the Husband is also helping her to support the Children by paying maintenance. In the circumstances, the Wife is capable of supporting herself financially and a grant of nominal maintenance would be unnecessary.

45 The Wife relied on *TBV v TBW* [2015] SGFC 44 (“*TBV*”) to support her position. In *TBV*, nominal maintenance was granted to the wife since she was the primary caregiver of two young children, and she was therefore entitled to seek financial support from the husband if there is a change in circumstances in the future which affects her income (at [19]). In my opinion, the reasoning in *TBV* can no longer stand after the decision of the Court of Appeal in *TDT*, which

⁴⁶ W AOM1 at para 9(d).

⁴⁷ H AOM1 at p 5.

held that a wife’s bare assertion of a change in future circumstances is insufficient.

46 I note that at the time of the appeal hearing in September 2019, the order for nominal maintenance was to last for only another year. In the circumstances, there would be minimal prejudice to the Wife if the nominal maintenance order be revoked. Further, a revocation of the nominal maintenance order would remove yet another possible source of conflict and reduce any further animosity between parties.

47 Accordingly, I amend the AM Order such that no maintenance is granted in favour of the Wife.

Division of the Flat

48 The Flat was the only matrimonial property divided between the parties. The parties agreed that the direct financial contributions ratio was 65:35 between the Husband and the Wife. They also agreed that equal weightage is to be given to the direct and indirect contributions.⁴⁸ The DJ found that the indirect contributions ratio was 30:70 between the Husband and the Wife, and arrived at a final division ratio of 47.5:52.5 between the Husband and the Wife which she rounded to 45:55 (GD at [45]).

49 The DJ also gave the Wife the first right of purchase over the Flat. Therefore, under the AM order, the Husband was to transfer his share of the Flat to the Wife in exchange for a refund to his Central Provident Fund (“CPF”) Ordinary Account of 45% of the net value of the Flat. The gross value of the

⁴⁸ Joint Summary of Information at p 11, S/No 1.

Flat was the average between the purchase price of the Flat (at \$371,500.00) and its surrender value (at \$352,925.00).⁴⁹ The net value of the Flat was derived by deducting the outstanding housing loan of \$257,479.73 from the gross value;⁵⁰

$$[(\$371,350.00 + \$352,295.00) \div 2] - \$257,479.00 = \$104,732.77 \approx \$104,500.00.$$

The Husband's share of the Flat was therefore calculated at \$47,000.00 (being \$104,500.00 x 0.45).

50 On appeal, the Husband submitted that the gross valuation of the Flat should not be based on the surrender value, but instead on the Flat's market value. He also submitted that he should be given a higher share of, as well as the first right of purchase over, the Flat. In response, the Wife submitted that she should be given a higher share of the Flat instead.

Valuation of the Flat

51 The Husband submitted that the date of valuation of the Flat should not be the AM date, but instead the appeal hearing date of 15 October 2019.⁵¹ The Husband's concern was that the gross value of the Flat on the AM date would be its surrender value, since the MOP for the Flat has yet to expire then. Since the Flat's surrender value was lower than its market value, he would thus be

⁴⁹ Notes of Evidence for D3340/2017 at pp 23–24.

⁵⁰ Notes of Evidence for D3340/2017 at pp 23–24.

⁵¹ Husband's Supplemental Submissions dated 8 October 2019 ("HSS1") at para 9.

required to sell his share of the Flat to the Wife at a discount. This, according to the Husband, would result in a windfall to the Wife.⁵²

52 To address the Husband’s arguments, I adopt a two-stage enquiry:

- (a) First, should the date of valuation of the flat be the AM date or the appeal hearing date?
- (b) Second, if the AM date is adopted, should the gross valuation of the Flat be based on the surrender value?

53 On the first question, I do not accept the Husband’s position. My attention was directed to the case of *ATT v ATS* [2012] 2 SLR 859 (“*ATT*”), which dealt with a situation similar to the present case. In *ATT*, the AM order entailed a “property swap” where the disputed property was given to the wife and other properties were given to the husband. After the husband filed his Notice of Appeal, the disputed property was sold as part of an *en bloc* sale for about \$1m above its valuation at the time of the AM hearing. The Court of Appeal was of the view that a change in value of an asset between the AM order and the final appeal will not, without more, be sufficient (at [25]). The Court of Appeal’s reasoning merits being set out in full:

.... This begged the question as to whether such a subsequent change in the value of a matrimonial asset could *ipso facto* constitute a ground for a successful appeal. ... If the “property swap” order made by the Judge in this case were held to be just and equitable and had been affirmed by us, we do not see any basis to review the division on account of subsequent changes in the valuation of the asset in question. ***Especially in a volatile market where prices do move up and down fairly rapidly, there should be certainty and finality. The party who, under the order on division of matrimonial assets, is***

⁵² HSS1 at para 14.

given an immovable property would have to take it subject to all risks or vagaries of the market. Otherwise, it would only encourage relitigation at the appeal stage. Thus, unless there are special circumstances or compelling reasons, the mere change in 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.

[emphasis added in bold italics]

54 In my opinion, the case of *ATT* is not on all fours with our current case. In *ATT*, the *en bloc* sale of the disputed property (and therefore the subsequent change in value) was not foreseeable at the time of the AM hearing. In our case, however, the expiry of the Flat’s MOP was foreseeable at the time of the AM hearing. Therefore, if the change in value occasioned by the expiry of the Flat’s MOP can be dealt with by the DJ during the AM hearing, the concern about encouraging relitigation would not arise.

55 However, I am not convinced that the change in value occasioned by the expiry of the Flat’s MOP could have been satisfactorily dealt with by the DJ. There remains the concern of speculation, *ie*, making a valuation where there is insufficient information. In our case, it would be difficult for the DJ to make an estimation on 28 September 2018 about what the market value of the Flat would be when the MOP expires eleven months later. While the Husband can wait for the MOP to expire and then file an appeal to get a more accurate valuation of the Flat (which he did in this case), such an approach will once again engage the Court of Appeal’s concern with encouraging relitigation.

56 Accordingly, I find that the appropriate date of valuation should be the AM date.

57 On the second question, I am of the view that even if the AM date is chosen, the gross value of Flat should nevertheless be based on the market value

of similar HDB properties in the vicinity, and not the Flat’s surrender value. I accept the Husband’s argument that a valuation based on the surrender value would result in a windfall to the Wife. I note that in the case of *AGD v AGF* [2011] SGDC 293, the District Court preferred the surrender value over the market value as the latter was “[a speculation] on what the value of the [property] might be when it is eligible for sale” (at [17]). However, in my view, the surrender value is just as much of a speculation on the Flat’s value when it is eligible for sale. The surrender value would only be an accurate estimate of the Flat’s value if it was actually surrendered to the HDB, which is unlikely to be the case. Therefore, the market value of HDB properties similar to the Flat is to be preferred to the Flat’s surrender value, the former being a more accurate indication of the real worth of the Flat.

58 I note that there is no evidence on the market value of HDB properties similar to the Flat on the AM date of 28 September 2018. In the circumstances, I direct the parties to obtain further evidence of such property for the purposes of deriving the gross value of the Flat, and to agree on its valuation. The valuations obtained by the parties were not based on the AM date of 28 September 2018, and thus may not be appropriate.

The appropriate division ratio

59 While only the Husband has appealed against the DJ’s orders on the division of the Flat, both parties have submitted on the DJ’s finding that the indirect contributions ratio was 30:70 between the Husband and the Wife.

60 I begin by addressing the arguments raised by the Wife. First, she argued that the Husband should be awarded negative indirect contributions for his

attempt at poisoning the Wife's mother.⁵³ It was not conclusively proven that the Wife's mother was poisoned, or that the Husband was the culprit. Therefore, I do not give weight to this argument in arriving at the indirect contributions ratio.

61 Second, the Wife also claimed that the Husband has deliberately caused injury to her and the Children,⁵⁴ and damaged her personal property.⁵⁵ Given that the Wife only furnished evidence of the injury and damage done, but not of the person who inflicted such injury and damage, I am again not able to conclude that the Husband was responsible.

62 Last, she argued that an adverse inference should be drawn against the Husband for his failure to disclose two insurance policies in favour of the Children⁵⁶ and his receipt of the Baby Bonus cash gifts totalling at \$10,000.00.⁵⁷ In my view, the Baby Bonus cash gifts were paid out between 2011 and 2014,⁵⁸ which means that these sums are likely already spent. As for the insurance policies, I note that the assured under the policies are the Children.⁵⁹ However, there were no indication on who the beneficiaries under the policies were. In the circumstances, I am not inclined to find that the policies were for the Husband's benefit. Accordingly, I decline to draw any adverse inference against the Husband.

⁵³ WA 118 at para 41.

⁵⁴ WA 118 at para 41.

⁵⁵ WA 118 at para 43–46.

⁵⁶ WA 118 at para 5.

⁵⁷ WA 118 at paras 9–10.

⁵⁸ WA 118 at pp 30, 33.

⁵⁹ WA 118 at pp 28–29.

63 I turn to address the Husband's arguments. His case on appeal was that he was the primary caretaker of the Children, and thus the indirect contributions ratio should be more in his favour.⁶⁰ Once again, I accept that the Husband has played an important part in the Children's upbringing; but as I have found in [18]–[19] above, the Wife was the primary caretaker of the Children.

64 Further, while the Husband footed the bill for at least half of the rent of the Ang Mo Kio flat,⁶¹ and half the cost of furniture and electronic equipment in the Flat,⁶² he made no attempt⁶³ to refute the Wife's claim that she was responsible for most of the Children's childcare fees, utilities and groceries.⁶⁴ In the circumstances, I am not minded to interfere with the exercise of the DJ's discretion in arriving at an indirect contributions ratio of 30:70 between the Husband and the Wife.

65 For completeness, the Husband also argued that the parties' direct contributions should be given higher weight, since this was a short marriage.⁶⁵ In my view, the duration of the marriage at seven years is not short. Further, given that there were children from the marriage, the indirect contributions made by the parties in raising the Children would have been significant.

66 In sum, the direct contributions ratio and indirect contributions ratio would be 65:35 and 30:70, respectively, between the Husband and the Wife.

⁶⁰ HC at paras 101–102.

⁶¹ H AOM1 at para 19(c); W AOM2 at para 17.

⁶² H AOM1 at para 19(d); W AOM2 at para 18.

⁶³ H AOM3 at pp 6–7.

⁶⁴ W AOM2 at para 26–34.

⁶⁵ HC at para 78.

There is also nothing on the evidence to compel me to depart from the general position of attributing equal weightage to direct and indirect contributions. I note that the DJ has rounded the division ratio without expressly providing a reason why (GD at [44]–[45]). In my view, it is not necessary to make any further adjustments to the division ratio. Therefore, I arrive at a final division ratio of 47.5:52.5 between the Husband and the Wife.

Apportionment of the Flat

67 With regard to the apportionment of the Flat, I am not inclined to intervene with the DJ’s decision. In my opinion, she was justified in granting the Wife the first right of purchase over the Flat, since this would result in minimal disruption of the Children’s lives. This would be based on the valuation of the Flat obtained in accordance with [58] above.

68 I also address the issue of who should bear the mortgage payments on the Flat after the AM Order was issued. I am guided by the Court of Appeal authority of *TIC v TID* [2019] 1 SLR 180, which stated at [24(b)] that when a spouse has been given the option of buying the other spouse’s share in a matrimonial property, the eventual owner of the property should be responsible for the mortgage payments made between the date of the AM Order and the date of completion. Accordingly, the Wife should be responsible for the mortgage payments on the Flat for the period after the date of the AM Order, *ie*, December 2018. The Wife should thus refund the Husband \$7,326.00 (being \$603.00 x 12 months from December 2018 to November 2019). As the Husband has not made mortgage payments for December 2019 and January 2020, the Wife should simply pay this amount. While there is a \$3.80 late payment charge arising from the Husband’s non-payment of the mortgage loan on December 2019 and

January 2020, this charge is in my view *de minimis*. It would engender less acrimony if the Wife simply pay off this minimal sum.

69 I also note that the Wife has obtained a new mortgage loan on the basis that the Flat's surrender value would be used, and that a re-evaluation of the Flat's value would force her to cancel this mortgage loan and suffer a loss of \$4,455.00 in cancellation fees.⁶⁶ It is unfortunate that the Wife will have to suffer this loss, but in my view there is no basis to make the Husband liable for this cancellation fee.

Conclusion

70 In conclusion, para 1.3.i of the AM Order is varied such that the Husband's weekday access during the school term would be every Monday and Friday from after school to 9.00pm. The remainder of the AM Order dealing with access on weekends, birthdays, school and public holidays is to remain. Para 2.1 of the AM Order is also varied such that the Husband is to pay the Wife a flat monthly sum of \$1,000.00 monthly for maintenance of the Children. Further, para 3 of the AM Order is rescinded, so that the Husband no longer has to pay the Wife a monthly nominal maintenance of \$1.00. Para 5.1 of the AM Order is likewise varied such that the Flat is divided in the ratio of 52.5:47.5 between the Wife and the Husband.

71 In the event that parties are unable to agree on the valuation of the Flat in accordance with [58] above, they are to furnish evidence on the market value on the AM date of similar HDB properties in the vicinity of the Flat within four weeks of this judgment for the valuation to be determined by the court.

⁶⁶ Wife's Supplemental Submissions dated 8 October 2019 at para 22.

72 The parties are to file and exchange their submissions on costs, limited to ten pages (excluding list of disbursements, exhibits and authorities) within four weeks of this judgment, and to inform the Registry if they are prepared to receive the order on costs by way of Registrar's Notice.

Tan Puay Boon
Judicial Commissioner

Alyssa G Mundo (M/s Yeo & Associates LLC) for the Appellant;
Steffi Huang Yujia (M/s Kalco Law LLC) for the Respondent.
