LAB's Case Digest (2023)

This digest features various High Court cases on family law and procedure, published in 2023, which LAB found to be of interest. Each case write-up only focuses on points which LAB found to be of interest and does not cover every issue that was considered in the case.

WDB v WDA [2023] SGHCF 1

Child maintenance, relocation expenses, wife suffering from long Covid-19

Forum: General Division of the High Court (Family Division)

Brief facts: This case involves a wife who was ordered (through a variation order) to contribute to the relocation expenses of two teenage children, who followed the husband to the US some years after the divorce. The wife's appeal was allowed, and the variation order was rescinded.

Key points: At the time that the wife was ordered to contribute to the expenses, she was suffering from long covid, but the true extent of her medical condition was not known – there was still the possibility that she could recover. However, she remained very ill, and her prognosis was poor by the time of the appeal. The wife was unemployed as a result, and there seemed no prospect of her being able to take gainful employment in the foreseeable future. There was no medical evidence as to her fitness for employment, but the wife turned up in person in court, wheelchair bound, and only able to speak in a whisper, requiring constant intubation with an oxygen tank. The judge seemed to be convinced she was unemployable by seeing her in person.

VWM v VWN [2023] SGHCF 2

Division of matrimonial assets, matrimonial home

Forum: General Division of the High Court (Family Division)

Brief facts: This is a divorce case, with a short, less than 4-year marriage. Parties had two children. The district court ordered parties to have joint custody, with care and control to the wife, and for the matrimonial home, an HDB BTO flat, to be surrendered to HDB, and for parties to be refunded any sums they had paid in the proportion of their respective contributions towards the purchase price. The other matrimonial assets would be divided in the ratio of 64.5:35.5 in the wife's favour. The father was to pay $1,100 to the wife for child maintenance each month. There was to be no wife maintenance.

The wife was unhappy with the entire decision and appealed. The appeal court dismissed the appeal. The wife has further appealed, in respect of the matrimonial home.

This write-up will focus on the matrimonial home point. The wife wanted to take over the matrimonial home in her sole name, without making any refund to the husband's CPF account in respect of the CPF monies he used to pay for the flat.

Key points: The sale of the flat in question had not been completed by the time of the FJC hearing. Parties had not yet collected the keys. The wife therefore argued that the matrimonial home was worth $0.

The wife argued that her indirect contribution was 75% (versus the FJC judge's 55% estimate), notwithstanding it was a short marriage, based on all the work she had to do in carrying, giving birth to and caring for the two children. She further argued that the final ratio should be adjusted further upwards by 5% in her favour because the two children needed a roof over their heads. Also, she argued that the flat was close to her parents' residence, and she needed the support of her parents to take care of the children.

The High Court said that the wife had "*placed an unduly great emphasis on the facts that she gave birth to, and has care and control of, the children and that they need a roof over their heads… Having children is often part and parcel of the marriage process for a woman. It is unrealistic of the Wife to expect that a woman who bears children should be accorded special recognition or reward in the division of matrimonial assets in the manner set out in her submissions… In fact, the Wife came across, from her submissions, as utterly selfish and self-centred. She thought of only herself and had no regard whatsoever for the Husband, as seen in her proposal… that there need not even be a refund of his CPF moneys used for the deposit to the HDB. The Husband needs a roof over his head as much as she (and the children) does*."

The court noted that the wife had considerably more savings in her CPF accounts than the husband, and she also earned a comparable salary. She also had much more savings in her bank account than the husband did in his. It was therefore "*grossly unfair*" for her to deprive the Husband of his CPF refunds upon the transfer of the flat. It was also "*absurd*" of her to submit that the flat had no value. This would amount to giving her a windfall.

Other considerations the FJC judge took into account, which the High Court accepted, is the fact that it would be a clean break for neither party to obtain the property, and then they could both move on and look for their own accommodation on their own terms. The property was located near the parties' respective addresses, so its locality was at best a neutral factor. And, in any event, none of the family had actually lived there, so there would be no acclimatisation issues.

LAB's comment: A proposal which is obviously unfair to the other side and does not consider how they will be able to live after the divorce should not be made.

WBU v WBT [2023] SGHCF 3

Child maintenance

Forum: General Division of the High Court (Family Division)

Brief facts: In this case, the divorcing parties had a five year old child. At the ancillary matters hearing, the father was ordered to pay the mother $1035 as child maintenance. The mother had care and control of the child. The district judge found that the child's reasonable maintenance was $3450, and apportioned it in the proportion of 70:30 between the mother and the father respectively. The mother appealed.

On appeal, the High Court held that the child's reasonable expenses should be $4000, and maintenance should be apportioned between the mother and father in the proportion of 65:35.

Key points: The court noted that the mere fact that the parties have been paying for certain items during the marriage does not automatically render such expenses reasonable for the purposes of determining maintenance. Instead, parties should show how their projected expenditure for the child's expenses is reasonable, having regard to all relevant circumstances, including the child's accustomed standard of living and the parents' financial means and resources. The change in circumstances following the divorce is also relevant, as this would have an impact on the family's financial needs and resources (LAB's comment: i.e. it is more expensive to run two separate households than one – you have fewer economies of scale).

Therefore, parties should avoid an "*overly mathematical approach where receipts are produced to prove every single item of expenditure*". Receipts are useful as an indication of the child's accustomed standard of living, and to evidence certain exceptional expenses, such as medical needs and costs, but are not necessarily conclusive of what the child's reasonable expenses are. Parties should draw up a "budget", whereby broad categories of the child's estimated needs are identified, and a corresponding reasonable sum is proposed for each category.

The parents' idea of what this budget should comprise would differ depending on their own parenting philosophy, views and aspirations for the child. This is something they should discuss and agree on, as far as possible.

In this case, the mother submitted certain monthly expenses as reasonable because she was already paying for them, for example $1500 for food and groceries, $1400 for books/edutainment/craft/toys, $1400 for enrichment, caregiver allowance of $1000 (to the child's grandmother) etc. (These were cut down by the District Judge to $500, $175, $500 and $450 respectively.) However, the High Court said that the fact that the mother paid these expenses does not automatically render that expenditure reasonable in the context of determining maintenance.

For the food, for example, the mother bought a lot of organic food for the child. But there was no medical reason to do this. The High Court thought $1500 was unreasonable, and $500 was reasonable. The same for the books and other items. The court thought the mother's sums were far higher than what was actually needed for the child, considering his young age as well as the fact that he had not yet started school. The mother had also claimed the child's monthly medical expenses to be $700, which the District Judge had cut down to $100. The High Court agreed with the District Judge on this. For this item the High Court looked at the receipts the mother produced, to conclude that the $700 was exaggerated, since one treatment was only about $150, and the court did not think the child needed multiple treatments each month.

LAB's comment: Interestingly, there appeared to be no real basis for why the High Court thought that the District Judge's sums were reasonable versus the mother's sums. It seemed to be along the lines of "I think it is reasonable, based on my life experience and feel of society."

The High Court largely agreed with the District Judge's estimate of expenses, save for the child's share of the housing expenses, which the mother claimed was $2000 monthly, but the District Judge gave only $150 (for utilities and Internet, but not for accommodation). She thought the mother should purchase her own accommodation. The mother and child had been

living in the mother's sister's apartment. She paid her sister rental each month, of $2500 per month. She argued that a half share of this rental, plus property tax, maintenance and conservancy charges should be attributed to the child's expenses. The High Court agreed with this in principle, though the sum awarded by the High Court was only $550. This lower sum took into account that "*... ...it is difficult practically to count the precise dollars and cents, or have a strict insistence on the market value of the help equivalent to that received from her extended family. By virtue of the familial bond between them, there would have been mutual give and take in such arrangements.*"

On the apportionment of the maintenance, the starting point should not be equal apportionment. The court should consider the parties' income, earning capacity, property and other financial resources, as well as significant liabilities and financial commitments. For example, a party may have no income but have substantial savings or received substantial inheritance, and would thus be better able to bear a higher burden of the maintenance obligation. The court should also have regard to the assets received by parties after the division of the matrimonial assets.

In this case, the proportion of the mother's income to the father's income was 66:34. Therefore, it would be fair for the father to bear 35% of the child's monthly expenditure.

LAB's comment: In summary, a good approach to child maintenance would be to look at the parties' socio-economic status, imagine what is reasonable for a child of this age in this class, and draw up a budget for him covering various items. After that compare it with what the parents say they spend or they think is reasonable, and ask for receipts (and rationale) for the unusual items. Apportion the amounts between the parents in accordance with their income, and adjust if they have a lot of assets.

WGW v WGX [2023] SGHCF 5

Division of assets, renovation contributions

Forum: General Division of the High Court (Family Division)

Brief facts: In this case, the parties were only married about 3 and a 1/2 years, with no children. The only matrimonial asset they had was the matrimonial home. There was a dispute between the parties as to whether a certain payment made by the wife for renovations should have been included in the calculation for direct financial contributions. This was the only issue which went on appeal.

The court below had excluded this amount, on the basis that the renovation was a basic one which did not significantly alter the property, and that they were actually indirect financial contributions.

Key points: The High Court was of the view that this was wrong. It said that direct financial contributions of parties would include renovations. In this case, the cost of renovation was 20% of the purchase price of the flat. The court said it would not be "*just and equitable for the court to ignore sizeable sums of monies expended to improve matrimonial assets*".

A second point is the extent of indirect contributions to this marriage. The court was of the view that they were minimal, as parties did not go through with the customary traditions of marriage, there was no consummation, and no children to take care of. There was a dispute on

whether they had lived together at all during the marriage, but the court was of the view that even if the parties had resided together physically, they had been unable to get along from the start, and "*the consortium of marriage failed before it even had the opportunity to form*". Therefore, the court gave no weight to indirect contributions by either party.

The court therefore held that the matrimonial assets should be divided in the ratio of 33.29 (husband): 66.71 (wife), based entirely on their direct financial contributions

VWJ v VWI [2023] SGHCF 7

Late service of appellant's case

Forum: General Division of the High Court (Family Division)

Brief facts: The couple had one child. The marriage soured, but they could not get divorced because they had not been married for more than three years. There was a dispute over the care and control of, and access to, the child. The parties filed cross applications on this issue in the Family Court, under the Guardianship of Infants Act.

The District Judge ordered that the father be granted and control, and the mother be granted access. The mother appealed.

Key points: The service of the appellant's case was effected a day late – which meant that it would be deemed withdrawn under rule 827(5) of the FJR (Family Justice Rules 2014). The mother's counsel submitted that the deemed withdrawal under rule 827(5) of the FJR for non-compliance with rule 827(1) FJR is only limited to filing and not service. The court disagreed.

Therefore, if a party thinks that he cannot comply with the service timeline, because, for example, he is trying to serve a litigant in person who is trying to evade service, then he should apply to court for an extension of time. He should not just assume that the court will be indulgent just because he is fractionally late, or that he has a good reason for being late.

However, in this case, since the delay in service was only a day, and the father's counsel did not press her objection, the court proceeded to consider the merits of the appeal. The court decided that the District Judge's order should be upheld.

VRI v VRH [2023] SGHCF 8

Contempt for breach of access orders

Forum: General Division of the High Court (Family Division)

Brief facts: the parties had two daughters, aged 11 and 13 years old. There were many access disputes between the parties, which led to multiple access variation orders. In the latest order, the father was given access to the children on certain dates and times, with the mother having care and control. One of the access orders was that the mother should not arrange for the children to have any activities during the father's access periods, and that the father could purchase and maintain mobile phones for the children, and the mother would not prevent the children from using the mobile phones to communicate with the father.

The father took out contempt proceedings against the mother for breach of the access orders. The District Judge found that the mother had committed seven counts of contempt for breach of the access orders, and ordered the mother to pay a fine of $3500 within one month, but suspended the committal order indefinitely until the children turned 21 years old. The mother appealed.

Key points: The principle for an alleged offender to be held in contempt of court is that (a) his act or omission must be in breach of what the underlying court order required the offender to do, and (b) the necessary intention to commit the act, with (c) knowledge of the court order, must be established. It is therefore not a subjective intention to breach the court order which is required, but a lower test.

Some of the breaches are detailed below:

(a) The father was supposed to have access to the children on certain dates after picking them up from school, until 7 pm. However, the mother said that they were on home-based learning, and hence there was no stipulated time where school would end, and therefore this order did not apply. The High Court disagreed with this, saying that even if they were on home-based learning, they would finish with school at a certain point in the day. To say that this order only applied when the children were physically released from school premises was a "technical interpretation" which was contrary to the intention of the access order, which was to allow the father access on weekdays after the children's schooling hours ended. The mother had also messaged the father to say that the children would not be coming, showing that the breach was intentional. There was a discussion on s 21 of the Administration of Justice (Protection) Act 2016, which says that a person is not guilty of contempt of court if the failure to comply was due to an honest and reasonable failure to understand the obligation imposed on him. In this case, the court said that the mother's position that she thought home-based learning days were not caught by the access orders was an "*obstinate adherence to an incorrect belief in the face of truth*", which could not exculpate her from the breach. She could have enquired into the nature of the home-based learning from MOE. Besides, the father had actually made this enquiry, and sent a screenshot to her of MOE’s definition of home-based learning, which indicated that a home-based learning day was just like an ordinary school day (implying that it would be subject to ordinary school hours). The mother's position was also unreasonable – school hours could not possibly start from early morning and last all the way until 7 pm.

(b) The mother did not hand over the children on a certain date when the father was supposed to have access. Her excuse was that the younger child was unwell, and access therefore could not take place. The High Court was of the view that even if the younger child was sick, the elder child could have gone for access. Moreover, if the younger child was sick, the father could have spent his access time bringing her to see a doctor. Also, there was no medical certificate to support the mother's position that the child was sick, and in fact, there was some evidence that the child had taken public transport on the day in question.

(c) There was another occasion where the father did not have access. The children were supposed to take the school bus to the father’s residence after school, but they did not go to his home, but instead went back to the mother's residence. The mother said that the children did not want to see him. The court did not accept this. The court said that the mother had a duty to take positive steps to enforce the access order. It was not enough for her to make arrangements for the children to be dropped off at the father's

place. She should have taken further steps to get them to go to the father's house, when she realised that they had not gone. She just told the father that the children were home, without any effort to get them to go.

(d) On another occasion the father was entitled to access from the time the children finished school until 7 pm, but he did not have access. The mother's position was that the children did not want to go. The court said the question was not whether the children wanted to visit the father, but whether the mother failed to take reasonable steps to facilitate access. On this occasion, the mother took the children out for dinner that night to celebrate the elder daughter's birthday. This was during the father's stipulated access time. She should have instructed the children to go to the father's residence instead.

(e) The father was entitled to handphone access, but the mother imposed a rule on the children's handphone use, which limited the use of the handphone during term time to Saturdays only, and from 6 pm to 10 pm daily during vacation periods. The effect was that the children effectively did not have access to their handphones, which frustrated the purpose of the order. The court was not convinced by the mother's claims that the father only needed to inform her if he wished to contact the children, and she would facilitate phone access, or that the children only had to ask her for their handphones if they wished to talk to the father. The court said she could have installed applications to monitor the children's use, and other methods to restrict handphone use without frustrating the order.

The court therefore upheld the contempt finding, as well as the fine, and decided that the suspension of the fine would be for one year, and not until the children were 21 years old.

LAB's comment: In summary, the parent with care and control must use his best efforts to get the children to comply with the court order for access. He or she must follow the spirit of the order, not just the letter of it. He must actively encourage the children to go, and excuses like the children are sick or do not want to go will be scrutinised very carefully by the court.

VOW v VOV [2023] SGA 9

Raising new issues on appeal

Forum: General Division of the High Court (Family Division)

Brief facts: This case featured a 14-year marriage, where the wife worked for about 10 of those years. They were a high net worth couple and had two children. The husband moved out of the matrimonial home with the children, and subsequently the parties got divorced. The District Judge at the ancillary matters hearing ordered joint custody, with sole care and control to the husband, and access for the wife. The matrimonial assets were more than $2 million. The *ANJ* formula yielded a ratio of 52.5 (husband): 47.5 (wife), which was adjusted to 55 (husband):45 (wife), in consideration of the needs of the children and the wife's rent-free occupation of the matrimonial home. Child maintenance was also ordered, in proportion to the earnings of the parties. The wife appealed.

There were various issues raised in the appeal by the wife. Some were issues which had not been raised at the ancillary matters hearing, regarding certain assets which she said should or should not have been part of the matrimonial pool. The wife's contention was that as long as any new arguments sought to be raised on appeal were mentioned clearly in the appellant's

case, the appellate court could grant leave for the new point to be argued. The position she took for some issues departed from that which she had taken in the third and final Joint Summary of Relevant Information which had been submitted to the court for the ancillary matters hearing. The wife argued that this Joint Summary was simply a procedural tool designed to assist the court, and that parties should not be held too strictly to its contents.

Key points: The High Court stated that there is no legal impediment to the appellant raising new points of appeal which differ from the position the appellant took in the court below. But the court would carefully consider whether to grant leave to the appellant to introduce new and even contradictory points on appeal, having regard to factors such as the nature of the parties' arguments below, whether the court had considered and provided any findings and reasoning in relation to the new point, whether further submissions, evidence, or findings would have been necessitated had the new points been raised below, and any prejudice that might result to the counterparty in the appeal if leave were to be granted.

The High Court was of the view that 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 take 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 monies to achieve a fair outcome in every case. 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 assigned binding positions (as modified or supplemented by any considered positions taken at the ancillary matters hearing) in the interests of certainty and finality. While an appellate court 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 in the Joint Summary. Departures from the Joint Summary that lead to re-litigation will otherwise be treated with reservation by the court.

In the present case, the Joint Summary stated that both parties accepted that the Summary represented their binding position, and the District Judge had relied on both the Joint Summary and counsel's submissions in coming to her decision at the ancillary matters hearing, on various issues. The wife did not adequately explain why she was taking a different position from that in the Joint Summary for certain items. Therefore, she should be held to the position she took in the Joint Summary. (Note: In this case, the husband did not object to the wife raising new points without leave – his position was just that she should stick to the position she took in the Joint Summary. So there was no argument on whether the wife should have been allowed to raise the new points in the first place.)

The court reviewed the list of matrimonial assets and excluded certain things from the matrimonial pool. This slightly affected the ratio of direct financial contributions. However, the indirect contributions ratio was the same. The average ratio then became 53.5 (husband): 46.5 (wife). The High Court supported the 2.5% adjustment to the overall ratio made by the District Judge to take into account the needs of the two young children of the marriage and the rent-free occupation of the matrimonial home by the wife. This then increased the average ratio

to 56:44 in favour of the husband, but since the husband's position was that the final ratio should not be disturbed, the High Court left it as 55:45 in favour of the husband.

The other issue of some interest is that of the retention of the matrimonial home - the District Judge had ordered, *inter alia*, the wife to transfer her share of the matrimonial home to the husband, and the husband to pay a certain sum into the wife's CPF account upon the transfer. The wife wanted no specific orders to be made on how to dispose of the matrimonial assets, but for the parties to work it out themselves, alternatively for the matrimonial home to be sold instead, giving the husband the first option to purchase the property at valuation price. She also wanted an increase in the value of the matrimonial home to be divided in the same ratio as the division of the assets. This is because the value of the matrimonial home had apparently increased since the time of the ancillary matters hearing.

The High Court upheld the order by the District Judge, on the basis that the children would move back to the matrimonial home with the husband after the wife transferred her share to him. The court also added that the mere change in the value of an asset between the dates of the ancillary orders and that of the hearing of the appeal should not be a ground to revisit the division made by the court below. There were no special circumstances or compelling reasons to justify a review of the division on account of changes in the valuation of the matrimonial assets. In any event, the method of valuation had been agreed upon by parties, and the value had also been agreed at the time of the ancillary matters hearing. Since parties appeared to have difficulties coming to an agreement, it was justified for the District Judge to have made specific orders on how to dispose of the various matrimonial assets, rather than leaving parties to work it out amongst themselves.

LAB's comment: In short, once a position is set out in the Joint Summary, it is more or less set in stone. Although you can raise new points on appeal that had not been raised in the ancillary matters hearing, you really need to justify why you did not raise them earlier, and the court might not let you raise the new points if it prejudices the other party, or results in a lot of relitigation.

CXR v CXQ [2023] SGHCF 10

Joint custody and shared care and control for acrimonious couple

Forum: General Division of the High Court (Family Division)

Brief facts: The marriage lasted 9 years and 9 months. Both parties were high net worth individuals, earning a high monthly income, but by the time of the ancillary matters hearing, the husband was unemployed, and only had $2,938 per month in rental income. They had one child, aged 11 years, who suffered from epilepsy. He was a special needs child with various neurodevelopment disorders. The parties disputed all the ancillary matters issues.

Key points:

Custody

Both parties wanted sole custody. Both felt that they could not work together as co-parents. The court noted that the wife showered the child with material comfort, providing him many opportunities and access to various therapies and learning opportunities, including engaging an

occupational therapist, a speech and language therapist, and a play therapist. She spent a lot of effort ensuring that the child's medical and educational needs were attended to. However, she might be less attuned to his other needs, such as having more resting space between therapy sessions and classes. The husband was sensitive to the child's emotional needs, and tried to come up with creative solutions in engaging him. He opposed the wife's efforts in arranging for therapy, and may not have sufficiently appreciated that some of the therapy arranged might be beneficial for the child.

The High Court granted both parents joint custody. In the event of a deadlock pertaining to matters relating to the child's academic education arrangements for reading, writing and maths, the wife may make the final decision. In the event of deadlock pertaining to matters relating to the child's extracurricular arrangements and other therapy including occupational and play therapy, the husband may make the final decision. The court urged the parties to communicate with each other on all matters. It was important to ensure the child would have a stable and predictable environment, with sufficient breathing space between sessions. The parents were also ordered to attend counselling at the DSSA to gain better insight into the child's needs and to strengthen their parenting abilities. The court also expressed the hope that each of them would get their own private therapeutic services to "*understand their own issues and needs as they continue to parent* [the child] *under these post-divorce circumstances."*

Care and control

There was a bitter fight over care and control. However, the court made an order for shared care and control, with the wife having the child from Saturday 8 pm to Wednesday pm, and the husband the rest of the time. The court repeated that the parents must have in place a clear routine and structure that would enable the child to have a stable and predictable arrangement. There were a slew of orders exhorting the couple to cooperate to facilitate his attendance for therapeutic sessions, and to mutually agree on care arrangements for special days such as birthdays and public holidays (*"The parties were reminded to exercise flexibility and graciousness in making the necessary arrangements during these special days."*), and what to do if the parties wanted to bring him overseas.

Division of assets

The total value of the undisputed matrimonial assets was about $1.6 million. There were quite a number of disputed assets. There were disputes over numerous assets in terms of whether they were acquired before the marriage or after. The total pool available for division was determined to be about $4.6 million. Some points of interest:

(a) UK apartment bought before marriage by the husband. The family had stayed there for 21 months during the marriage, and the child had spent about a year of his life there. Therefore, the court held that it was ordinarily used by both parties for shelter and hence was a matrimonial asset under s112(10)(a)(i) WC. Also, the husband had made about 70% of the payments towards the apartment during the marriage. Therefore, the full value of this asset was included in the matrimonial pool.

(b) The husband claimed that he had borrowed money from his father to pay the child's educational expenses. However, he did not submit any bank statements or written agreements, and the husband's father did not submit an affidavit verifying the loans, which

"*was a common enough practice*". The court therefore did not take the purported loan amounts into account.

(c) The wife was entitled to various stock options from her company. At the time of the IJ, they had not all been vested in her. Those already vested were included in the matrimonial pool for division. The court said that an "if as and when" order was the appropriate approach for the stock options that had yet to be vested – i.e. the division of these assets would be postponed until the stock options were exercised and the profits made.

(d) The wife was also entitled to a company pension. The court ordered that only that portion of the pension earned during the marriage should be put into the pool.

(e) The wife had purchased four insurance policies when the parties' relationship had broken down, right before the divorce proceedings were commenced. These were not run-of-the-mill expenses. There were no surrender values for the policies, but the wife had spent a hefty amount on the monthly premiums for these policies. This amount was added back into the pool.

Direct financial contributions

The parties argued about who paid for what for the household. For example, the e-scooter, the outdoor barbecue, toaster, kettle, security camera, pressure washer, chairs, beanbags, dehumidifier, ceiling fans, water heater, air-conditioning, mattress, curtains and cost of movers. The court ignored all of these items, under the broad brush approach. The court only took into account major items such as contributions towards the renovation and large purchases to make the home liveable.

The court managed to come up with a direct contribution ratio, even though there would be some fluctuation if the stock options were vested. The court said that the direct contribution ratio "*was reached in broad strokes and should not change even when more shares vest in future*". The direct contribution ratio was 45:55 in favour of the wife. The indirect contribution ratio was 45:55 in favour of the wife. Therefore, the average ratio was 45:55, in favour of the wife.

Both parties were ordered to contribute to the child's expenses equally. Since there was a shared care and control arrangement, they would bear the child's expenses when the child was with them.

VWB v VWA [2023] SGHCF 13

Extension of time for leave to appeal; stay of maintenance order pending appeal

Forum: General Division of the High Court (Family Division)

Brief facts: In this divorce case, the ancillary matters were heard on 14 June 2021. Orders were made for wife and child maintenance, at $5000 per month for two children, and $2680 per month for the wife, for three years. The wife took out enforcement proceedings on 21 March 2022. The matter was heard on 21 October 2022, where the District Judge found that the husband was in arrears of more than $65,000. He was ordered to pay off the arrears at $5000 per month, and to continue to pay the current maintenance (“**EMO**”). He was supposed to show proof that he had made the payments, each month, for six months.

The husband wanted to file a notice of appeal, but was not able to do so in time, so he filed an application for an extension of time to file his notice of appeal, and also for a stay of the EMO.

Key points: The High Court granted the husband's application for an extension of time, but denied his application for a stay. In considering the length of the delay in filing the appeal, the court found that it was six days, which was short. His prospects of success were neutral, and there was also no prejudice which could not be remedied by costs.

The husband gave two explanations for his being out of time in filing the appeal:

(a) The first was that he had gone to the Crimson Logic bureau in the State Courts to file the appeal, and was told by them to go to the High Court, but the High Court Crimson Logic bureau told him to go to FJC. When he called FJC, he was told to seek the court's directions on 4 November 2022, which was the day that he was supposed to show payment. The High Court said that this was not a good excuse: "*It is a litigant's own responsibility to pursue his case with good sense.*" The husband was a medical doctor, highly educated, and could have seen from the website where he should have gone, and gone to the right place.

(b) The second explanation, however, was accepted by the High Court. When the husband came to court on 4 November 2022, the District Judge for that case told him that he had to (i) show proof of payment of the maintenance arrears and current maintenance for that month, or (ii) proof that he had filed the notice of appeal and summons to stay the EMO, by 2 December 2022. If not, he would be liable to a five-day imprisonment term. This was followed up by an email from FJC which said that he had to show payment by 4 November 2022, or "*submit his notice of appeal and stay of execution pending appeal before a judge on the show payment date*". The husband said that this meant that he had been given an extension of time to file the notice of appeal, before the 2 December 2022 deadline.

    Unfortunately, the District Judge's directions and the FJC email did not make clear whether the husband was supposed to have filed his notice of appeal etc by 4 November 2022, and then show proof that he had filed his notice of appeal etc on 2 December 2022, or whether he had in fact been granted an extension of time to file his notice of appeal before 2 December 2022. *No distinction was drawn between the filing of notice of appeal, and producing the evidence that it had been filed.* (LAB's emphasis) The use of the word "submit" was ambiguous. Because of this, and the husband's reasonable diligence in following up on the matter, the court was of the view that the delay was excusable.

On the issue of the stay – when the husband came back on 2 December 2022, the District Judge ordered that "*all show payments (be) suspended pending hearing for application for stay of execution of EMO pending appeal*". She did not order a stay of the EMO. However, the effect of her order, which was a suspension of the show payment, had the practical effect of a stay. The show payment order is typically used where a party liable to pay maintenance has a history of non-compliance. This is because the court has power to imprison for the non-payment of maintenance, and the requirement to show proof of payment secures his presence in court, where the court can then deal with him on the spot. When the show payment was suspended, the effect was to suspend the imposition of the five-day imprisonment term that would follow from the husband's default in showing proof of payment.

The husband's liability to pay the maintenance continued to run but there were no consequences for his failure to meet that liability. The High Court noted that whether there are grounds for a stay should be borne in mind when adjustments are made to the enforcement of maintenance orders, since hardship may arise where arrears remain unpaid.

LAB's comment: In summary:

(a) if an order sounds ambiguous, clarify it with the court swiftly – and especially note the point about the distinction between filing something and giving the evidence that it has been filed;

(b) a suspension of show payment operates, practically, as a stay – so if you are asking for a suspension of show payment, or defending it, run through the factors for a stay, summarised in the case of ***VOC v VOD* [2021] SGHCF 14** (generally a court will not deprive a successful litigant of the fruits of his litigation pending an appeal; the appeal, if successful, should not be nugatory - there must be a reasonable probability of getting damages and costs paid back if the appeal succeeds; an appellant must show special circumstances (connected with the enforcement of the judgement, not its validity or correctness) before the court will grant a stay, not just the likelihood of success.

WLE v WLF [2023] SGHCF 14

Children's affidavits; child maintenance

Forum: General Division of the High Court (Family Division)

Brief facts: This was a 22-year marriage with two children aged 22 (a son) and 19 years (a daughter) respectively. The court ordered joint custody of the daughter, with care and control to the father. Both children resided with the father. The mother had moved out.

Key points:

The points of interest in this case are as follows –

(a) How not to draft affidavits for children. The children were aligned with the father, and each of them filed an affidavit in support of him. The affidavits disparaged the mother, did not acknowledge any of her contributions, and much of the wording was identical for the two affidavits. The court found this unconvincing and one-sided. For example, the children did not acknowledge that the mother helped to manage the domestic helpers, get meals for the family, and was also involved in their education - whereas she had documentary proof of this. The father was out of the country for extended periods when the children were growing up, which meant that the mother had to be the one that was involved in their care. The children stated that they had been much closer to the father than the mother as he had been more involved in their care since they were born. The judge did not believe that they actually knew this (presumably he did not believe that they could remember such details from the time of birth to age 3 or 4). The son said that the pocket money which he received came from the father – this was only something he could have known by being told this by the father.

(b) The father wanted the mother to contribute towards the children's maintenance, and he listed a very long list of expenses. The court rejected items such as MCST fees, property taxes, Wi-Fi expenses, property insurance, and home phone bills, on the basis that the father

would have had to pay this, whether the children lived with him or not. However, he allowed items such as utilities and groceries, because these would increase proportionately with the number of household members.

(c) The father was an indulgent one. For example, he was happy to pay a very large amount for the daughter's university admissions help, which amounted to almost $27,000. He then sought to claim this from the mother. However, the court said that child maintenance is not for luxuries but to provide for reasonable financial needs. So it did not allow this expense.

(d) Another point is that the father's income had dropped to about $4000+ a month by the time of the ancillary matters hearing, but he used to earn more than half a million a year, though this later fell to about $250,000 a year, not long before the time of the ancillary matters hearing. The wife earned about $7000 a month at the time of the ancillary matters hearing. The court ordered her to pay $1000 of the $2300 child maintenance figure for the daughter, despite the fact that she earned more than the father, because the court looked at the father's earning capacity, not just his income.

(e) The son was serving national service, and the court held that he should be financially independent, since he would have a reasonable allowance from the army. The parties' offer to provide maintenance should be seen as a privilege, not a right. (LAB's comment: What was interesting is that the court did not ask the son to apply for maintenance for himself, but dealt with the issue in the ancillary matters hearing – same with the costs of the university education for the son.)

(f) There was also the question of whether the mother should have to bear the expenses of an overseas university education for the children. The court held that she would only have to bear half the expenses of a local university education for the children. The fees for an overseas university education were not reasonable, the fees for a local university education were.

UBQ v UBR and anor [2023] SGHC(A) 10

Custody and access disputes

Forum: Appellate Division of the High Court

Brief facts: The divorcing parties had two sons, and had been engaged in protracted litigation for more than seven years. The children were now 14 and 13 years old respectively. The father was Canadian, and the mother and children were US citizens. The mother and children would usually visit the US a couple of times a year, and spend time with their relatives there. However, they were prevented from doing so during the Covid period by the father, who kept filing applications to stop them from travelling back to the US, and getting court orders to do this. In desperation, the mother defied the court order and brought the children back to the US in May 2021. She later brought the children back to Singapore after 6 months.

The father then filed two summonses asking for, amongst other things:

(a) an injunction restraining the mother from taking the children out of Singapore, to hand over the children's passports to the father for safekeeping, and for the mother to provide security of $100,000 for each child if she took the child out of Singapore ("summons (a)"); and

(b) a switch in care and control, makeup access, an order for one of three named therapists to be appointed to conduct therapy aimed at restoring the father's relationship with the older boy, the appointment of a parenting coordinator, etc.

The High Court dismissed both summonses. The father appealed. He also filed an application for a stay of the dismissal of summons (a). The High Court (a different judge from the one which dismissed both summonses) granted the father's stay application. The mother appealed against this. Her appeal was allowed by the appellate division. The appellate division was of the view that it was in the children's interest to have their routine travel to the US during school vacations restored. There was some risk that the mother would attempt to permanently relocate the children if she was allowed to take them out of the jurisdiction, but the appellate court concluded that it was not a risk that would be truly permanent and irreversible such that it would render the appeal nugatory.

The mother then took the children to the US as planned in June 2022, and returned with them in July 2022. After that, was the hearing of the appeal.

Key points:

Some points of interest are as follows –

(a) Adducing new evidence: the father applied to adduce new evidence, in the form of a judgement of the US District Court on costs relating to the Hague Convention proceedings which the father had taken out in the US when the mother took the children there in May 2021. This judgement came out after the date of the decision the father was appealing. The appellate division observed that this application to adduce new evidence was not necessary, because pursuant to s 41(5) of the Supreme Court of Judicature Act 1969, such evidence may be adduced before the appellate division of the High Court without permission of court. (S41(5) states "*Such further evidence may be given to the Appellate Division without permission if the evidence relates to matters occurring after the date of the decision appealed against."*) The appellate division, however, had to decide whether the evidence should be admitted, even if it could be adduced without permission. The US Judge had awarded costs to the father for the Hague Convention proceedings, and made a finding that the mother had not acted in good faith, amongst other things. The appellate division decided that the US judgement should be admitted because it would give the court the full picture when deciding the appeal, and the US judgement contained certain observations about the mother's conduct which would be relevant. Therefore, the US judgement might have a perceptible impact on the decision in the appeal, which was the test for the admissibility of the evidence adduced.

(b) High Court not plainly wrong: The appellate division accepted that the May 2021 trip was an aberration, and not indicative that the mother would try and relocate the children to the US unilaterally. Indeed, the mother was aware that she had breached a court order, but the appellate division was satisfied that the mother would be likely to comply with the terms of the ancillary matters orders. The father had made allegations of parental alienation against the mother, but the appellate division agreed that both parties had contributed to the children's emotional state. It would not be in the children's interest for a switch of sole care and control from the mother to the father, since the mother had been the primary caregiver of the children. The appellate division also did not agree that stringent restrictions should be imposed upon the children's overseas travel, in the form of making it subject to the father's consent, having him hold onto the passports, and having the mother to furnish

security for the children's return. Generally, they agreed with the High Court judge at first instance, or else they could not find that she was plainly wrong in her findings.

(c) Risk of unilateral relocation: The appellate division accepted that there was some risk of the mother unilaterally relocating the children to the US, but was of the view that this was not a large risk, because the pandemic situation was largely resolved, with the conclusion of the appeal the litigation of the children should also be largely resolved, and the mother would be well aware that should she attempt to relocate the children in breach of a court order, she would probably have a second set of Hague Convention proceedings to deal with in the US. Although the older boy would turn 16, and not be covered by the Hague Convention, it was unlikely that the mother would split the children, and leave the older boy in the US, with the younger one in Singapore.

(d) Maintenance tied to access: The father had also asked for the cessation of the mother's maintenance if she should breach the ancillary matters orders by not returning to Singapore with the children. This was not something covered in his two summonses. The appellate division did not accede to this request, as they felt that this seemed draconian.

(e) What the therapist should decide: The father had not pursued his request for specific therapists that he named in his summons to be appointed, but just wanted reunification therapy to repair his relationship with the older boy. The appellate division agreed with the High Court that it should be in the boy's interest to continue therapy, with a therapist that he was already seeing (Therapist Y), and that the details of the therapy, such as the number of sessions, the duration of the sessions, the scope of the sessions, and whether the sessions are to be joint sessions with the father, should be determined by Therapist Y, rather than mandated by court order. The therapist, as a professional, would be best placed to decide these details in the boy's best interests. The appellate division therefore just ordered that the boy was to continue therapy with Therapist Y, until the parties agreed or the court ordered otherwise.

The father was ordered to pay $5000 in total for (i) the mother’s expenses for the appeal, (ii) the summons to stay the decision made in summons (a), and (iii) the mother’s appeal in which she was successful.

WLI v WLJ [2023] SGHCF 15

Access versus enrichment; child maintenance

Forum: General Division of the High Court (Family Division)

Brief facts: This case features a 5 year marriage, with two children. The wife was Japanese, and the husband was Malaysian. The ancillary matters had been heard, and the husband had appealed against two issues, namely the husband's weekend access to the children and the child maintenance order of about $14,700 per month. Care and control of the children was with the wife.

The husband had been given weekend access from 3 pm on Saturday to 1 pm on Sunday. This was 22 hours, and he wanted 24 hours. So he wanted the access to start either at 1 pm on Saturday or finish at 3 pm on Sunday. But the children's enrichment class schedule ended around 2:30 pm on Saturdays and started around 1:30 pm on Sundays. The husband wanted the

wife to reschedule the children's piano lessons so that he could have 24 hours of weekend access.

Key points: The High Court did not grant his request. The husband already had quite a lot of access, and the children had been attending various enrichment classes on weekday afternoons, but they had recently enrolled into a new school. To accommodate the children's new weekday activities at school, the weekday enrichment had to be shifted to the weekend. It was just a rescheduling of existing enrichment classes, not scheduling any new classes. The wife had rescheduled the classes to occur during her weekend access times, so that she would not impinge on the husband's weekend access hours. The husband complained that the children were doing too many enrichment classes. The older child was doing tennis, Japanese, maths, art and piano, and the younger child was doing tennis, art, Japanese, and piano. The Japanese classes took place on the weekdays so they were not relevant to this access issue. As for the other types of classes which took place on the weekends, the court felt that these classes in sport, music, and art were good for the overall development of the children. Therefore the court did not order the cancellation of any of these existing enrichment classes so that the husband could have two additional hours of weekend access.

As for child maintenance, the husband earned a monthly income of $96,000. The children's maintenance amounted to approximately 15.3% of the husband's monthly income, which the court found to be reasonable. There were certain items disputed by the parties, such as enrichment classes, transport expenses, school snacks, and so on. Nothing was particularly remarkable. The court went through each item in deciding whether it was reasonable, and what a reasonable amount was. For example, the husband thought it was extravagant of the wife to shop in places like Medi-ya and Tanglin Market Place. However, the High Court held that given the fact that the wife was Japanese, it was not extravagant of her to buy groceries from a Japanese supermarket, and also taking into account the children's previous living standard, her food and groceries claims were not overly extravagant. The food and groceries amount allowed for both children was $1500 a month. In addition, the children had dining out expenses at $1500 per month. This was taking into consideration that the wife did not have home help, and while she would cook most of the time, there would also be times where she and the children would have to dine out or order in food. This was commensurate with the children's previous living standard.

LAB's comment: It seems that receipts were quite helpful to show the previous living standard, and the fact that the wife claimed a lesser amount than what she previously used to spend on the children was a point in her favour for various items.

WJF v WJE [2023] SGHCF 17

Purpose of adverse inference

Forum: General Division of the High Court (Family Division)

Brief facts: This case features a 20-year marriage. The couple had two children, aged 21 and 17 years old. At the ancillary matters hearing, the District Judge ordered that the matrimonial

home be divided in the ratio of 69:31, in the wife's favour, and that the husband pay the wife a total of $132,000.

Key points:

(a) The District Judge had drawn an adverse inference against the husband, who owned three businesses. The District Judge found that the husband used the monies from the bank accounts of these companies for purposes outside of business expenses, including personal family expenses, and giving expensive gifts to friends and relatives. He did not adduce sufficient evidence to differentiate between monies applied toward company purposes and monies applied for his own purposes. There were many transactions, and hence many transaction entries unaccounted for, so it was difficult to ascertain the true amount of matrimonial assets that had been dissipated in this way. Therefore, the District Judge added back into the matrimonial pool certain payments from the husband's companies amounting to almost $200,000, and an additional sum of almost $17,000 back into the matrimonial asset pool. She also applied an 8% uplift to the wife's share of the assets.

(b) The husband's main objection was the District Judge's order to repay withdrawals that he made from a company called G Pte Ltd amounting to about $50,000. He said that G Pte Ltd was a separate legal entity from him, and its assets were not matrimonial assets. The High Court held that the husband's shares in G Pte Ltd were matrimonial assets, and the depletion of the company bank account by the husband's withdrawals had improperly diminished the value of the shares. Therefore, the addition of the $50,000 back into the matrimonial pool reflected the true value of the shares before the unjustified transactions diminished the value.

(c) On the 8% uplift, the District Judge explained that 5% was for the husband's breach of his duty to provide full and frank disclosure in respect of the use of the monies in his companies' bank accounts. And 3% was for his conduct in the proceedings, and to recognise the wife's role as the permanent caregiver of the children in the future. The High Court did not support the 3% uplift, because adverse inferences are not meant to punish parties for their conduct, unless that conduct amounts to a failure to provide full and frank disclosure. The way to recognise the wife's role as the permanent caregiver is through the ratio of division (which the District Judge did) – the further 3% uplift counted the wife's primary caregiver role twice. However, the court affirmed the decision to give a 5% uplift.

(d) The uplift should also be applied to the entire asset pool, and not just the class of assets to which the husband's companies' shares belonged. This is because the purpose of an uplift is to give the prejudiced party a higher proportion of the known assets. The court said that when a spouse uses a corporate bank account to manage the company expenses as well as his personal expenses, he must be able to account clearly what the expenses were for.

WIQ v WIP [2023] SGHCF 16

Split care and control ordered; judicial interview of children

Forum: General Division of the High Court (Family Division)

Brief facts: In this divorce case, the parties had two children, aged 14 and 11 years old respectively. The ancillary matters order was made, giving care and control to the father. Subsequently, this was varied by the district court such that the elder child was to live with the

mother, while the younger child remained with the father. Various additional access arrangements were also made.

The father appealed against the split care and control order. The High Court dismissed the appeal.

Key points: The High Court acknowledged that it was not usual for split care and control to be ordered, and that keeping siblings together should be the norm, so that anxieties arising from the parental separation would not be increased by further separation from a sibling. However, this is just one of many considerations, and the weight to be given to it will vary from case to case, on its own facts. The District Judge found that the mother appeared to connect better with the elder boy and provided him with emotional support. The father said that the mother did not discipline him nor track his activities, and that is why he chose to live with the mother, but there was no evidence of this. The High Court said that the father was asking the court to choose between his way of supervising and disciplining the elder child, against the mother's allegedly permissive parenting style. However, the High Court had interviewed the child, and felt that he was sufficiently mature and recognised the importance of discipline, and did not seem pampered or ill disciplined under his mother's care.

Both children expressed a mutual desire to spend more time with each other throughout the week, although they were comfortable with the split care. The judge interviewed them separately, and found them both to be sensible and mature in articulating what they wanted. They proposed a suitable arrangement to increase access time, and the High Court varied the additional access orders accordingly.

LAB’s comment: In summary, with older children, even relatively young teenagers, their views will be given weight, if they tell their stories convincingly. Further, split custody is rare, but not impossible.

WJM v WJN [2023] SGHCF 18

Matrimonial assets division and husband maintenance

Forum: General Division of the High Court (Family Division)

Brief facts: In this case, the marriage lasted 22 years. The husband was 67 years old, and worked as a corporate account manager for about 12 years, and then retired due to ill-health. He was wheelchair-bound and had been certified as disabled. The wife was 49 years old, and worked as a beautician. They had one child, aged 21 years old.

The Family Court divided the matrimonial assets in the ratio of about 40:60, in the wife's favour. The wife was ordered to pay $150 a month for the husband's maintenance, for a year. The wife appealed.

Key points:

(a) The wife said that the District Judge had made a mistake in attributing the Additional Housing Grant (for the matrimonial home, an HDB flat) entirely to the husband instead of apportioning it equally between the parties. However, she did not check with HDB

on who the intended beneficiary of this grant was, and the mechanism for its payout. Since the burden was on the wife to prove that the District Judge had made a mistake, and she did not check, the High Court decided not to disturb the District Judge's findings. (LAB's comment: The learning point is that we should check information with relevant third parties if we can, rather than going to court without it, and expecting the court to sort it out for us. It will not).

(b) The husband had paid the wife cash each month, in order to refund part of the CPF contributions made by her towards the matrimonial flat mortgage loan. He could not use his CPF monies to pay for the loan, because he had none left. He argued that the cash amounts should count as his "CPF contributions". The High Court agreed, saying that it was quite a common arrangement for one spouse to pay for the acquisition of an asset, and be reimbursed by the other spouse.

(c) The husband had taken rental income from renting out one of the rooms in the matrimonial flat for his living expenses for 4 years, as he was unemployed during this time, whereas the wife was working. The wife said that this rental income should be set off against his CPF contributions (in (b) above). The High Court disagreed, saying that the rental income was legitimately used for the husband's daily living expenses at that time, even though the parties' relationship had soured. There had to be mutual give-and-take in the marriage, even after the union was over. An accounting for every cent would transform the union from "*a marriage into a business partnership*".

(d) The husband (who was unrepresented) wrote in to make further submissions after the High Court had reserved judgement, to ask for the wife's maintenance obligation to be for the rest of his life. The court said that this was not in accordance with the proper procedure for further arguments. When the court has reserved judgement, no further submissions should be made without leave. In any event, the wife was not a high-income earner, the husband was receiving social assistance from the Government, and would be entitled to a lump-sum payout when the matrimonial flat was sold. Therefore, the High Court did not disturb the husband's maintenance order. (LAB's comment: The wife's appellant's case did not deal with this issue, even though she appealed on it, so perhaps she had abandoned it on appeal.)

WLL v WLM [2023] SGHCF 19

Discovery; failure to file affidavit

Forum: General Division of the High Court (Family Division)

Brief facts: This High Court case features a 23-year marriage, with one child aged 21 years. Please refer to the case itself for more detailed facts, as these are not so relevant to this write-up.

Key points:

(a) The husband had made late disclosure of two trading accounts and three brokerage accounts, which was a breach of his duty to make full and frank disclosure, as he should have disclosed these accounts in his affidavit of assets and means. The wife asked for an adverse inference to be drawn against him because of this. The High Court did not grant the request. An adverse inference is not to be used as a punishment for breaching the duty to make full and frank disclosure, but to make adjustments to the matrimonial assets by giving a value to assets which had been hidden, or siphoned from the

matrimonial assets. An adverse inference could not be drawn in the current circumstances, because the husband's late disclosure was not in itself evidence of undisclosed assets and bank accounts.

(b) The wife said that there were large transactions in a joint bank account which the husband held together with his mother, which the husband said was not a matrimonial asset. It was used as the husband's mother's day-to-day spending account. The wife said the husband was using this account to trade in shares and collect dividends, and wanted an adverse inference to be drawn against him for this. However, she failed to ask for discovery on these accounts, in order to draw the link between the husband's funds from the matrimonial assets to this joint account. The High Court said that if it was the wife's case that the husband had been using the joint account to amass his own wealth, the burden lay on her to seek discovery of the documents necessary to prove the case. Since she did not, she could not prove the case.

(c) At the hearing, the husband's counsel produced an affidavit sworn but not filed by the husband. It contained details of the husband's mother's trading accounts. The court said that it was not acceptable to use this affidavit. If he wanted to use it, he should file it. (Counsel for the husband had said that the affidavit would be used in defence against the wife's call for the drawing of an adverse inference in regard to the trading accounts. He said that he would file the affidavit depending on what orders the court would make at the hearing.) The court said: *"Arguments, not evidence, may be changed to adapt to the circumstances as the case progresses. Parties cannot choose to disclose evidence in instalments, depending on whether the situation has become desperate enough for them to do so. If they have the evidence, they must disclose or risk the court rejecting it."*

WHB v WHA [2023] SGHCF 20

Judge's interview; caution in adducing evidence

Forum: General Division of the High Court (Family Division)

Brief facts: This case features a marriage which was about 28 years long. There was one daughter, aged about 25 years at the time of the hearing. The daughter took out a PPO against the wife in September 2018. Various decisions were made by the court at first instance. On appeal by the wife, there were only two issues. The first was that her indirect contribution of 20% was too low. Secondly, she wanted the husband to return her jewellery.

Key points: What was interesting is that the High Court interviewed both the daughter and the husband, the latter in the presence of his counsel and the wife, who acted in person. Based on these interviews, the court agreed with the findings of the Family Court regarding the indirect contributions.

The court observed that it was not unusual to find a witness's affidavit rephrased and embellished by the solicitor drafting it, and distorting the client's personality and character in the process, but in this case the husband's affidavit fit the person whom the judge spoke to (not under oath). This was in contrast to the wife, who the judge noted "*protests a little too much*". The wife had used certain letters and cards to show that her daughter loved her, and would not have taken out the PPO against her, but for the husband's instigation. However, the court observed that the letters and cards had an important message in them, which eluded the wife,

namely that the daughter wanted the wife to accept the situation and not continue to make the family, including herself miserable.

As for the jewellery, there was no evidence of what the jewellery was and where it was, so the court made no order on this matter.

LAB's comment: In summary, make sure that the tone and feel of the affidavits match the person affirming it, just in case the court ends up talking to him or her; and also when adducing evidence in the form of letters and cards, make sure you understand the deeper meaning behind the words written, not just the surface meaning.

WJW v WJX [2023] SGHCF 21

Consequences of delay in carrying out orders of court for transfer/sale

Forum: General Division of the High Court (Family Division)

Brief facts: In this case, the parties were married for about 12 years. The husband was disabled. Ancillary matters orders were made, including on the disposal of the matrimonial home. The wife could either buy out the husband's share for a certain sum ($188,318.72), within two months of the ancillary matters order date, or sell the matrimonial home in the open market within six months from that date.

However, the wife was not able to buy out the husband's share within the deadline, because there was a problem with the order of court (it contained no order granting care and control of the children to the wife, because of counsel's oversight). By the time she got the order rectified, and wanted to effect the transfer of the matrimonial home, the husband refused to agree, because he said that he wanted more money, as the flat price had risen in the meantime. The wife then applied to vary the order, to force the husband to transfer the matrimonial home to her.

Key points: The district court dismissed her application to vary the order, on the basis that the order was still workable – she could still sell the flat on the open market. The High Court agreed with the district court.

However, the wife needed a place to stay with the children, so the High Court decided that the fairest way forward was to amend the original order so that the wife bought over the husband's share of the property according to a recent valuation. As a result, the husband' share became $221,160.00 – almost $33,000 more.

LAB's comment: In short, first, if you are the party who benefits, do not delay in carrying out the order of court. Second, the consequences of a typographical or technical error in the order of court may be quite serious. In this case, the wife could perhaps look to her counsel to compensate her with the $33,000, since it was his oversight in the order of court which led to the delay.

VOM v VON [2023] SGHCF 23

Setting aside an ancillary matters order

Forum: General Division of the High Court (Family Division)

Brief facts: Parties (who were both Singapore PRs) were married in India for 11 years and divorced in Singapore. The Husband applied to set aside the ancillary matters order made by the High Court ("AM Order") on 2 grounds: (i) the AM Order was procured by fraud ("Alleged Fraud"); and (ii) Singapore was not the appropriate forum to determine the divorce and the ancillary matters ("Inappropriate Forum").

Key points: On the issue of the Alleged Fraud, the High Court found that it had already been dealt with substantively by the High Court before the AM Order was made, so if the Husband was dissatisfied, he should have appealed and not made an application to set aside the AM Order, because this was the wrong procedure. On this point, even if considerable time had passed since the AM Order and it would be difficult to seek leave to appeal out of time, this did not warrant making an application to set aside the AM Order.

As for the issue on Singapore being the Inappropriate Forum, the High Court held that this ought to have been canvassed at the start of the ancillary matters proceedings and not after the entire matter was concluded. Further, by participating in the divorce proceedings in Singapore, the Husband had by his conduct submitted to the Singapore jurisdiction. The Husband had never mentioned that India was the appropriate forum during the divorce proceedings. Hence, there was no basis for the Husband to set aside the AM Order by claiming that Singapore was the Inappropriate Forum.

LAB's comment: The key takeaway is to make sure that appeals are filed within the appeal timeframe because a back-door appeal via an application to set aside court orders is unlikely to be entertained. Secondly, any arguments on whether the Singapore court is the appropriate forum must be made while divorce proceedings are ongoing.

WLR and anor v WLT and anor [2023] SGHCF 24

Mental capacity case

Forum: General Division of the High Court (Family Division)

Brief facts: There was an elderly couple who raised four children, G, T, J and W. G lived overseas and was not involved in the family business and in the present litigation. W was a pastor, and not involved in the family business, and only peripherally involved in the litigation. The real fight was between T and J. The issue was whether J should be appointed together with a professional deputy (Low, a lawyer) as the Deputy and co-Deputy for the mother (P), and with another person (a lawyer) as a successor deputy. T objected and asked for a professional deputy (Lau, an accountant) to be appointed instead. W applied to be jointly appointed as co-deputy with J, but only for P's personal welfare.

P had executed an LPA a few years back, making J the sole donee, and there was an issue as to whether it should be revoked – T had applied to do so.

P and her husband (the deceased) were extremely wealthy – accumulating assets worth millions of dollars through running a successful family business. At least half of these assets belonged to P. The other half would be distributed under the will of the deceased. P was involved in the

family business, but there was a dispute between J and T regarding how involved she was (J saying she was very involved, and P disagreeing.)

J asserted that T began to influence the deceased against her, and even influenced the will that he made, amongst other things. T had also monitored the deceased's and P’s correspondence, and withdrawn large sums of money from the deceased’s accounts. On the other hand, T asserted that J had refused to give the deceased updates of his fixed deposits and rentals received from his various properties, and that the deceased had turned to him for help, because he was worried that J would misappropriate his monies. There were a lot of other assertions by each party against the other, but the bottom line is that the relationships between J and T and between J and the deceased became very bad. J was close to P. T was not close to P – in fact, they were estranged.

J claimed that P had some claims against the estate of the deceased for unpaid salary, loans and accrued director's fees – T said that P never had the intention of suing for such sums, and that J was just being self-serving.

Regarding the Deputy appointment, J said Lau was unqualified (and had no prior deputyship experience) and careless, and that she, J, would make a good deputy because she had been the personal assistant of both parents, and had worked closely with them. So she knew what they wanted to do with their assets and their succession plan. She said that she had always been the one to take care of P. Low was also an experienced professional deputy.

T, on the other hand, said that J had isolated P from other family members, requiring them to seek her approval before coming to visit. For example, P's own sister could not come to celebrate her 84th birthday with P without J present. He also alleged that J did not take good care of P's health by, amongst other things, failing to administer her dementia medication, and sought to preserve P's property for her own benefit. He said that her role in the family business was limited and, in any event, she did not perform its competently. He said that lawyers would not make suitable deputies, because they were not qualified in accountancy.

W’s position is that he shared a close relationship with P, and had been a caregiver to P since young, and brought her for outings regularly, even recently. Both T and J objected to his application, alleging he was incompetent, self-serving etc.

Key points:

Deputyship decision

The High Court noted that both J and T distrusted each other and that it was clear that J was actively caregiving for P. Since there was no dispute on this latter point, this was a good enough reason to allow it to continue, and was "the most important consideration". Also, there was a need to maintain a balance between J and T, so that both the deceased’s and P’s assets were preserved. Keeping in mind likely litigation over the deceased's will, it was not in P's interests to have her deputy appointed by T, who might be in a conflict of interest situation between his interests and P’s interests. However, just as J was there to keep T in check, there should be another deputy to keep J in check. The High Court chose W, as being sufficiently neutral to be an appropriate joint deputy. It would be excessive to add Low as well.

Therefore, J and W were appointed as deputies over the personal welfare and property and affairs of P. (The applications in relation to Low and Lau and a successor deputy were all refused.) J and W were to act jointly on all matters.

J had asked to be appointed to the Board of Directors of one of the companies in the family business, in order to protect P's interests in it, but the High Court declined, as it had no power to do so under the MCA. In any event, J could exercise the powers conferred on her as deputy to pursue legal action on behalf of P, who was a shareholder of the company.

Revocation of LPA

There was a handwritten amendment to the standard template LPA application form, which included the words "all of" in front of the words "my residential property". This did away with the need for P's numerous residential properties to be exhaustively listed in the lines provided after that clause. This was indeed an irregularity, but it was not sufficiently material to justify a revocation.

There was an issue as to whether P had fully lost mental capacity the time that she executed her LPA. The medical evidence showed that she had, and the LPA she executed was therefore set aside by the court, as being invalid.

LAB's comment: Interesting points

(a) The concept of "balancing" deputies by having a co-deputy to keep the primary deputy in check; and also keeping an eye on the bigger picture – it is not just about protecting P's own assets, but what P might be entitled to under another person's estate, and putting in place a deputyship regime to protect those interests as well.

(b) That the court has no power to appoint a deputy onto the board of directors of a company to protect P's interests as a shareholder in the company.

(c) That qualifications as a lawyer or accountant do not seem to matter so much in deciding who would be an appropriate deputy - it seems that a family relationship, and especially a close relationship to P, is more important.

WKN v WKM [2023] SGHCF 25

Importance of child interview

Forum: General Division of the High Court (Family Division)

Brief facts: In the above case, the parties divorced, and the father was given care and control of the child, who was 4 years old at the time of the ancillary matters hearing, and 11 years old at the time of the hearing of this appeal. The mother was given liberal access.

This arrangement went on for five years. Thereafter, the mother alleged that the child had been emotionally abused and neglected by the father, and refused to return the child to him. The father than applied to enforce the care and control orders, and the mother applied to vary the care and control order so that she would have care and control.

The District Judge dismissed the mother's application and granted the father's application. The mother appealed. The High Court ordered that care and control of the child be given to the mother, and liberal access to the father.

Key points:

After the decision, the father's lawyer wrote a long letter to the court to ask that the High Court reconsider various counselling reports (which would show the father was a good caregiver). The High Court wrote in the judgement *"I asked to see counsel to impress upon her that her letter was without merit and should not have been written."* In any event, the High Court said that it was not convinced that there was emotional abuse or neglect of the child by the father, as the mother had alleged.

The mother had called the child's school and claimed that the child was suicidal and also made police reports against the father for child abuse (which were baseless) which he claimed caused him much mental anguish. However, the High Court ignored all this, on the basis that these were not actions directed at the child but to try and regain care and control of the child. (LAB's comment: The principle here seems to be what counts is what the child was happiest with, not how badly one parent behaved towards the other.)

The reason the court switched care and control to the mother was because the child was sufficiently mature to decide which parent she wished to live with. She calmly answered questions from the judge at the interview and "*articulated her opinions with firmness and maturity*". She made it clear she preferred to live with her mother, and was happier with her. The court felt that she did not appear to be coached or under the influence of either parent. The court followed the child's wishes to live with the parent she was happiest living with.

LAB's comment: It appears that the child interview is very important. A question which could be asked is whether and how the High Court judge was able to ascertain that the child was not coached, despite living with the mother. But, in any event, it seems like what the child said had a significant impact on the eventual decision. So in a case where there is an articulate child who seems to have a decided view on the care and control issue, a judge interview may be helpful to the parent in whose favour that view is.

WFE v WFF [2023] SGHC(A) 16

Apportionment of monies in joint bank account

Forum: Appellate Division of the High Court

Brief facts: In this divorce case, the High Court ordered the matrimonial pool to be divided 59.63: 40.37 in the Wife's favour. The Wife appealed. One issue was whether monies derived from shares she inherited, which had been transferred to a jointly-held bank account with the Husband ("the Funds"), should be accredited equally between the parties as their direct financial contributions to the matrimonial property.

The High Court allowed the Wife's appeal in part, and apportioned the assets 65.95: 34.05 in favour of the Wife.

Key points:

(a) Where one spouse places moneys derived from non-matrimonial assets into a joint account with the other spouse, a rebuttable presumption arises that the transferring spouse intends to share the moneys with the other spouse and that such assets would *prima facie* be part of the matrimonial pool – but a rebuttable presumption would not arise that half of such moneys should belong to the other spouse.

(b) In this case, the Funds were part of the matrimonial asset pool since they had been used to purchase the matrimonial property, which suggested that the Wife intended to share the Funds with the Husband. However, she should still be fully credited for her direct contributions as the funds originated from her inheritance.

(c) Bearing children in itself, without more, would not entitle a wife a certain extra percentage in indirect contributions. The Wife's argument in this regard was not accepted.

(d) Although the Wife only got 6.32% more on appeal, which is below the 10% general threshold for family appeals before costs following the event may be awarded (see *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 at [68], and *USB v USA and another appeal* [2020] 2 SLR 588 at [80]), the High Court nonetheless awarded the Wife costs of $30,000 inclusive of disbursements. This could be because the matrimonial asset pool was of a relatively high value, at $9,832,718.29.

WKD v WKC [2023] SGHCF 29

Failure to make full and frank disclosure of assets

Forum: General Division of the High Court (Family Division)

Brief facts: This case involves a 29-year marriage, with two adult children. It is interesting to see how the judge worked out:

(a) whether there were in fact hidden assets held by the husband, and how much was reasonable to add to the matrimonial pool as a result of the husband's failure to make full and frank disclosure (failure to make full and frank disclosure does not necessarily mean there are hidden assets, let alone lots of hidden assets).

(b) whether the uplift the wife was asking for in respect of the husband's failure to make full and frank disclosure was reasonable and realistic

The key issue was the division of the matrimonial flat. The District Court ordered that the husband should transfer his interest in the flat to the wife, with the wife paying the husband about $90,000. If the matrimonial flat was not transferred to the wife, then it would be sold on the open market, and the net sale proceeds, after paying the outstanding mortgage, costs and expenses of sale, would be divided in the ratio 38 (husband):62 (wife). Each party was to retain assets held in their respective names. There was no wife maintenance ordered. The matrimonial asset ratio on which these orders was based was 55 (husband):45 (wife).

The wife appealed to the High Court. She wanted, amongst other things, a ratio of 44.48 (husband):55.42 (wife) for the entire pool of matrimonial assets; and she wanted an uplift of 15% based on an adverse inference drawn from the husband's failure to make full and frank disclosure ("adverse inference"). (The District Judge had given the wife an uplift of 7% based on the adverse inference.) This would increase her share of the pool to 70.42%.

Key points: The High Court found that the husband earned about $800,000 during the whole marriage, and regarded this as his total financial contributions towards the marriage. He found that the wife earned about $876,000 during the whole duration of the marriage, which he took as the wife's financial contributions towards the marriage. The ratio of direct financial contributions was 47.78 (husband):52.22 (wife). The court observed that establishing the total income earned by the respective parties during the entire marriage is a relatively quick, easy and fairly accurate method of assessing their respective financial contributions towards the marriage.

The ratio of indirect contributions was found to be 40 (husband): 60 (wife). (This was a significant difference from the District Judge's findings of 70 (husband): 30(wife). Therefore, the ratio of all the contributions was 43.9 (husband):56.1 (wife) (rounded off).

The total pool of the matrimonial assets was about $2.8 million. Therefore, if the wife had a 15% uplift (56.1% + 15% = 71.1%), this would amount to a more than $400,000 increase in the wife's share of the matrimonial assets.

The High Court worked out the total value of the pool of matrimonial assets based on the parties' total income and accumulated profits from other investments, less the total expenses for the duration of the marriage (~ $2.5 million). If the total value of the disclosed assets for division was much lower than $2.5 million, then one might infer the probable existence of a hidden pool of undisclosed assets. However, this $2.5 million figure was not far from the established $2.8 million figure. This indicated that the probability of hidden assets was low.

The High Court concluded that it was not likely for the husband to have hidden assets amounting to about $750,000. This was the amount needed for the wife to get her 15% uplift. The equation is: ~$199,0000 (the amount the wife would get from the $2.8 million pool based on her desired 71.1% share (56.1% + 15% uplift) = 56% x ($2.8 million + ~$750,000 (allegedly hidden assets)). The High Court felt that even a 7% uplift would be excessive.

The High Court then ordered a smaller notional sum of $100,000 as the value of all the undisclosed assets in the husband's possession, in respect of his failure to make full and frank disclosure. This gave the wife an additional uplift of about $56,000 to her share of matrimonial assets, based on her 56.1% share of the total matrimonial asset pool.

The High Court then ordered that should the wife decide to retain the matrimonial flat for herself, the husband was to transfer his share to her, and pay the wife the sum of $276,972, to adhere to the ratio of 43.9 (husband): 56.1 (wife) for the total matrimonial pool. Parties were to retain the other assets in their own names. If the flat was sold, then the net sale proceeds would be divided in the proportion of 43.9 (husband): 56.1 (wife). In this event, the husband would pay the wife a sum of $380,000+, in order to adhere to the final ratio of 43.9 (husband): 56.1 (wife) for the total matrimonial pool. The no wife maintenance order was upheld.

VHK v VHL [2023] SGHCF 34

Egregious contempt of court

Forum: General Division of the High Court (Family Division)

Brief Facts: In this case, the father lived in the US, and the mother lived in Singapore. The mother had care and control of the child whereas the father had video access to the child, as well as a hybrid arrangement of supervised and unsupervised physical access.

The mother refused to comply with orders for the father to have access to the child, prompting the father to file a variation application in respect of the access orders. When the mother again ignored the court's interim access orders, the father took out committal proceedings against the mother.

A few days before the committal hearing, the mother took the child to France and did not show up for the hearing on the pretext that the child was sick and could not leave France. A warrant of arrest was issued against the mother and the hearing was adjourned to a few days later. In the meantime, the father applied to reverse the previous order for care and control.

The mother failed to show up at the adjourned committal hearing again. The court then ordered that the child be taken into Child Protective Service's ("**CPS**") custody as soon as she returns to Singapore and for CPS to ensure that the father has access according to existing access orders. The father's applications for variation of access orders, committal proceedings and to reverse the care and control order were adjourned to yet another date.

Once again, the mother failed to turn up at the adjourned hearing for the applications and refused to disclose her physical location on the ground that there was a warrant of arrest against her. Faced with such blatant impudence, the court granted the father sole custody, care and control of the child. The court adjourned committal proceedings until such time the mother might be placed physically before the court.

Key Points:

The court noted that no court should or ignore or condone a blatant defiance of its orders. The court had no alternative but to order a warrant of arrest in light of the mother's persistent defiance.

VMG v VMH [2023] SGHCF 45

Access to child with special needs

Forum: General Division of the High Court (Family Division)

Brief Facts: In this case, the father of a 6-year-old child with autism had access to the child under an order made by the Family Court 2 years ago, as follows: 10 hours every week (2 hours on weekdays, 4 hours on Saturday and 4 hours on Sunday); 6 hours every public holiday and 4 hours on the father's birthday and Tamil New Year (collectively, the "**Present Access Arrangement**").

The father applied to vary the Present Access Arrangement, requesting, amongst other things, overnight access on the weekends and school holiday access ("**Variation Application**"). The Family Court dismissed the Variation Application and the father appealed to the High Court.

Key Points:

The father wanted to spend more time with the child. He said that there was insufficient time to bring the child to places of interest such as the Zoo and Bird Park as he stayed a long distance away from the mother and too much access time was spent travelling from his home to the child's. The mother objected to the increase in access time as the child's special needs condition meant it was important for him to have "structure and predictability".

After hearing both parties, the High Court allowed the appeal in part, increasing the father's access to the child by: (i) an additional 3 hours every Saturday; (ii) an additional 1 hour every Sunday; and (iii) 7 hours of access to the child every Tuesday during the December school holidays (the "**Increased Access Arrangement**").

The High Court held that:

(a) The child's psychological reports were not crucial in deciding whether to make the Increased Access Arrangement. This was because the Present Access Arrangement over the last 2 years showed no detriment to the child;
(b) The father's request for greater access was not detrimental to the child and on the contrary, might have strong benefits to him. Young children, especially those with special needs, need both parents to secure a stable future. The Increased Access Arrangement would deepen the bond between the father and the child, which would be beneficial for the child;
(c) The focus should be on the amount of access that the child needs with the father instead of how much access the father should have to the child; and
(d) The Increased Access Arrangement would be subject to further review in June 2024.

LAB Comments: In *TSF v TSE* [2018] 2 SLR 833, the father, who cared for a 6-year-old child with autism in Singapore, wanted the child to remain in Singapore while the mother wanted to take the child to the UK. The Court of Appeal maintained the existing care and access arrangements for the child. In keeping the status quo, the Court of Appeal held at [90] of the judgment that, taking into account the child's autism, he was in a "more fragile condition" than most other children in his age group and a drastic change (such as relocation) could compromise his developmental progress.

In the present case, it appears that an increase in access hours may not constitute a "drastic change" in the child's circumstances and hence was not considered by the High Court to be "detrimental" to the child. Therefore, in assessing whether to make or resist an application to vary orders concerning special needs children (e.g. access orders), lawyers should consider whether the change is "drastic" or "detrimental" (e.g. whether the change would adversely affect the child's developmental progress).

DDO v DDN [2023] SGHCF 44

Access to children reduced due to promiscuous behaviour

Forum: General Division of the High Court (Family Division)

Brief Facts: In this case, the parties divorced and agreed to care and control to the wife, and generous access to the husband, including overnight access from Thursday after school to Sunday before noon, and school holidays. The father could take the children overseas during

the June and November/December school holidays. The first child was 15 years old, and the second child was 12 years old.

The mother then applied to vary the access orders, asking for weekly outings on weekends and no more overseas and overnight access, on the basis of a material change of circumstances. She argued that the father had not utilised any of the overnight or overseas access, and the liberal access placed the children at risk because of the negative influence of the father's promiscuous lifestyle, namely his unhealthy obsession with pornography, his procurement of sexual services from employees of a local public hospital (the father was a doctor), and his leaving of various sexual objects around the house where they could be seen by the children.

Key Points:

Preliminary point on whether the matter should be heard before the Family Court or the High Court

Counsel for the father had argued that the matter should not have been fixed for hearing before the High Court, because there was a dispute as to whether the pool of matrimonial assets was more than $5 million. The High Court held that where a dispute arises in the course of the ancillary hearing as to whether the value of the matrimonial assets exceeds the $5 million threshold, the case can continue to be heard in the High Court. This is so that the date and time already allocated for the hearing by the High Court would not be wasted. Costs may be awarded on either the High Court or the Family Court basis depending on the finding of the High Court on the true total net value of the matrimonial asset pool.

Whether variation of the access orders should be granted

The High Court agreed with the mother that the father’s access ought to be reduced on the essential ground that it was in the children’s welfare to do so.

The court held that the rights of access were ultimately conferred for the *father's* benefit, though the court recognised that it would also be in the interests of the children to interact with their father. In this regard, the court said that the father could not be forced to utilise all his rights of access if he did not wish to make full use of them. However, where the father had completely or substantially failed to exercise any of his access rights, it would be relevant to the court’s consideration of whether there were material changes in circumstances warranting a variation of the access orders. It would be unfair for the children to be kept waiting by the father for access, if he did not intend to exercise it, and also an unnecessary burden on the mother to keep preparing the children for such access. In this case, the father had not exercised his overnight or overseas access for about two years – though he had stayed over at the children’s home from 23 June 2019 to 26 December 2021. He only stopped staying overnight from 26 December 2021, when the mother allegedly assaulted him (which the mother disputed). The court was of the view that if the father wanted to exercise overnight access, the children should stay over at his own place of residence, and not at the mother's place. The court was persuaded that the father’s persistent failure to exercise overnight or overseas access weighed against his claim that these access rights should be retained.

The court also found the mother’s other allegations relevant in deciding whether to reduce the father’s access. On the facts, the court did not find that there was evidence that the father left sexual objects around the house where the children could see them. However, there was

evidence that the father had procured the sexual services of unknown female individuals. He also had an unhealthy obsession with sex with underage girls and pornography, and there was a potential risk of the children's care being outsourced to the father's friends, who had encouraged the father on his sexual escapades and connected him to underage girls for sex. The evidence was in the form of transcripts of audio recordings of conversations involving the father and one of the said friends, who had apparently introduced or was intending to introduce underage girls for the father to have sex with. While these were the father's private matters, they were relevant insofar as the children had been or were at risk of being placed in harm's way. The father had been open to the possibility of placing the care of his children in the hands of his friends – this would pose a risk to the safety of the children.

The father argued that the mother already knew about his sexual predilections at the time of the consent order on access. However, the court said that this was not relevant. Firstly, the court would have to act to protect the children, now that it was aware of the risk to their safety - the overall welfare and best interests of the children would remain paramount. Secondly, the mother had consented to the access orders in the belief that the father would mend his ways, which turned out not to be the case.

Therefore, the court removed the father's overseas and overnight access to the children, but allowed him to retain reasonable access to them on Tuesdays, Thursdays and Sundays, and on special occasions such as public holidays and birthdays. The father could also call the children on his non-access days.

LAB Comments: The father appealed against the High Court's decision. The Appellate Division of the High Court has dismissed the father's appeal in *DDN v DDO* [2024] SGHC(A) 2**.**

WOS v WOT [2023] SGHCF 36

Date for determining matrimonial asset pool and maintenance

Forum: General Division of the High Court (Family Division)

Brief Facts: In this case, a key issue was whether the date for determining the matrimonial asset pool should be the Interim Judgment ("**IJ**") date, or the date of separation which was about 10 years earlier.

Key Points:

Separation without more cannot automatically be taken to be the end of the marriage

The court decided to use the IJ date, because although the husband had moved out of the matrimonial home, he still seemed to have some hope of reconciliation at the time that he moved out. Furthermore, the parties did go out as a family (albeit very occasionally) and the husband supported the wife and child by contributing to the family expenses. It was also pertinent that there was no formal separation agreement. Therefore, the court found that the marriage still seemed to be a "meaningful" one despite the physical separation.

Wife's contribution to include the long period of separation

In terms of the wife's indirect contributions, the court took her contributions for the full marriage period, including the long period of separation, because she had been the main caregiver for the child of the marriage during this time. However, the court also took into

account the husband's effort in accumulating all the matrimonial assets, especially considering what a large amount of assets they were. Therefore, the court decided on the ratio of 60:40 in the husband's favour, rather than the usual 50-50 split.

Spousal maintenance

No wife maintenance was ordered, because the wife had already gotten a large sum from the matrimonial assets.

Child maintenance

The court allowed the wife to claim for maintenance of the child's overseas tertiary education as the child was already enrolled in tertiary education overseas and studying at the time of the hearing. However, the court said that the mother should also contribute to half of these expenses despite the fact that she was not working, as she had gotten a large share of the matrimonial assets.

VXM v VXN [2023] SGHCF 39

Division of matrimonial assets – determining the matrimonial pool; no spousal maintenance

Forum: General Division of the High Court (Family Division)

Brief Facts: This case concerns a marriage which lasted slightly under 10 years, with two children aged eight and seven years old. The matrimonial asset pool was more than $11.5 million.

Key Points:

Determining the matrimonial pool

The parents of the wife gave her a 1 kg gold bar when she got married, which had her name inscribed on it. This was held by the court to be a gift to the wife only, and not for the benefit of both parties – the inscription indicated that it was strictly of sentimental value. The wife's mother said on affidavit that she wanted to give the wife something to keep for life as hers and hers only.

The husband and wife had lived in a property owned by the husband's mother for most of the marriage. This was because they were supposed to live in their own place, but the construction was not completed yet when they got married, and the husband's mother offered to let them stay in her property. Even when their own place was ready, they decided to keep on staying in that property, because they were comfortable in it. When the husband's mother passed away, the husband inherited ¼ share in it. The wife claimed that the ¼ share was a matrimonial asset and not an inheritance. The court held that this was not a matrimonial asset as: (1) the parties had accepted that the property belonged to the husband's mother during her lifetime; and (2) the husband's mother did not intend for the property to be owned by the parties and she had retained control over it.

There were certain director's fees and bonuses received by the husband after the interim judgement date. The court found these to be matrimonial assets. The cheques for the director's fees were dated almost a month *before* the interim judgement date. The husband could not be allowed to benefit from his delay in banking in his director's fees. As for the bonuses, the court

agreed with the wife that the bonuses were for work that he did during the marriage before the interim judgement date and therefore should be considered matrimonial assets.

The husband had given gifts to the wife before the marriage. These were not counted as part of the matrimonial assets. However the gifts that he gave her after the marriage – luxury handbags, jewellery, watches – were considered matrimonial assets. Even though these were feminine items, it did not mean that the husband had a "clear and unequivocal" intention to divest his interests in these assets, so that they would not form part of the matrimonial pool.

Division of assets

The direct contributions of the husband and wife were 81.3 (husband):18.7 (wife). The husband had been the one paying the family expenses, while the wife was the primary caregiver of the children and the sole homemaker. The indirect contributions ratio was therefore 70 (wife):30 (husband). The overall ratio was 56:44 in the husband's favour. However, an adverse inference was drawn against the husband, because there was some evidence that he was hiding assets, based on discrepancies in his bank statements. Therefore, the overall ratio was adjusted to 52:48 in the husband's favour.

Spousal maintenance

No wife maintenance was ordered because:

(1) The wife had sufficient means to support herself. The wife had a significant share of the matrimonial assets which amounted to a large sum of more than $5.5 million. She also had personal assets which were not part of the matrimonial pool, some of which were shares which amounted to more than $2 million.
(2) The wife had a high earning capacity. The wife was highly educated with a Master's degree in business administration, and many years of work experience. The court found that she was capable of commanding a higher salary if she chose to work outside her family's company. Furthermore, she received high monthly rental income from a rental property that she owned.

Child maintenance

The court did not allow the wife to claim for expenses that were clearly excessive and unreasonable. In this case, the court found that $10,000 a month was a reasonable sum for the children's maintenance. The court ordered the parties to bear this in the ratio of 80:20, with the husband bearing the higher figure.

DBB v DBA [2023] SGHCF 40

Determination of division in a long marriage— dual income, but wife earned much less than husband

Forum: General Division of the High Court (Family Division)

Brief Facts: This case features a long marriage of more than 30 years. The husband was retired after working for more than 25 years, but had a monthly investment income of about $12,200 per month, which he used to acquire assets and pay for the family expenses. Before his retirement, he had worked in various companies, where he had earned quite a lot. The wife was employed throughout the marriage, including running a small business for some years (which

was apparently loss-making). She was generally in fairly low paid jobs or part-time jobs, however. After retirement, the husband claimed to have become a homemaker, taking an active role in caring for the children, by, for example, preparing their breakfasts, sending them to school, coaching them in their studies, organising dinners and family outings. The parties owned properties in Singapore, including the matrimonial home, as well as several properties overseas, bought as investments.

Key points:

Determination of *TNL* or *ANJ* framework

The wife argued that the marriage should be considered a single-income marriage (because she earned so little relative to the husband, and had not been continuously employed throughout the marriage, and in several periods had worked part-time) and thus the division of assets should be done in accordance with the case of *TNL* (*TNL v TNK* [2016] SGHCF 7). The husband, on the other hand, said that the marriage was a dual-income one, and hence the *ANJ* (ANJ v ANK [2015] SGCA 34) framework should be used.

The court held that since the wife had worked throughout the marriage, it was a dual-income marriage, *"…albeit that the Wife's earnings of the years were insignificant when compared with the Husband's and sometimes she worked on a part-time basis. The court is also mindful… that the Husband should not be penalised for being successful."*

Ratios of contributions

The court accepted the husband's version of events regarding the financial matters, because his figures appeared to be much more reliable and supported with evidence, unlike the wife who had made many bare assertions. Therefore, he was awarded 95% of the direct contributions. The court also awarded the husband 60% of the indirect contributions. The eldest child of the marriage had filed an affidavit saying that both parents had contributed equally in terms of taking care of the children and the household. Therefore, the court held that they had made equal non-monetary contributions towards the marriage as they were a working couple, with the husband contributing more as a full-time homemaker after his retirement. The husband was given a higher proportion of the indirect contributions because he had contributed more by way of indirect financial contributions. The overall ratio was 77.5:22.5, in the husband's favour.

LAB Comments:

(1) Interestingly, if the wife had not worked during the course of the marriage (instead of working at a series of low-paying or part-time jobs) she would likely have been awarded 50% of the matrimonial assets under *TNL.* This would have been a much more favourable position for the wife.

(2) Unlike the husband who was able to support his assertions with evidence, the wife could not prove her claims of making significant direct financial or even indirect financial contributions. This worked against her and resulted in her getting a small share of the overall asset pool. This case illustrates the importance of adducing documentary evidence to support one's case.

Spousal maintenance

No maintenance was awarded to the wife because she was still working, whereas the husband had stopped working for about seven years and it would be difficult for him to re-enter the workforce, however skilled he might be, after this lapse. The court also considered that the wife had been given a substantial portion of the matrimonial assets, to which she had made no significant contribution towards the acquisition of.

LAB Comments:

(1) The fact that the wife was still working was taken against her even though it was only a low-paying part-time job. The court was influenced by the fact that the wife already had a significant share of the matrimonial assets which she did not have a hand in acquiring.
(2) Although the husband had retired quite young at 56 years old, this was not taken against him and the court did not expect him to return to the workforce. This may have been because his retirement income was quite considerable and he also fulfilled homemaker duties after retirement. Therefore, he was contributing to the family financially as well as in non-financial ways, even after retirement.

Child maintenance

The parties agreed on the maintenance of the first two children. The youngest child was in secondary school. The wife submitted that his expenses would be $2,230, and the husband said that the child's expenses should be $1,760.

Interestingly, the court ordered that $1,500 was reasonable, even lower than what the husband had submitted. In particular, the maintenance ordered for several heads of expenses were lower than even what the husband had submitted. The test that the court adopted was "how much does a secondary school student in Singapore need in order to live reasonably well given his family's standard of living?" The court found that the parties' projections were overly generous. The court also opined that the wife could vary the maintenance ordered with the husband's consent if indeed the maintenance ordered for certain heads was insufficient.

CVC v CVB [2023] SGHC(A) 28

Interspousal transfers of monies, refund of CPF monies before or after division of sale proceeds and backdating of child maintenance

Forum: Appellate Division of the High Court

Brief Facts: The wife had appealed against the High Court's decision in the ancillary matters, submitting that the High Court had erred in, amongst other things: (i) finding that the transfer of $400,000 made by the husband to the wife during their marriage (the "**Transfer Sum**") was a loan and not a gift; (ii) the drawing of an adverse inference against the wife; (iii) making an unworkable order in relation to the sale of one of the matrimonial properties (the "**Bishan Property**"), as it did not provide for the parties' respective Central Provident Fund ("**CPF**") contributions to be refunded *before* the net sale proceeds were divided between them; and (iv) failing to order the husband to pay backdated maintenance for the children of the marriage.

Key Points:

Transfer sum

Inter-spousal transfers may be made for many purposes not falling within the nature of a “gift” or a “loan”, including for convenience (e.g. to enable the other spouse to manage the monies), or sharing the enjoyment of the monies with the other spouse. There was no evidence suggesting that the husband had treated the Transfer Sum as a loan, e.g. by seeking its repayment, or that he intended to completely divest himself of any interest in it. The court held that the husband’s intention was to share the Transfer Sum with the wife, for acquiring joint assets and common use, and it had been so used. As the Transfer Sum emanated from the husband, the amount paid by the wife to purchase the Bishan Property, using monies which came from the Transfer Sum, was counted as the husband’s direct contributions towards the purchase.

Adverse inference

The wife’s substantial earning power did not, without more, suggest that she was hiding information, or had more assets than she had declared. The wife’s belated disclosure of her assets after several discovery applications (as opposed to a total non-disclosure) did not warrant an adverse inference being drawn against her.

Refund of CPF monies

The refund of CPF moneys may be made *before* or *after* dividing the sale proceeds between the parties, so long as the total value of each party’s share reflects the final division ratios ordered. In the latter situation, if a party’s share of the divided proceeds is insufficient to repay the CPF moneys used, that party may have to use other assets to cover the difference.

Backdated child maintenance

The wife failed to apply for interim maintenance for the children, even though the husband did not pay child maintenance for 5 years. However, this should not be counted against her when deciding whether to order backdated child maintenance. That said, the fact that she made no genuine attempts to communicate with him on the maintenance issue was a consideration. In the circumstances, the husband was ordered to pay 2 years of backdated maintenance.

WQR v WQS [2023] SGHCF 41

Determination of single or dual-income marriage based on capacity to contribute rather than actual contributions; loans made by one spouse to another

Forum: General Division of the High Court (Family Division)

Brief Facts: The parties were married for almost 30 years. They had two daughters, both of whom were adults at the time of the divorce. At the time of the divorce, the wife was still working, but the husband had retired for about a year. Prior to that he ran his own businesses.

The wife's case was that she had worked throughout the marriage and was the main breadwinner. She said she had paid for all the family expenses, and that she and her father also helped provide financial support to the husband for his businesses. Whatever the husband earned, he would keep for himself and spend it on his mistress instead of the family. The husband apparently did not draw a salary between 1996 and 2020.

Key Points:

Single-income or dual-income marriage – focus is on capacity to contribute rather than actual contributions

The High Court held that the more principled approach to the question whether a marriage ought to be considered single-income or dual-income is to focus on the capacity to contribute - whether the parties were drawing an income and therefore *able* to make financial contributions towards the family, rather than their actual contributions. A focus on actual rather than potential capacity for financial contributions would allow a spouse who is drawing an income to avail himself of a more favourable methodology for division of assets, by simply declining to contribute such income towards the family and rendering himself a "non-working spouse". This would place a spouse who can, but declines to, financially contribute to the family, in a better position than one who can and does in fact so contribute.

On the facts of this case, the court found that the husband did have some form of income which he could have contributed to the marriage. Although he claimed that he did not draw any salary for a long period of time, the court said that it was difficult to believe that a self-employed businessman could have gone unremunerated for more than 20 years, given his claims that he had been awarded various big projects, and was also able to purchase a couple of properties in Malaysia, and had an average of about $1200 of personal expenses per month. He also had income streams from certain investments. On this basis, the court considered that this was a dual-income marriage.

80-20 indirect contributions ratio

On the evidence, the husband's indirect financial contributions and his indirect non-financial contributions were minimal. He had numerous adulterous affairs throughout the marriage. This severely impinged on the amount of time he had to spend with his family in Singapore and his capacity to make indirect contributions to the family. He was also abusive to the wife. Therefore, the parties' indirect contributions were assessed to be 80:20 in favour of the wife. The court noted that this was at odds with the trend towards equal division in long marriages, but considered this an exceptional case where one party made the vast majority of both financial and non-financial contributions to the marriage. It was not an approximately equal partnership of different efforts, simply because it was a long marriage.

Return of loans

The wife had loaned various sums to the husband during the marriage. The court ordered the husband to repay these sums. (LAB Comments: The court did not ask the wife to sue the husband in the civil court for the sums instead.) In coming to its decision, the court followed *Yeong Swan Ann v Lim Fei Yen* [1999] 1 SLR(R) 49, where the Court of Appeal considered that the wife in that case had primarily shouldered the financial burden for the family, as a factor which favoured ordering the husband to repay the sums loaned by the wife to him. On the facts of this case, the court said that this was not a mutually supportive partnership, in which both parties would be expected to share both the costs and the fruits of any economic enterprise undertaken by one and supported by the other.

Third party interests

The parties' eldest daughter owned a property, which had been funded entirely by the wife. The husband requested for the court to insert the other daughter's name in this asset as an equal beneficial owner, as the purchase of this property was meant for the interests of both children. The court dismissed the husband's request, on the basis that the matrimonial jurisdiction of the court cannot be exercised to decide the legal rights of third parties.

Adverse inference drawn against the husband

The husband refused to produce financial documents in relation to a private limited company which he claimed was later converted into a limited liability partnership. This was notwithstanding the husband's own admissions that he was the 100% owner of the business, and that the business was awarded various big projects. Therefore, the court drew an adverse inference against him. There was insufficient material before the court to make any finding on the value of any allegedly undisclosed assets because of the husband's failure to make full and frank disclosure. Therefore, the court applied the uplift approach, giving the wife a higher proportion of the known assets. In this case, the court gave the wife a token uplift of 1%, because she had the preponderant majority share of the assets. As a result, the husband would receive only 9.4% of the matrimonial pool.

Costs

The court noted that the default position is that costs are not ordered in respect of matrimonial proceedings, in order to avoid pronouncing a "winner" and a "loser". However, the court can make costs orders against parties who have been uncooperative in disclosing their assets and means, who have made patently unmeritorious allegations, and who have incurred unnecessary costs.

The court noted that the husband had spent a lot of time in his affidavits attacking "strawmen arguments" and raising irrelevant matters. He lost on a major plank of his position, regarding the wife's shares, which he said were part of the matrimonial assets, but which the court eventually found to be gifts by the wife's father to the wife. The husband failed to make full and frank disclosure of his assets and means, and also persistently refused to abide by the court's directions to do so.

While the court thought that this was an appropriate case to make a costs order against the husband, it did not do so. This was because the husband would already receive a relatively small share of the matrimonial assets and the wife had considerable financial means at her disposal. Further, although the children were both adults, the court wanted to avoid exacerbating the hostility between the parties, who both loved their children. (LAB comments: This case shows the reluctance of the courts in making costs orders in ancillary matters proceedings. In this case, the court could have been influenced by the fact that the husband was in person.)

WNR v WNQ [2023] SGHCF 43

Application to adduce further evidence on appeal

Forum: General Division of the High Court (Family Division)

Brief Facts: In this case, the marriage was almost 40 years. The wife was a homemaker, and the husband was self-employed. The District Judge made orders on ancillary matters on 2 March 2023, and the husband filed an appeal. The husband also filed for leave to adduce further evidence in the appeal on 25 August 2023. He wanted to adduce further statements from his bank accounts for the period of April 2021 to July 2021, which related primarily to his credit card and credit line liabilities. The District Judge had excluded these debts from the matrimonial assets for lack of evidence. The husband's case was that he could not provide these bank documents earlier because the bank would not release them to him until he paid off his debts to them. They only released them to him after he entered into a repayment plan with them on 5 December 2022.

Key Points: The High Court was not satisfied that the husband was unable to obtain the bank statements with reasonable diligence for the ancillary matters hearing. He had already negotiated a repayment schedule with the banks by 5 December 2022, and therefore they should have been willing to give him the statements. He also did not provide any evidence in support of his claim that the banks were unwilling to give him the statements until he had paid off his debts.

Further, the wife had asked for discovery of full and unredacted monthly statements for all the husband's bank accounts as part of the discovery process – this was not complied with. Yet, on appeal, the husband only wanted to adduce limited statements that would not give a full and complete account of all his earnings and expenses for the relevant years.

The court therefore held that there were no special grounds to allow the husband to adduce further evidence of the bank statements. The husband's appeal was largely dismissed, except for taking his proven liabilities into account, and subtracting them from the matrimonial asset pool.

LAB Comments: A party should do its utmost to obtain and adduce the relevant documents for the ancillary matters hearing. There is a high chance that if a party could have obtained documents for the ancillary matters hearing, he or she would not be allowed to adduce them in the appeal. If a party is making a case that the documents could not be obtained in time for the ancillary matters hearing, he or she would need to adduce evidence, preferably in writing, of the efforts made to obtain the documents and the outcome of those efforts.

WRX v WRY [2023[SGHCF 50

Valuation of stock trading account; mortgage and rental expenses that should not be claimed for spousal maintenance

Forum: General Division of the High Court (Family Division)

Brief Facts: In this case, the parties married in 2002. The husband was a senior corporate executive while the wife was a business development manager. IJ was granted in July 2021. The High Court heard the parties on ancillary matters on 4 October 2023 and 16 November 2023.

Key Points:

Valuation of stock trading accounts that fall in value after IJ date

There was a huge drop in the valuation of the husband's stock trading accounts since the IJ date. The High Court held that where it is not known what the composition of shares is, or whether there has been any withdrawal of funds out of the account, the IJ date should be the valuation date. This avoids the uncertain exercise of determining whether the value had decreased due to volatility of stock trading, or whether money had been withdrawn. In the former, it would be fair to value the account at a date closest to the ancillary matters hearing. In the latter, it would be fair to value the account at the IJ date.

On the evidence available, it was impossible to tell what withdrawals had been made from the accounts since the IJ date. Given the potential for the husband to have dissipated money away from the accounts after the IJ date, and considering the husband could have but did not adduce the relevant transaction information to clarify this, the court held that the valuation should be based on the IJ date.

Spousal maintenance – claim for rental and mortgage expenses

The court rejected the wife's claim for spousal maintenance for mortgage expenses for a property that she solely owned. If the wife wished to continue building up her equity in that property, she was solely responsible for her mortgage payments.

The court also did not accept the wife's claim for rental expenses as part of her maintenance claim. It would be unfair for the wife to rent an accommodation and claim it as an expense from the husband when she had her own property.

VUG v VUF [2023] SGHCF 46

Setting aside of consent order

Forum: General Division of the High Court (Family Division)

Brief Facts: In this case, the parties were divorced in 2021. The husband appealed against the ancillary matters order ("**AM Order**"). On appeal, the High Court varied the AM Order ("**the High Court J's Order**).

On 15 March 2022, the wife successfully obtained leave to appeal to the Appellate Division of the High Court ("**AD**") against the High Court Order on a limited issue relating to the husband's shares in his companies. Subsequently, on 6 December 2022, the parties settled and obtained a consent order varying the High Courts Order ("**Consent Order**"). The wife withdrew her appeal to the AD on 12 December 2022.

The Consent Order provided, amongst other things, that the wife was to receive $78,957.53, comprising her share in the matrimonial assets, in cash. In return, the wife was to transfer her share in the matrimonial home to the husband, without any refunds to the wife's CPF account (**"Waiver Request**").

The husband subsequently filed an application to vary the Consent Order when he realised that he was liable to refund the wife's CPF monies (utilised for the matrimonial home) to his CPF account upon a future sale. In the application, the husband alleged that the wife's first set of solicitors had made certain

misrepresentations to him/his solicitor regarding the CPF refunds, which misled him into accepting the Consent Order.

The Family Court dismissed the husband's variation application. The husband appealed against this decision to the High Court.

Key Points:

The High Court set aside the Consent Order.

The court found that the husband and his lawyer had been misled. When the wife's first set of solicitors consulted the CPF Board on the Waiver Request, they should have provided the CPF Board with the version of the draft Consent Order which was amended by the husband's solicitor ("**Updated Draft**") to include a clause which provided that in the event that the CPF Board requires the wife to refund to her CPF account, the wife shall be solely responsible for refunding to her CPF account monies utilised towards the purchase of the matrimonial home ("**Clause**"). Not having seen the Updated Draft, there was a risk that the CPF Board's reply may not have been comprehensive enough for a properly considered negotiation between the parties.

The court disagreed with the wife's counsel's arguments that the Clause was irrelevant. This was because the husband's solicitor had, through a letter dated 6 September 2022 to the wife's first set of solicitors, made it clear that the husband's acquiescence to pay the wife in cash was subject to the condition that the husband would "not be liable nor responsible for any refund" the wife has to make to the CPF Board. The Clause was supposed to protect the husband in this regard.

The court also rejected the wife's counsel's submission that the husband would not be prejudiced by having to refund money into his CPF account. The husband wanted cash in hand rather have his money in his CPF account.

The court said that varying the Consent Order to the husband's requested form would be unsatisfactory as the wife cannot be said to have consented to the husband's proposed version. Accordingly, the court dismissed the husband's appeal. The court also acknowledged that wife had agreed to discontinue her appeal to the AD because of the Consent Order. The court held that since there was no true consent from either party to give rise to a consent order (in whatever form), the only fair way out was to set aside the Consent Order.

LAB Comments:

For a consent order to be set aside, there must be clear evidence of fraudulent non-disclosure and that parties would have entered into a substantially different order if proper disclosure was made (see *BMI v BMJ* [2017] SGCA 63 at [9]). It is not clear from the High Court's judgment whether the High Court had considered whether the legal threshold for setting aside a consent order has been met. While the High Court had found that there was non-disclosure (i.e., the Updated Draft was not sent to the CPF Board), the court did not find that the wife's first set of solicitors had acted fraudulently.

The Clause did not deal with a situation of a CPF refund in the event the matrimonial home was sold. It is therefore not clear why the High Court was of the view that the CPF Board may have come to a different view on the Waiver Request had they seen the Updated Draft.

Chye Hwa Luan and others v Do Allyn T [2023] SGHCR 10

Suing an administrator in their personal capacity and not as administrator

Forum: General Division of the High Court

Brief facts: In this case, the first and second plaintiffs were the deceased's parents, the third plaintiff was the deceased's brother and the defendant was the wife of the deceased.

The defendant had applied for a grant of letters of administration to the deceased's estate but she did not extract the grant of letters of administration.

The three plaintiffs commenced a suit against the defendant in her personal capacity, in respect of a property that had been registered in the names of the third plaintiff and the deceased, who were tenants in common in equal shares. The first and second plaintiffs' case was that they had purchased the property and registered it in the names of the third plaintiff and the deceased with the understanding that the property was to be held on trust for them. They wanted, amongst other things, a declaration regarding the trust, and an order that the defendant, as administrator of the deceased's estate, transfer the deceased's share in the property to them.

The defendant applied to strike out the plaintiffs' Statement of Claim in its entirety. Her case was that she had no authority to deal with the deceased's estate as she was not legal administratrix of the estate. Consequently, she had no legal standing to defend the action. The court allowed the defendant's application.

Key Points:

<u>The court's power to strike out a pleading where the defendant has no requisite standing</u>

The court's power to strike out a pleading that discloses no reasonable cause of action is found under Order 18 Rule 19(1)(a) of the Rules of Court 2014 ("**ROC**"). A particular instance where there is no reasonable cause of action is where the aggrieved party has no locus standi to bring an action or where the defendant does not possess the requisite standing. In the case of the latter, there would be simply no basis on which the court can grant the reliefs sought or make the orders sought against the defendant, nor does the defendant have any legal capacity to comply with any orders made against it.

<u>Determination of the capacity under which the defendant was sued</u>

Order 6 Rule 2(1)(d) of the ROC mandates that before a writ is issued, it must be endorsed "where a defendant is sued in a representative capacity". This rule envisages that a party in his or her representative capacity is distinct from his or her personal capacity. It is also necessary that the representative capacity of a defendant be reflected in the title of action of the Statement of Claim and not merely in the body thereof, pursuant to the rule on *In Re Tottenham* [1896] 1 Ch 628. As neither was not done in this case, it could not be challenged that the defendant was sued in her personal capacity.

<u>The defendant's legal standing to defend the action</u>

The court pointed out that there is a distinction between the grant of the application for grant of letters of administration and the extraction of the sealed grant of letters of administration. It

is upon the former that the property of the intestate is vested in the administrator but this does not mean that the administrator is able to immediately take an action on behalf of the estate. It is only upon the latter that authority is conferred upon the applicant to administer the estate. Since the extraction of the grant of letters of administration is the dispositive act to confer authority and title upon an administrator, the defendant was not legally the administratrix of the estate and had no authority to deal with the deceased's estate. Consequently, no cause of action could accrue as against the defendant.

The extraction of the grant of letters of administration is necessary to confer authority upon an administrator. In this case, the defendant had not extracted the letters of administration. Hence, she had no authority to deal with the deceased's estate.

<u>What the plaintiffs should have done</u>

The plaintiffs should have applied under Order 15 Rule 6A(1) of the ROC to bring an action in the absence of any grant of letters of administration. Pursuant to Order 15 Rule 6A(4)(a) of the ROC, they would have had to apply for an order appointing a person to represent the estate for the purpose of the proceedings and for an order that the proceedings be carried on against that person.

Tan Zhi Wei, Alan v Tan Jia Lin, Jaylin [2023] SGHC 271

Determination of which court has jurisdiction in deciding the removal of a joint administrator

Forum: General Division of the High Court

Brief Facts: The deceased was survived by his wife and two adult children. The estate was worth more than $10 million. After some disputes, the son and daughter jointly applied for letters of administration. However, they had some disputes over the administration, and the son applied in the High Court for the daughter to be removed as the joint administrator. The application was dismissed.

Key Points:

The daughter submitted that the General Division of the High Court did not have jurisdiction to hear the application as this was an application to revoke or amend the grant of letters of administration and the jurisdiction for such application was to be exercised through the Family Division under section 22(1)(a) of the Family Justice Act 2014 ("**FJA**") read with section 17(1)(f) of the Supreme Court of the Judicature Act 1969 ("**SCJA**").

The High Court agreed with the daughter. It held that this application ought to have been filed in the Family Courts. First, although the Probate and Administration Act 1934 ("**PAA**") does not provide specifically for the removal of a co-administrator, the power to do so is found in section 32 of the PAA which talks about revoking or amending the letters of administration.

Second, the Family Courts have the jurisdiction to revoke or amend letters of administration. The jurisdiction to exercise the power under section 32 of the PAA is part of the civil jurisdiction of the General Division in section 17(1)(f) of the SCJA. This jurisdiction is to be exercised through the Family Division by virtue of section 22(1)(a) of the FJA. In turn, section

26(2) of the FJA makes it clear that the Family Courts also have the jurisdiction and powers mentioned in section 22 of the FJA.

Finally, section 26(3A) FJA states, amongst other things, that any family proceedings heard and determined by the Family Division of the High Court must in the first instance be commenced in a Family Court. Section 2(1)(q) of the FJA defines "family proceedings" as including "any civil proceedings under the [PAA]".

WKR v WKQ [2023] SGHC(A) 35

Resealing of foreign domicile grants

Forum: Appellate Division of the High Court

Brief Facts: In this case, a man who was born in France died intestate in Spain. The deceased had two children with Mdm WKQ, who claimed to be his wife. He had two other children with another woman, Mdm Y.

The deceased's father (the "**Father**") did not accept Mdm WKQ as the deceased's wife. He applied in the United Arab Emirates (UAE) for the deceased's inheritance certificate, and was granted this as well as administrative rights of the assets for the deceased's four minor children, as well as guardianship over the children. Mdm WKQ filed an appeal against the UAE court decree, which was dismissed.

Without giving any notice to the Father, Mdm WKQ applied for and obtained a grant of letters of administration in Vanuatu, based on the fact that she and the deceased had acquired citizenship in that country. The inheritance provisions were different for the UAE and Vanuatu. Under the Vanuatu grant, the Father and the two children from Mdm Y were not given any share of the estate. Under the UAE court decree, the Father and the deceased's mother, Mdm WKQ and all 4 of the deceased's children had shares in the estate.

Mdm WKQ then applied for the Vanuatu grant to be resealed in Singapore, again without notice to the Father. The Father filed a caveat against this, and applied to stay the resealing proceedings pending his application challenging the Vanuatu grant in the Vanuatu courts. The High Court dismissed his application and granted Mdm WKQ's resealing application. The Father appealed against what he framed as the High Court's decision to remove the caveat, and the High Court's decision to grant the resealing order. (The Judge of the High Court however maintained that he had not actually ordered the caveat to be removed – the caveat remained on record but was "spent" in the light of his decision to allow the resealing.)

Key Points:

The Appellate Division of the High Court ("**AD**") allowed both appeals.

Pursuant to section 47(4) of the Probate and Administration Act ("**PAA**"), the court, in granting a resealing application, must first determine the issue of the deceased's domicile. If it appears that the deceased is not domiciled in the jurisdiction where the foreign court had issued the grant, the court should not reseal the grant, unless the grant is one that would have been made by the Singapore courts. Even if the deceased was domiciled in the jurisdiction where the grant

was issued (in this case, Vanuatu), the court retains the discretion in determining whether to reseal the foreign grant.

Procedure governing probate proceedings

The AD summarised the following key principles regarding the procedure governing probate proceedings:

(a) A person who wishes to reseal a Commonwealth grant may apply to do so by an ex parte originating summons. The person must show evidence that the deceased was domiciled in the jurisdiction of the grant sought to be resealed.
(b) Even where domicile is proved, the court retains a discretion to refuse to reseal the grant.
(c) A person who wishes to oppose the resealing of the grant may file a caveat. Once filed, the caveat remains in force for six months and operates to prevent the making of a grant.
(d) After the caveat has been lodged, any person interested may issue the caveator a warning to state his interest in the estate.
(e) On such warning being served on him, the caveator must enter an appearance in response to this warning, and file and serve a summons for directions. The probate matter is then considered a contested one.
(f) The contested matter must then be referred to a Judge who may dispose of the matter summarily, or direct that the matter proceeds to trial. If the court directs that the matter proceed to trial, a "probate action" will be deemed to have commenced.
(g) No grant will be sealed until the final adjudication of the probate action.

In this case, steps (a) to (e) above were followed by the parties. They then appeared before the Judge of the High Court. The Judge dismissed the Father's application for a stay of proceedings because the Vanuatu proceedings were at that time no longer alive. The Judge then dealt with the probate matter summarily when he ordered the resealing. This in effect was an order for the caveat to cease to have effect. Therefore, the AD said that the Father was entitled to appeal against the decision to order the resealing, as well as for the caveat to cease to have effect.

Triable issues on the deceased's domicile

The AD held that the parties' affidavits below raised triable issues as to the deceased's domicile. The Father's case was that the deceased was domiciled in the UAE at the time of his passing. Mdm WKQ contended that the deceased was domiciled in Vanuatu. The AD held that the Judge ought not to have made a summary determination that the Deceased's domicile was Vanuatu without the benefit of full evidence at trial, for the following reasons:

(a) The deceased had a resident identity card in the UAE which was valid at the time of the deceased's death.
(b) The Father adduced a copy of an immigration search in Vanuatu which suggested that the deceased had never even entered Vanuatu. The immigration search was not challenged by Mdm WKQ.
(c) Mdm WKQ did not adduce evidence of any property or bank accounts held by the deceased in Vanuatu.
(d) The Father adduced the birth certificate of the deceased's and Mdm WKQ's older child which stated that the child was born in Spain and that both parents were domiciled in Spain.
(e) The deceased also appeared to be residing in Spain until just a few months before his death.

Triable issues on the lawfulness of the Vanuatu grant

The AD also found that there were triable issues on the lawfulness of the Vanuatu grant. The Father alleged that Mdm WKQ had declared that she was the deceased's wife when she had never been lawfully married to the deceased when she obtained the grant. She had apparently

procured the Vanuatu marriage certificate by fraud two months after the deceased's death. The AD found that, among other things, there was no evidence of Mdm WKQ's original marriage certificate with the deceased, and Mdm WKQ did not explain the alleged falsities in the Vanuatu marriage certificate. These issues could have had an impact on the Vanuatu court's jurisdiction in issuing the Vanuatu Grant.

The AD said that the resealing of a foreign grant involves similar considerations of comity and finality as does the enforcement of a foreign judgement. The Singapore court will refrain from enforcing a foreign judgment if the judgment was procured by fraud. A like approach should be adopted for resealing applications where an executor or administrator seeks to reseal a foreign grant of probate or letters of administration in Singapore.

In the circumstances, the AD directed Mdm WKQ to file a writ in Singapore to prove her entitlement to the resealing of the Vanuatu grant.

WKK v WKL [2023] SGHCF 28

Validity of wills

Forum: General Division of the High Court (Family Division)

Brief Facts: In this case, there was a dispute between two brothers over two wills purportedly executed by their deceased father. The elder brother claimed that the will made by the father in 2016 was the only valid one, while the younger brother claimed that the will made by the father in 2019 was the valid one.

Key Points:

The High Court decided that the 2016 will was valid, and the 2019 will was not.

In coming to its decision, the court considered the contemporaneous evidence, including many Whatsapp messages, adduced by the elder brother showing that the father was not in a physical condition to have been able to execute a will in 2019, and could not have known or approved of the contents of the 2019 will. For example, the 2019 will said that the debts owed by the younger brother to the deceased would all be forgiven. However, just days before this will was made, there was a WhatsApp message showing that the deceased expected the younger brother to return him a loan of $25,000. The court therefore found it incredible that the deceased would have changed his mind on this issue in such a short time.

The elder brother also called the lawyer and his secretary who drew up and witnessed the execution of the 2016 will respectively, as witnesses. On the other hand, the younger brother did not adduce such evidence for the 2019 will.

LAB Comments: This case demonstrates the importance of contemporaneous evidence like WhatsApp messages in showing whether a will reflects a testator's intentions.

Donald Tan Boon Teck v Lum Shih Kai [2023] SGHC 347

Changing of wills for the benefit of beneficiaries

Forum: General Division of the High Court

Brief Facts: In this case, the deceased testatrix had made a will stating that she wanted the property she owned to be sold, and the sale proceeds (after payment of outstanding liabilities) were to be used to set up a Christian fund. The will empowered her two executors and trustee to sell the property, but specified that the property should not be sold before three years from her death. (LAB Comments: It is not clear from the judgment why the deceased had specified as such.) As one of the appointed executors and trustees predeceased the testatrix, the claimant in this case was left as the sole executor and trustee.

Unfortunately, the property was still subject to mortgage, and there were various outgoings such as Management Corporation debts which had been unpaid for some time. The deceased did not leave any significant sums to pay these liabilities (and the mortgagee bank had in fact already obtained judgment against the deceased in respect of the outstanding mortgage loan), so the claimant decided to sell the property before the three years were up. He found a buyer, who was the defendant in this case, and they signed the relevant sale documents.

However, the defendant noticed the restriction on sale in the will, and asked the claimant to obtain a court order sanctioning the sale. The claimant therefore took out this action.

Key Points:

The claimant relied on section 4 of the Conveyancing and Law of Property Act as giving the court the authority to sanction the sale. The court held that this section was inapplicable, since the express wording of the section empowers the court to make an order on any question arising out of or connected with a *contract of sale* of the property. It does not deal with a situation where a will confers or restricts the power to sell the property.

The defendant (who was on the same side as the claimant in wanting the application to be approved) argued that the court could make an order to sell the property based on its inherent jurisdiction.

The claimant made the following points to overcome the restriction on sale in the will:

(a) The sale price offered by the defendant was the highest amongst all transactions in the last three years for the condominium development in which the property was situated.
(b) The bank might exercise its power of sale pursuant to the judgment it had obtained, and this could result in a forced auction or public tender that would not fetch the best price.
(c) The property was subject to a charge registered by the Management Corporation, in respect of debts due to it.
(d) The property was not in a tenantable state, and not earning any rental income, and there was no cash to renovate it.
(e) The claimant was 84 years old and ordinarily resident in Australia. He wanted to finish with administering the estate as soon as possible.

The court cast some doubt on whether all the facts raised by the claimant were completely correct, but in any event, was unmoved by these arguments, saying that they were not sufficiently pressing as to justify "*the exercise of the court's inherent powers to ride roughshod over the explicit wishes of the Testatrix*". The court's inherent powers cannot be exercised simply because the act or transaction concerned will be beneficial to the trust. It should only be invoked in exceptional circumstances. Ultimately, the court's inherent powers should be

exercised to give effect to the intentions of the settlor or testator, as expressed in the trust instrument or will. Therefore, the court decided that it was not an appropriate case to exercise its inherent powers to sanction the completion of the sale.

The court also discussed section 56(1) of the Trustees Act which allows the court to supplement gaps in the trustee's powers, even outside of pressing exigencies. However, the court decided that this section was not applicable, as while it could be used to empower trustees to do what the *absence of power* stops them from doing, it cannot be used to authorise acts or transactions that are *expressly forbidden* by the trust instrument.

The claimant tried to argue that the testatrix must have had an overriding intention to maximise profits from selling the property, even if her will expressly forbade selling the property within three years of her death. The court acknowledged that it would be unusual for any testator to intend that his estate be realised at a loss, and that by and large, one could expect testators to prefer their estates to be realised in a way that yields the best value. However, these general assumptions could not in and of themselves provide grounds for rewriting the will: *"Otherwise, explicit restrictions by testators may be snubbed as a matter of course every time a good deal comes along."*

LAB Comments: First, even if a will seems illogical, if it can be practically carried out, it looks like the court will not change the terms of the will to something which makes more sense for the beneficiaries. Second, one should try to make a sensible will, or else the beneficiaries and executors may suffer. Third, an executor should read the will carefully and clarify any doubts with the testator before taking on this responsibility.

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