AYQ *v* AYR and another matter
[2012] SGCA 66

Case Number	: Civil Appeal No 33 of 2012 and Summons No 4696 of 2012
Decision Date	: 05 November 2012
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; Sundaresh Menon JA
Counsel Name(s)	: Isaac Tito Shane, Justin Chan Yew Loong and Neo Bi Zhi Peggy (Tito Isaac & Co LLP) for the appellant; Imran Hamid Khwaja and Guy Bte Ghazali (Tan Rajah & Cheah) for the respondent.
Parties	: AYQ — AYR

Family Law

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2012] SGHC 80.]

5 November 2012

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This is an appeal against the decision of the High Court Judge ("the Judge") in *AYQ v AYR* [2012] SGHC 80 ("the GD").

2 The Judge dealt with the following issues: the division of matrimonial assets between the parties, the maintenance for the Wife ("the Appellant"), the maintenance for the two children from the marriage ("the Children"), and the custody and care arrangements for the Children. In the present appeal, the Appellant appealed only against the Judge's orders relating to the division of the pool of matrimonial assets and maintenance for herself and the Children. No appeal was made in so far as the custody and care arrangements were concerned.

3 The Appellant also filed Summons No 4696 of 2012 on 17 September 2012 in order to adduce additional evidence before this court ("the new evidence"), comprising the following (in relation to her recent diagnosis of and treatment for breast cancer): the Appellant's Histopathology Report, the medical certification of her treatment, her Medical Report, copies of her medical receipts as well as her clinic's sales summary from March 2012 to September 2012. The new evidence might, if admitted, have impacted the issue of maintenance (both with regard to herself as well as her (percentage) contribution to the maintenance of the Children). Counsel for the Husband ("the Respondent"), Mr Imran Hamid Khwaja ("Mr Imran"), helpfully stated that his client had no objection to the adducing of the new evidence but would make submissions with regard to such evidence. This was, in our view, an eminently fair approach to take. We were, in any event, minded to and eventually did admit such evidence based on the applicable legal principles.

4 After hearing submissions from counsel for both parties, we dismissed the appeal with regard to the issue of maintenance, albeit with liberty to the Appellant and with the appropriate evidence to apply to the court below for a variation of the maintenance order(s). In so far as the issue relating to the division of the pool of matrimonial assets was concerned, we confirmed the classification method

adopted by the Judge. However, we varied the percentage of indirect contributions by the Appellant which we felt ought to be allotted a 30% weightage in each of the three asset classes. In the circumstances, the Appellant was awarded 49% (instead of 39%) of the net sales proceeds of the matrimonial home, 30% (instead of 5%) of the Respondent's share of the Australian house sale proceeds, and 40% (instead of 20%) of the other matrimonial assets (the original orders made by the Judge are also reproduced below at [8]). Viewed from an overall perspective, the Appellant's share of the entire pool of matrimonial assets amounted to 40.96%, whilst the Respondent's share amounted to 59.03%. We would like to take the opportunity to emphasise once again that the court's task, pursuant to s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("s 112"), is to arrive at a "just and equitable" division of the entire pool of matrimonial assets. In this regard, we were of the view that the division made in the present case, as reflected by the respective final overall percentages, did in fact achieve such a result when viewed in the round as well. In the circumstances, we also found it appropriate to make no order as to the costs of the appeal (a similar order, incidentally, having also been made by the Judge in the court below).

5 We now give the detailed grounds for our decision and also take the opportunity to clarify the role of indirect contributions (particularly with regard to "the classification methodology" first referred to by this court in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*")).

Brief background

6 By way of brief background, the Appellant is presently 51 years old whilst the Respondent is 53 years old. The parties were married in 1986. The Appellant sought a divorce citing, *inter alia*, unreasonable behaviour on the part of the Respondent. [note: 1] The marriage ended after 23 years, with interim judgment for divorce being granted on 18 March 2009. There are two children of the marriage – a daughter, aged 20 years and currently pursuing a university education in England and a son, aged 16 years, pursuing his studies at an international school in Singapore.

7 The Appellant is an aesthetics doctor with Singapore citizenship whilst the Respondent is an eye-surgeon with Australian citizenship. They are both presently in private practice and run their own clinics.

The decision below

8 The Judge made the following orders on 6 March 2012:

(a) *Custody of children*: That parties be granted joint custody over the children and that the Wife be granted sole care and control with reasonable access to the Husband (see the GD at [4]).

(b) *Division of matrimonial assets*:

(i) That the Wife would obtain the following:

(A) 20% of $1,323,655.19 which was the parties' combined matrimonial assets excluding matrimonial home sale proceeds and Australian house sale proceeds ("other matrimonial assets"),

(B) 39% of $886,887 which was the net sale proceeds of the matrimonial home, and

(C) 5% of $533,122.52 being the Husband's share of the Australian house sale

proceeds.

(ii) That the Husband would obtain the balance. The sums to be paid by the Husband from the division may be set-off against his share of the matrimonial home sale proceeds.

(See the GD at [5]).

(c) *Maintenance:*

(i) That the Husband pays the Wife $1 per month from 1 January 2010 for her own maintenance.

(ii) That the Husband pays 60% of the Children's maintenance of $2,000 per month, *ie*, $1,200 per month, from 1 January 2010.

(iii) That the Wife reimburses the Husband for 40% of the Children's school fees from 1 January 2009 and 40% of the daughter's overseas accommodation and living expenses. The Husband is to give reasonable documentary evidence of these items. The sums to be paid by the Wife for reimbursement can be set-off against her share of the matrimonial home sale proceeds.

(See the GD at [6]).

(d) *Costs*: That each party was to bear his or her own costs of these ancillary proceedings (see the GD at [7]).

Issues before this court

9 As noted above (at [2]), the Appellant appealed with regard to the issues pertaining to the division of the pool of matrimonial assets and maintenance, respectively. In the circumstances, there were, in effect, three issues that were raised before this court, as follows:

(a) *Issue 1*: Whether the Judge had accorded sufficient consideration to the Appellant's indirect contributions in dividing the pool of matrimonial assets between the parties;

(b) *Issue 2*: Whether the Appellant's percentage contribution to the Children's maintenance should be decreased (particularly in light of the new evidence); and

(c) *Issue 3*: Whether the quantum of the Appellant's maintenance ought to be increased (again, particularly, in light of the new evidence).

10 We turn, first, to consider Issue 1.

Our decision

Issue 1: Whether the Judge accorded sufficient consideration to the Appellant's indirect contributions in dividing the matrimonial assets

The Appellant's arguments

11 The crux of the Appellant's case centred on the argument that the Judge had failed to value her *indirect contributions* sufficiently in dividing the pool of matrimonial assets between the parties.

Counsel for the Appellant, Mr Tito Isaac ("Mr Isaac"), submitted that his client was not disputing the specific valuation amounts of the various assets making up the pool of matrimonial assets but that the dispute was only with the percentage of matrimonial assets awarded to her. In this regard, he submitted that an appropriate award for his client ought to be 45% of all matrimonial assets. In support of this, Mr Isaac proffered two specific arguments.

12 First, Mr Isaac argued that the Judge ought to have used "the global assessment methodology", and not "the classification methodology", so as to achieve a just and equitable division of the pool of matrimonial assets. He argued that, in applying "the classification methodology", the Judge had not given due consideration to her indirect contributions, such as homemaking and child caring, to each class of asset. In particular, Mr Isaac pointed out that the Judge had only attributed 20% of the sale proceeds of the matrimonial home to her indirect contributions and was silent as to her indirect contributions as regards the remaining two classes of matrimonial assets (*ie*, the Australian house and the other matrimonial assets).

13 Secondly, Mr Isaac argued that the Judge should have used a broad-brush approach in the division of the pool of matrimonial assets and that he had erred in considering irrelevant considerations while failing to consider relevant ones. He argued that the Judge in finding that the Appellant had an increased interest in her social life, placed excessive emphasis on the findings of the private investigator report submitted by the Respondent resulting in his discounting of her indirect contributions as the Children's primary caregiver and his failure to appreciate the "true" reason for her departure from the matrimonial home.

The Respondent's arguments

14 Turning to the Respondent's arguments, in so far as the Appellant's first argument was concerned, Mr Imran submitted that "the classification methodology" used by the Judge was appropriate. He added that an appropriate reading of this court's statement in *NK v NL* (at [35]) that "[t]he element of indirect contributions ... must necessarily remain constant in relation to each class of asset" under "the classification methodology" ought to be understood as the fact of indirect contributions in each asset class being constant but that the extent of such contributions may vary. As such, he disagreed with the Appellant's argument that her indirect contributions were not given due consideration, because, as he submitted, the Judge did consider and award her a proportion of the assets in each class which duly reflected the extent of the indirect contributions on her part. Mr Imran added that the Appellant herself appeared to accept "the classification methodology" as being appropriate at the ancillary hearing below.

15 In so far as the Appellant's second argument was concerned, Mr Imran argued that the Judge did consider and did not discount the Appellant's indirect contributions. This was reflected at [21]–[22] of the GD, and also his (the Judge's) finding that the Appellant was the Children's primary caregiver and that she had made career sacrifices accordingly (see the GD at [25]). In addition, Mr Imran suggested that the extent of the Appellant's indirect contributions had to be appreciated in the context of her preference for a social lifestyle which was seen in the evidence placed before the Judge. On the reason for the Appellant leaving the matrimonial home, the Respondent disagreed that this was due to violence on his part and pointed out that the Judge in fact did not make such a finding as to the reason for this. Finally, Mr Imran submitted that the Judge did, in fact, use the broad-brush approach in dividing the matrimonial assets, this being clear from a reading of the GD itself.

Our decision

16 We do not think that counsel were at odds in so far as the basic propositions of law were concerned (including the fundamental proposition that the court will adopt a broad-brush approach towards the division of the pool of matrimonial assets pursuant to s 112). The focal difference appeared to us to centre around, first, whether "the global assessment methodology" or "the classification methodology" ought to be applied and, secondly, assuming (as the Judge did) that the latter methodology applied, whether or not *indirect contributions* ought to be accorded the same weight in relation to each class of assets.

17 Turning first to the methodology that ought to be adopted, it is clear that there are no rules that are writ in stone. As this court observed in *NK v NL* (at [33]):

> ***There is much to be said for either method, both of which are consistent with the legislative framework provided by s 112 of the Act, which does not specify how the court should sequence the decisions involved in an application for the division of matrimonial assets.*** Nonetheless, the adoption of either methodology must be underscored by a principled approach. In this regard, four interrelated issues bear clarification. Before proceeding to consider these issues, it should be noted that the decision in this appeal itself illustrates the *dynamic interaction* between these two methodologies and (more importantly) the fact that ***neither methodology is superior to the other. In the final analysis, the facts and circumstances of the case at hand are of primary importance. Further, regardless of the methodology adopted, the paramount aim is to ensure that the matrimonial assets concerned are divided in a*** just and equitable ***manner (as aptly laid down in s 112(1) of the Act itself). The court should apply the methodology that leads to this result.*** [emphasis in italics in original; emphasis added in bold italics]

18 And, in a similar vein, the court proceeded to observe thus (at [36]):

> *Regardless of which approach is adopted, a holistic assessment of all the circumstances of the case must be undertaken. It would be contrary to the letter and spirit of the legislative scheme to embark on a mathematical calculation in a fruitless attempt to ascertain and attribute the "correct" percentage to each party's actual contribution.* As already mentioned ..., division of matrimonial assets is not a mechanistic accounting procedure reflected in the form of an arid and bloodless balance sheet. The final decision ... must remain governed by the "just and equitable" formula. [emphasis added]

19 In our view, the Judge was justified in adopting "the classification methodology" as the various matrimonial assets did lend themselves to classification under the three headings adopted in the court below, *viz*, the sale proceeds of the Singapore matrimonial home, the sale proceeds from the Respondent's share of the Australian house and the matrimonial assets (not arising from the sale of real property). However, what engendered more difficulty was the fact that the Judge appeared to accord different weights to the Appellant's indirect contributions with regard to each class of assets. This was particularly marked in relation to the Australian property, where the Judge held as follows (see the GD at [34]):

> I found that the wife had not proved her direct financial contributions for the Australia house. She did not adduce any documentary evidence and it was unlikely that she contributed to the payment of any monthly instalment. The property was bought by the husband and his sister. For the first two years after the Australia house was bought, the wife remained in Singapore while the husband resided in Australia. Further, the parties did not live in the Australia house even when the wife joined the husband in Australia subsequently. In the circumstances I found it hard to accept the wife's word that she had helped to pay for the mortgage. *There was also hardly*

> *any evidence as to how her indirect contributions had assisted the husband to acquire the Australia house. Nevertheless, the Australia house was technically part of matrimonial assets because it was acquired by the husband after the parties were married. In the circumstances, I awarded the wife 5% of the $533,122.52*, ie*, $26,656.13.* [emphasis added]

20 It was clear, in our view, that the Judge did not sufficiently take into account the indirect contributions of the Appellant with regard to this particular asset. With respect, this is contrary to the following observations of this court in *NK v NL* (at [35]):

> To begin with, it must be emphasised that, pursuant to "the classification methodology", only the direct contributions may vary*. **The element of indirect contributions in the context of homemaking and child caring must necessarily remain constant in relation to each class of asset.*** On this note, it would seem that this (classification) approach would be appropriate where there are multiple classes of assets, and where the parties have made different contributions. Without prejudicing the broad discretion conferred by the Act, it would appear in this instance that it might be more principled and conducive to a fair and equitable division to consider the assets in classes, taking into account the differing financial contributions, rather than as a vast conglomerate of assets. In the vast majority of other cases, however, *either* approach would likely achieve the same result. [emphasis in italics in original; emphasis added in bold italics]

21 We would observe – parenthetically – that, pursuant to "the global assessment methodology", the role of indirect contributions would, of course, be taken into account and, by the very nature of the methodology itself, only once at that.

22 Returning to "the classification methodology", we would emphasise the fact that indirect contributions must be factored into – and its weightage to remain constant in relation to – each class of assets. That there might be some confusion at present not only with regard to the present appeal but also with regard to other cases in which on occasion judges rightly hold that the weightage of indirect contributions ought to remain constant with regard to each class of assets (see, for example, the Singapore High Court decision of *AJR v AJS* [2010] 4 SLR 617 (at [21])) while on other occasions they appear to treat its weightage as differing as between asset classes (see, for example, the Singapore District Court decision of *BAA v BAB* [2012] SGDC 193 (at [26])), merely underscores the need for the clarification which we have just made.

23 Indeed, by their *very nature*, indirect contributions are part of the very warp and woof of the *entire* marriage and must therefore be reflected consistently throughout each class of assets. To hold otherwise would, in our view, be contrary to this approach and would invariably lead to undesirable anomalies. If, as was the case here with regard to the Australian property, the asset concerned was acquired by, for example, a husband very shortly after the marriage, there would, *ex hypothesi*, be little or no indirect contributions by his wife which could be taken into account when that particular asset is being considered by the court with regard to division between the parties pursuant to s 112. Simply put, the anomaly would be that for matrimonial assets acquired very early on in the marriage, for instance immediately after the marriage, the indirect contributions concerned would more likely than not be given very little weight. In contrast, for matrimonial assets acquired later on during the marriage, the indirect contributions concerned would likely be accorded heftier weight. However, the fallacy in such an approach is the fact that indirect contributions can only be assessed and applied at the *end* of the marriage and, by their very nature, *relate back and impact the entire marriage to date.* The court's assessment of a spouse's indirect contribution should thus be performed with retrospective lenses, looking back and fully appreciating the entire context and circumstances of the marriage. It should not be done in a time-specific manner, *ie*, assessing the extent of indirect contributions of a spouse as at that specific point in time when a particular matrimonial asset was

acquired. Further, this assessment should not be done in a blinkered fashion where the court focuses on each individual class of assets and decides the weightage of a spouse's indirect contribution as regards that particular asset class, resulting in a situation where varying weights are accorded for indirect contributions in different matrimonial asset classes. This approach would accord with the view of the marital enterprise being a partnership of efforts of both spouses and that, during the course of marriage, the spouses contribute to the betterment of it in ways that they can without consciously accounting with mathematical precision as regards the quantum and type of their respective contributions. In this case then, we thought it just and equitable to attribute what was, in our view, a reasonable weight to indirect contributions by the Appellant in the instant appeal *across all* the classes of assets. We were of the view that a weightage of 30% *vis-a-vis* the Appellant's indirect contributions would be appropriate, having regard to all the facts and circumstances of the present case (including the length of the marriage as well as the actual contributions and career sacrifices which the Appellant had made) – which resulted in the apportionment of the various classes of matrimonial assets set out above (at [4]). We should add that we did not think that the Appellant's allegedly keen interest in her social life was significant when placed in context and certainly would not have warranted any discount of the real efforts and contributions that she had evidently made throughout the course of the marriage.

24 The approach towards the role of indirect contributions outlined above with regard (especially) to "the classification methodology" is also consistent with the entire spirit behind this court's view as to the importance of ensuring that indirect contributions are not undervalued but are (on the contrary) given their appropriate weight in the case at hand. Indeed, as this court observed in *NK v NL* (at [34]):

> A related point, which is of special importance where one spouse (often the wife) has devoted his or her entire time to the family over a lengthy period of time, is to ensure that indirect contributions are *not undervalued*. We have dealt with this particular issue recently and reiterate the proposition laid down in that case, as follows (see [*Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520] ... at [39]):
>
> > In this regard, we also endorse the following views expressed by Debbie Ong Siew Ling & Valerie Thean, 'Family Law', (2005) 6 SAL Ann Rev 259 at para 13.31:
> >
> > > It could be contended that in most cases where one party experiences great financial success, the other often bears a heavy burden in respect of the children and home; in some cases this entails the sacrifice of any potential for career development. Non-financial contributions are impossible to measure, and success on that front, intangible and difficult to define. It is hoped that this would not stand in the way of courts according due regard to the fact that the financial aspect is but one facet of the many demands that husband and wife must have weathered if a family has had many years together.
> >
> > Our examination of the case law shows that the courts might not have given sufficient recognition to the value of factors like homemaking, parenting and husbandry when attributing to them a financial value in the division of matrimonial assets. This ought *not* to be the case. It is true that, by their very nature, such kinds of contributions to the marriage are, as pointed out in the quotation above, difficult to measure because they are, intrinsically, incapable of being measured in precise financial terms (we assume that this is what the authors meant when they said that such contributions were impossible to measure). Difficulty in measuring the financial value of such contributions has never been - and ought never to be - an obstacle to giving the spouse concerned his or her just and

equitable share of the matrimonial assets that is commensurate with his or her contributions, taking into account (of course) the other relevant contributions and factors.

[emphasis in original]

Issue 2 – Whether the Appellant's percentage contribution to the Children's maintenance ought to be decreased

25 We did not think that the Judge had exercised his discretion wrongly in so far as this particular issue was concerned. However, we were of the view that given the new evidence presented by the Appellant on appeal, it suggested that there might – in principle – perhaps be scope for some adjustment of the percentage contribution ordered by the Judge in the court below.

26 Mr Imran very fairly conceded that the Appellant's recently diagnosed illness might conceivably impact on this particular issue. However, as he also correctly pointed out, there was insufficient evidence before this court to arrive at a concrete decision as to the Appellant's exact percentage contribution to the Children's maintenance and therefore the more appropriate route would be by way of an application for variation by her in the court below. Indeed, Mr Isaac himself appeared to focus more on the next issue (*viz*, Issue 3) – and, in our view, rightly so in view of our finding that the Judge had not exercised his discretion wrongly in the court below in so far as this particular issue was concerned as the new evidence had not yet been discovered and placed before him. In the circumstances, we were of the view that Mr Imran's proposal was the most appropriate.

Issue 3 – Whether the quantum of the Appellant's maintenance ought to be increased

27 Mr Isaac argued that, owing to the recently diagnosed illness of his client, the Appellant ought to receive $2,000 per month in maintenance. Mr Imran, on the other hand, argued that the new evidence did not disclose any significant drop in the Appellant's income although he (again, very fairly and correctly, in our view) was prepared to concede that, with sufficient evidence, the Appellant would be entitled to apply for a variation of the current maintenance order in the court below.

28 Not surprisingly, Mr Isaac was unable to explain to this court's satisfaction how he had arrived at the figure of $2,000 in monthly maintenance and this merely underscored Mr Imran's argument to the effect that there was really insufficient evidence before this court to enable it to arrive at a principled decision. In the circumstances, we were – as was the case with the previous issue – of the view that Mr Imran's proposal that the Appellant apply for a variation of this particular maintenance order in the court below was the most appropriate.

Conclusion

29 For the reasons set out above, we arrived at our decisions on the respective issues (which have been set out above at [4]). However, we did urge the parties – in the light of the unfortunate illness the Appellant found herself afflicted with – to attempt their level best to arrive at a mutually agreeable arrangement with regard to the issues of maintenance considered above. In all the circumstances, we also found it appropriate (as did the Judge in the court below) to make no order as to costs with regard to the present proceedings.

[note: 1] Record of Appeal Vol II p 19.