

IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2020] SGHCF 2

Divorce (Transferred) No 1677 of 2016; Summons No 190 of 2019

Between

VDZ

... Plaintiff

And

VEA

... Defendant

GROUND OF DECISION

[Civil Procedure] — [Judgments and orders] — [Enforcement]

[Contempt of Court] — [Sentencing] — [Principles]

[Family Law] — [Custody] — [Care and control]

[Family Law] — [Custody] — [Access]

[Family Law] — [Matrimonial assets] — [Insurance moneys]

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VDZ

v

VEA

[2020] SGHCF 2

High Court (Family Division) — Divorce (Transferred) No 1677 of 2016;
Summons No 190 of 2019

Debbie Ong J

14, 19, 22 November 2018, 25 April, 8, 11, 25 July, 30 August, 19 September,
23, 29 October, 28 November 2019

10 January 2020

Debbie Ong J:

1 The plaintiff (“the Wife”) and the defendant (“the Husband”) were married on 6 June 1998. They have two children: a daughter who is now 15 years old (“the Daughter”) and a son who is now 9 years old (“the Son”). The Wife commenced divorce proceedings in April 2016, and the interim judgment of divorce was granted on 2 October 2017.

2 I delivered my decisions on the children’s issues on 11 July 2019 and the division of matrimonial assets (“MAs”) and maintenance on 30 August 2019. The final judgment of divorce was granted on 30 September 2019, and neither party has appealed against those decisions. There is instead now an appeal by the Wife against my decision in Summons No 190 of 2019 (“SUM 190/2019”) on 23 October 2019 sentencing her to one week’s imprisonment for

contempt of court.

3 These grounds of decision will address my decision in SUM 190/2019 and seek also to provide some guidance in the area of high-conflict family disputes involving children as well as certain aspects of the law on division of MAs and maintenance.

Background

4 The Wife commenced divorce proceedings in April 2016 on the basis of the Husband's behaviour, which the Husband did not contest. The Husband filed a counterclaim on the basis that the Wife had an adulterous relationship with one "R", who was the Wife's colleague and friend. The Wife contested the Husband's counterclaim and the matter was heard over the course of a five-day trial. The district judge ("DJ") found that the Husband had failed to prove that the Wife had committed adultery and dismissed his counterclaim. The divorce was granted on the Wife's claim.

5 Notwithstanding the DJ's finding, R was a key figure in the proceedings. He continued to appear at multiple hearings even after the Husband's claim was dismissed, as he said he had to assist the Wife, even though he was reminded that he was not involved in the ancillary matters. It also emerged that he had assisted the Wife in the preparation of her affidavits. The extent to which he appeared to be involved in the family was deeply troubling.

6 In fact, the present state of affairs may to a large extent be traced back to R's role in the family. The parties' initial separation appeared to be relatively peaceable where both parties agreed on joint custody of the two children, with care and control to the Wife and reasonable access to the Husband. The Husband moved out of the matrimonial home in July 2016 but continued to see the

children regularly. By this time, R was already close to the Wife and the children.

7 In October 2016, the Wife was diagnosed with breast cancer. R’s influence over the Wife may have increased at this point because he claimed that he could heal her (even though he had no medical training). He moved into the family home with the Wife and children. The Husband raised objections about R’s presence in the home as he was especially concerned about R’s close relationship with the Daughter, who was then 12 years old; he applied to vary the interim care and control order. On 4 September 2017, the DJ affirmed that the Wife would continue to have care and control of the children, but ordered that she “shall not allow any third party to reside in the matrimonial home without the prior written consent of the [Husband] pending the outcome of the ancillary matters hearing”.

8 The Wife then employed R as her “executive personal assistant”. She initially paid him \$8,500 a month, which increased in 2018 when she hired him to “remove (her) tumours” and paid him \$15,000 a month. This consisted of payouts from her medical insurance. She even contributed to his Central Provident Fund (“CPF”) account. She also claimed that she took loans from him which she had to repay. This had an impact on the division of MAs and maintenance (see [55] and [66] below).

9 Of importance is the fact that prior to late 2017, the Husband and children shared a good relationship. Reports from counsellors from as late as August 2017 showed that the children equally enjoyed spending time with the Husband and the Wife. While they wanted to live with the Wife, especially after her diagnosis, they also wanted to spend time with the Husband.

10 In February 2018, the Wife wrote a letter to the court that included graphic details about a “home mastectomy” that she claimed R had performed on her. There were suggestions that the children were present at or at least aware of these “operations”, which took place in the matrimonial home. Photographs depicted large wounds on the Wife’s chest and pieces of what she claimed were tumours that had been removed from her body. Concerned about the safety of the children, the Husband applied for a personal protection order (“PPO”) on behalf of the children against the Wife and for interim care and control of the children. The Wife responded by filing her own application for a PPO.

11 Both PPO applications were dismissed, but they appear to have contributed significantly to the breakdown of the relationship between the Husband and the children. The children have had minimal contact with the Husband since March 2018. R appeared at several of the scheduled handover sessions for the Husband’s access. The children were resistant to spending time with the Husband. On 27 June 2018, out of concern for the problematic handover experiences, the DJ ordered that “R is not to stay with the children and is to leave the premises once the [Husband] is sighted.”

Care and control and access

HCF/RAS 24/2018

12 The parties first appeared before me in Registrar’s Appeal (from the Family Justice Courts) No 24 of 2018 (“HCF/RAS 24/2018”). This was the Wife’s appeal against the DJ’s decision to award interim care and control to the Husband. In the decision, the DJ was clearly troubled that the children were exposed to the “home surgeries” and by the extent of R’s influence over them.

13 What was especially troubling was the extent to which the Wife and R embroiled the children in the conflict. The DJ found that the Wife did not appreciate the adverse effects of exposing the children to the ongoing litigation. In fact, the Wife stated that she saw nothing wrong with the children being aware of what was happening. From March 2018 onwards, after the Husband's application for interim care and control, both children filed multiple affidavits that repeated the allegations the Wife made against the Husband. They stated that they wanted the Wife to have sole custody, care and control of them, and for the Husband to pay their maintenance in a lump sum so that they would have no contact at all with him.

14 The contents of the children's affidavits were greatly disturbing. They echoed biblical references and phrases used by the Wife and R in their own affidavits. They also repeated the Wife's allegations against the Husband; for example, they called their father a "Mega-evolved Sexual Fetishist womanising pervert" and referred to him as part of the "Evil Trio". This was in stark contrast to their attitude towards the Husband a mere seven months before.

15 I set out a paragraph that appears at the start of both children's first affidavits:

This is not the first time we wrote to the Family Court. In our previous letter to the judges, we know that Daddy's lawyer [QW] said that Mummy forced us to write those letters to support her. [QW] said that the letters were not written by us. The thing is, we want to tell the Family Court Judges that those letters were from us ... So we decided that we tell the judges what we really want. The words in here are from [us], but *were make more clearly by Uncle [R]. Obviously we cant express ourselves well, because we are children. We tell Uncle [R] what to type and he makes it more clearly in writing.* We confirm that what was written in here is what we want in our heart.

[emphasis added]

The text and tone of the affidavits were clear evidence of the influence that the Wife and R held over the children and the way they had enmeshed the children in the proceedings. Given the clear admission that these affidavits were drafted by R, they were wholly disregarded.

16 The DJ had expressed concerns about R's influence over the children. The Wife, through her counsel, told the court at the hearing for HCF/RAS 24/2018 that R was no longer involved with the family. The extent of her reliance and trust in R made this assertion difficult to believe. I was not prepared to accept that R was no longer involved in the family just because the Wife said so to her counsel. I found that the DJ's decision to award care and control to the Husband was correct. The children enjoyed a loving relationship with their father some months before, and should be allowed to rebuild their relationship with their father. This did not seem possible unless they were removed from the Wife, whom I believed continued to allow R to be a part of their lives. I fixed a date and time for the handover of the children. I ordered the Wife to have supervised access once a week and for the children to undergo therapy.

Difficulties with handover

17 The handover was to be carried out in court on 19 November 2018 at 10.30 am. The parties, the children, and counsellors were present in court that day, but the handover took place only in the late afternoon after much difficulty due to the children's rather hostile resistance towards the Husband. On the second day that the children were in the Husband's care, they found their way back to the Wife after the Husband dropped them off at a tuition centre.

18 Appointed social workers and counsellors from a Child Protection Specialist Centre met with the children, the Husband and the Wife separately to provide the interventions ordered for the family. Despite this, the Husband

appeared unable to protect the children from the negative influence of the Wife and R, and the children were highly resistant to any interaction with him. I ordered that the children be temporarily placed in the care and control of a Children's Home, Gracehaven, a neutral environment, for two months so that interventions could be carried out to assist them. I specified that the court-ordered interventions should continue while the children were in Gracehaven and that the parties' access to the children should be subject to recommendations by the social workers, therapists and counsellors involved in the interventions.

19 The children remained in Gracehaven for over a month until 2 January 2019, which was the first day of the school term. When their classes ended for the day, instead of returning to Gracehaven, they returned to the Wife's home, where they have remained since. Attempts to get the children to return to Gracehaven were met with extreme resistance and also disrupted the children's school routines.

20 I was deeply concerned about the wellbeing of the children. While I was of the view that the Wife's influence over the children towards rejecting their father was adverse to their welfare, I was also aware that repeatedly removing them from her care was a highly distressing experience for them.

Social media posts

21 In June and July 2019, the Daughter posted on her social media accounts allegations that the Husband had sexually abused her and her brother. These were allegations that the Wife had included in her affidavits, and had already been proven to be unfounded. The Daughter's posts were made public and various news outlets published reports about them. The children were interviewed by at least one news outlet, with the Wife present. The Husband

received threats online and over the phone. It also emerged that the Wife had sent a letter of complaint to the Husband's employer.

22 It was extremely disappointing that the proceedings took a turn in this direction. It is in the welfare of the children that they have healthy relationships with both parents, but the Wife's conduct made this endeavour immensely difficult. Save for the one to two days after the November 2018 handover, the Husband had not had contact with the children for a long period and certainly did not have access in the months before the social media posts. Child Protection Services had already investigated the Daughter's allegations. Counsellors had also interviewed the children in November and December 2018 when it had sought to provide therapeutic interventions for them. There were no concerns relating to abuse by the Husband; instead, there were indications of coaching and parental alienation by the Wife. The Wife claimed that she was supportive of the children's relationship with the Husband, but it was not at all borne out in the way she had conducted herself.

23 The divorce proceedings have been highly traumatic for the children. They need stability in their care arrangements and the opportunity to rebuild their relationship with their father. I also bore in mind that should the Wife's cancer condition severely worsen, the children should be able to rely on the only other parent in their lives, the Husband (with whom they shared a close relationship not long ago), to raise and care for them. Yet, the Wife had relentlessly polarised them against the Husband to such an extent that any repair of their relationship with their father was not practically feasible.

24 Having considered the evidence available before me, including the reports by the counsellors, I found that the Wife had undermined the children's emotional and psychological wellbeing, and damaged their relationship with the

Husband through her acts of influencing them towards a highly negative view of the Husband (and that is an understatement). She did so by, amongst other things, informing them of the material in court proceedings and involving them in their parents' conflict in inappropriate ways, burdening them emotionally with various issues including her own health issues and in general failing entirely to cooperate with the Husband to enable the children to maintain the healthy relationship that they previously enjoyed with their father. Further, she had actively allowed R to manipulate the children against their father. If the Wife is of the view that she is acting in her children's welfare by instigating and encouraging such behaviour, then she has not acquired the necessary insight into the effects of her damaging behaviour on the children.

25 The Wife's conduct made co-parenting practically impossible. The various acts of the Wife and R constituted some of the reasons why the court had earlier ordered interim care and control of the children to the Husband. However, despite the previous orders and interventions from support services, the children appeared insistent on being with the Wife and outwardly rejecting of the Husband. The children were not at all supported by the Wife to have any relationship with the Husband, and they appeared ready to run back to the Wife despite the court orders. Such a state of affairs is highly distressing for them. I was also of the view that as the Wife is in ill health, it is also not in the children's welfare to be isolated from her at this time.

26 Under these circumstances, while both parents continue to share joint custody of the children, my final order on care and control was that the children shall be in the Wife's care and control while the Husband shall have reasonable access whenever the children are ready and willing to meet him. I also ordered that the Wife should support the access of the children to the Husband, and should not persist in creating an environment that alienates the children from

their father. This is not limited to any express words that are negative of the Husband. There are many ways, both verbal and non-verbal, as well as active acts, that effectively result in alienating the children from the Husband. In particular, she should not disclose material in court proceedings to the children.

27 Although this was not an ideal situation for the Husband and children, forcing access presently against the children's wishes would not assist in repairing the relationship. I ordered the Wife to send the Husband regular updates of the children's progress in school, such as copies of their school report book records, after the mid-year assessments results are available, and at the end of the year, after the end of the year assessment results are available. Copies of all material in the school report books shall be provided to the Husband so he is able to remain updated on the children's lives, albeit indirectly. He shall also have access to the children when they are ready to be with him.

SUM 190/2019

28 Prior to my final order on care and control, the Husband filed Summons No 169 of 2019 for leave to commence committal proceedings against the Wife, on the basis that she had breached court orders. I granted leave, and the Husband filed SUM 190/2019 for an order of committal against the Wife.

29 SUM 190/2019 concerned the court orders dated 4 September 2017 and 27 June 2018. Order 4 of the order dated 4 September 2017 states:

(4) During the time the children are with the [Wife] or the [Husband], each party will not make disparaging remarks about the other party to the children, and will also endeavor [sic] to ensure that his or her family and friends do not do so.

30 Order 3 of the order dated 27 June 2018 states:

(3) The parties, whether by themselves or their agents and/or nominees are restrained from involving the children in the litigation between them including verbal or written communication of the stage(s) of proceedings, showing them copies of any legal or court documents and/or otherwise sharing with them any correspondences, emails or any other communication pertaining to these proceedings or discussing the same with the children in whatever form or substance.

31 As the Husband's counsel highlighted, this was not the Husband's first application to commit the Wife for a breach of court orders. The Wife had also been found liable for contempt of court in Summons No 3993 of 2018 where the DJ found the Wife guilty of contempt for disobeying the handover orders. The Wife was fined \$3,000, which was converted into a costs order in favour of the Husband on 4 April 2019. She has not made payment of this order to this day.

Whether there was a breach

32 In *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd* [2018] 4 SLR 828 at [45], the High Court observed that an action for civil contempt is directed at a party who is bound by an order of court but is said to have breached the terms of that order. It is directed at securing compliance with the said order as well as to specifically and generally deter contemptuous behaviour and to protect and preserve the authority of the Singapore courts.

33 It is well-established that the applicable standard of proof to both criminal and civil contempt is that of the criminal standard of proof beyond a reasonable doubt: *Moh Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [85]. To prove *mens rea*, it is only necessary to prove that the relevant conduct of the party alleged to be in breach of the court order was intentional and that it knew of all the facts which made such conduct a breach of the order.

34 As evidence of the breach, the Husband relied on the social media posts made by the Daughter which contained material from the Wife's affidavits and other information relating to the court proceedings (see [21] above). He highlighted the harm that the posts had caused him; this included being asked for an interview by a newspaper reporter and receiving online threats.

35 At the hearing on 19 September 2019, the Wife was asked about the source of the Daughter's information:

Q: ... Did you ask her where she obtained her information from?

A: She said she took it from the cupboard in the room.

...

Q: Now ... knowing that there are two orders prohibiting you from sharing the divorce information with the children and that you have been committed for contempt in September last year for breaching these two orders, did you not think it is incumbent upon you to keep these documents away from the children or under lock and key?

A: When we renovate the house, there was no lock for that cupboard but the cupboard is always closed.

36 The Wife claimed she had done all she could to keep the court documents away from the children as she had closed the door to the room. However, she also testified that she only locked the door after the Daughter's second post on 4 July 2019:

Q: Are you telling the Court this morning that the children still have access to these documents then?

A: They don't have because the---the room, the doors---the bedroom to the door is locked.

Q: ... earlier you said that you do not lock the door because the maid has to clean---

A: Earlier on I did not lock it, but I---I realised that the children may have a chance to slip into the room to look at the documents again so I decided to lock it ...

37 The Wife was also present during the news outlet’s interview with the Daughter on her social media posts. Of concern is the Wife’s attitude towards the children sharing publicly matters relating to the court proceedings:

Q: Do you agree that [the Daughter’s] complaints about the [the Husband] are already before the Court in forms of the affidavit and the police reports?

A: Yes.

Q: So is it your position that pending the ancillary judgment, they are still entitled to give an interview to share their “experiences”, as you call it?

A: They can share their experiences with anybody ... Their purpose is just to voice out their frustration, their hatred, their bitterness.

Q: Is it your position that there’s nothing wrong with this interview?

A: There is nothing wrong with the interview.

Q: Okay.

A: It’s just to create awareness.

38 On 16 July 2019, the Daughter went to a police station to make a report titled “Statement of Confession” that stated:

We wish to state that the recent online postings ... and newspaper interview on our abused life experiences done solely by both of us. We are solely responsible for all these sharing. We answer for our own actions. No one else is involved.

39 The Daughter stated that she made the report on behalf of her brother and herself. The report was clearly made to protect the Wife and the Wife herself admitted that it was an attempt to absolve the Wife from any responsibility.

40 The Wife’s conduct and actions consistently show up her intention to cause the children to reject their father. Such conduct included giving the children information on the divorce and court proceedings, and supporting their negative views of their father, including permitting the interview with a local

news reporter for them to share “their frustration, their hatred, their bitterness” against their father.

41 The evidence in these committal proceedings clearly demonstrated the Wife’s disregard and intentional breaches of the court’s orders not to disclose or provide to the children information related to the court proceedings. The Daughter’s posts were replete with details that she could not have obtained herself, unless she had read the Wife’s affidavits. For example, the Daughter referred to the Husband’s alleged girlfriends by name and made the same accusations about his behaviour that the Wife made against the Husband, none of which she would have known unless the Wife had informed her about these proceedings. I did not find satisfactory the Wife’s explanation of how the Daughter obtained the court documents without the Wife permitting her the access.

42 I found that the Wife had allowed access to the documents and acted in breach of the court order; in fact, the evidence on the whole suggested active support from the Wife for the Daughter to use court materials and make allegations against her father. She did so while well aware that the court orders prohibited her from doing so. I had also found in my earlier decision that I was not persuaded that R was not involved in the Wife’s and children’s lives.

43 I found the Wife liable for contempt of court. Court orders such as those involved in these committal proceedings, which were aimed at preventing further damage to the children, must never be taken lightly. It is a misperception for anyone to think that court orders relating to a parent’s relationship with their child can be disobeyed by putting up a veil that the children are independent beings over which the party has little control.

44 When the Wife initiated proceedings in 2016, the Daughter and Son were twelve and six years old respectively. Unfortunately the children were not shielded from the conflict. In fact, as the situation worsened, the Wife actively influenced the children in an attempt to win the upper hand in the proceedings. I affirm what the DJ said in her decision in the previous committal proceedings, when she found the Wife liable for contempt of court:

... [T]he [W]ife is the parent and the adult in this matrix. She cannot sing the same refrain that it was the children's decision, it was the children's choice and it was the children who decided.

45 While children will have their own opinions and make their own decisions especially as they mature, parents cannot disclaim all responsibility for their actions. Parents are responsible for providing a safe and secure environment for their children. They are responsible for setting limits on what is unacceptable behaviour. In the present case, the Son is now nine years old and the Daughter is in her teen years – they need parental guidance. As the Wife has care and control of them, she must provide guidance and protection, including taking specific steps to guard their access to information that the court has prohibited her from giving the children. She may, for example, keep documents in a securely locked cabinet, and she should control their social media activities as responsible parents would. These are for the protection, welfare and wellbeing of the children. The social media posts, which included the Daughter's identity and personal family circumstances, have been exposed to the public. The Wife would do well to think carefully on the implications and consequences of these posts and actions on the children's welfare and safety.

46 An important aspect of parental responsibility is facilitating the child's relationship with the other parent. This is especially important in the light of the Wife's ill-health – the children should be able to rely on the other parent in their lives; the Wife should be cognisant of the importance of the children's

relationship with the Husband. Unfortunately, by her actions and R's actions, the children have become more isolated from their father at a critical time in their lives when their mother is ill and they are coping with the family breakdown.

Appropriate sentence

47 On sentencing, the Husband's counsel sought a one-month custodial sentence. The Wife told the court that imprisonment would not be suitable for her as she was undergoing treatment for breast cancer. When asked about her condition and treatment, she told the Court that the treatment involved daily oral medication, monthly injections and blood tests. She agreed that a shorter term of imprisonment would render the reason less significant, and made it very clear that she preferred imprisonment to a fine. Her view was that the moneys can be better spent on her children. She still has not paid the costs order that was the result of the previous committal application.

48 I found that the Wife deliberately breached court orders and intended the adverse consequences on the Husband that followed the breaches. My order on sentencing must uphold the goal of deterring contemptuous behaviour and to protect and preserve the authority of the courts (see [32] and [43] above). I also took into account her medical condition with her need for treatment, as well as the nature of the orders breached.

49 I ordered that the Wife be sentenced to one week's imprisonment, which was to commence in seven days to give her sufficient time to make the necessary arrangements for her medical issues. The sentence was due to commence on 30 October 2019. I also fixed costs at \$3,000, to be taken out of the Wife's share of MAs.

Post-hearing matters

50 On 28 October 2019, the Wife appointed counsel who wrote in to the court to request for further arguments. They produced a letter dated 25 October 2019 from Dr TW on the Wife’s medical condition that stated:

[The Wife] was diagnosed to have metastatic advanced Stage 4 breast cancer in Sep 2018...

...

Clinically, there are still several palpable right chest wall nodules that bleed when touched, and several ulcers on her right chest wall which continually ooze haemoserous fluid. Because the cancer involves the lymph nodes in the right axilla, she is unable to elevate the right arm fully. She is not allowed to carry or lift more than 3kg with her right arm.

The right chest wall has been and must continue to be cleansed daily ... Ulcers can easily become infected in a moist environment, such as sweating due to heat...

... A disruption in the chemotherapy regimen is discouraged as it can lead to development of cancer cells that become resistant to the chemotherapy regimen.

51 This “report” was the first substantive evidence on the severity of the Wife’s medical condition. Prior to the production of this doctor’s letter, she had insisted that she was recovering well; initially, she claimed that R was successfully healing her. In spite of my repeated requests that she provide objective evidence of her health such as full medical reports, which would have also been relevant to my decision on maintenance and the children’s issues, the Wife failed to provide anything substantive. The closest to a medical report she provided was a brief letter from the same Dr TW dated 21 March 2019 that stated:

... [The Wife] was diagnosed to have metastatic advanced breast cancer in Sep 2018...

...

Given her clinical condition and underlying disease, although she is unable to return to work indefinitely, she is still able to look after her two children.

52 It seems to me that Dr TW's letters were written for specific purposes. The first note dated 21 March 2019 was tendered at a time when I was considering issues of maintenance for the Wife and care and control of the children. The second note dated 25 October 2019 was tendered after the Wife had been sentenced to imprisonment.

53 Be that as it may, as this was the first time the Wife tendered evidence on the severity of her medical condition, I granted a stay of execution on 29 October 2019 and adjourned the hearing to a date where both counsel could be present. At the hearing before me on 28 November 2019, the Wife's counsel asked that the sentence be set aside or for the court to consider the Wife's health in light of the new evidence, presumably to change my order on one week of imprisonment. However, it was brought to my attention that the Husband had already extracted the order of court sentencing the Wife to one week's imprisonment (HCF/ORC 306/2019) and the Wife had filed a notice of appeal to the Court of Appeal. I did not think it appropriate for me to reverse the extracted order. The court is now *functus officio* and the matter is before the Court of Appeal; any order made affecting that order will be null. I granted a stay of execution of my order of one week's imprisonment, pending the appeal.

Division of matrimonial assets

Matrimonial asset pool

54 I now address the issue of the division of the parties' MAs. Although this aspect of my decision has not been appealed against, I write these grounds

to provide some guidance particularly on the issue involving the medical insurance payouts.

55 Having considered the evidence, I found the net value of the MA pool to be \$6,520,428.25. In so doing, I did not include insurance payouts amounting to more than \$435,000 that the Wife received for her medical condition. It was common ground that all these moneys had been paid to R. The Husband asked that all these moneys be ploughed back into the pool of MAs.

56 A question arose as to whether insurance payouts were MAs. In *UMU v UMT and another appeal* [2019] 3 SLR 504, I emphasised that the definition of a MA in s 112(10) of the Women’s Charter (Cap 353, 2009 Rev Ed) (“the Charter”) focuses on two key features: first, it is an asset acquired *by effort* and not by gift or inheritance, and second, it is an asset acquired *during* marriage or has a connection to the efforts of the spouses *during* marriage. Assets with these two characteristics have been described as “quintessential matrimonial assets”: see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) (“*Elements of Family Law*”) at para 16.041; *TNC v TND* [2016] 3 SLR 1172 at [40]; *TND v TNC* [2017] SGCA 34 at [9]. Assets which do not have these characteristics may be “transformed” into matrimonial assets if they were ordinarily used or enjoyed by parties, constituted the matrimonial home or were substantially improved by the efforts of the parties *during* the marriage: see s 112(10) of the Charter.

57 Thus, the purpose of the insurance payouts is of critical importance. In this vein, the decision of the Court of Appeal in *Saseedaran Nair s/o Krishnan (now known as K Saseedaran Nair) v Nalini d/o K N Ramachandran* [2012] 2 SLR 365 is helpful. The husband in that case took up the Home Protection Insurance Scheme (“HPIS”) established pursuant to s 29 of the Central

Provident Fund Act (Cap 36, 2001 Rev Ed). The HPIS provided that in the event of the husband's death or disability, his outstanding liability to repay the housing loan shall be discharged by CPF. He was subsequently certified to be legally blind, and pursuant to the HPIS, the CPF Board paid a sum of \$172,740.30 to HDB to fully discharge the outstanding mortgage loan on the matrimonial home. The issue before the court was whether the HPIS payout was a matrimonial asset, and whether it was for the sole benefit of the insured party (*ie*, the husband) such that it should be deducted from the sale proceeds before determining the net worth of the property.

58 The court noted that the husband was not solely entitled to the HPIS payout, because HPIS is a mortgage-reducing policy that is specifically targeted at protecting the family home – the purpose of HPIS is *not* to compensate the insured for his incapacity. Thus, it was an MA and the HPIS payout should not be deducted from the sale proceeds before determining the net worth of the matrimonial home. Indeed, the High Court in the same case drew a distinction between the HPIS and an “ordinary” insurance policy (*Nalini d/o Ramachandran v Saseedaran Nair s/o Krishnan* [2010] SGHC 98 at [22]):

... The mischief that the HPIS was intended to address was therefore not the insured's general financial concerns *resulting from some future disability* but the prospect of the insured and his dependants losing their home should the insured meet with some misfortune. A distinction must therefore be drawn between the HPIS and an ordinary insurance policy where the payout is made to the insured who has control over the use of the money ...

[emphasis added]

59 The discussion above suggests that there is some room for the possibility that the court might have reached a different conclusion if the husband in that case had received insurance moneys which were meant to cover his expenses relating to his disability.

60 In the present case, it appeared that the insurance payouts were meant to cover the Wife's medical expenses and other expenses relating to her treatment for cancer. It may well be that some insurance payments are intended to provide for income that one is unable to earn due to the illness, but as this was not suggested by the Husband, I treated the sums as providing for her medical expenses and issues related to her cancer condition. The Husband did not submit otherwise. Thus, the payouts were not assets acquired as a result of the efforts of the parties nor were they received in the form of income; they were meant to cover the Wife's specific medical needs. I therefore did not consider them to be MAs for the purposes of division under s 112. However, the payouts which she has received had an impact on her financial needs, and was relevant in respect of her claim for maintenance.

Proportions of division

61 As to the proportions of division, as both parties worked during the marriage, this was a dual-income marriage. I applied the structured approach in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ v ANK*").

62 The documentary evidence which the parties tendered in respect of their direct financial contributions were either incomplete or inconclusive. This gap in evidence is not unusual, because parties in a functioning marriage do not keep records of their transactions with a view to building a case should a divorce occur. The court will make a rough and ready approximation of the figures, having regard to the available evidence. I note that at the beginning of the marriage, the Wife earned slightly more than the Husband (about \$3,000 to \$3,500). Nevertheless, the Husband's income soon exceeded the Wife's income. Using a broad brush approach, I found that the ratio of parties' direct financial contributions was 60:40 in the Husband's favour.

63 As for indirect contributions, both parties submitted that the ratio should be 80% in their favour. Having considered the evidence, I accepted that the Husband likely contributed more to daily expenses and outgoings. As for non-financial contributions, it is clear from the first specific issues report that the both parents played an active part in the children's lives, and that the children were close to both parents. Nevertheless, I accepted that the nature of the Wife's work allowed her to play a slightly more active role. For instance, she took a year off work from May 2010 to May 2011 to take care of their Son when he was born; this was evident from her CPF statement showing that save for the annual bonus in December 2010, she did not receive salary payment from the Ministry of Education from September 2010 to May 2011. Applying a broad-brush approach, I found that parties' indirect contributions were 60:40, in the Wife's favour.

64 Applying the *ANJ v ANK* approach, the average ratio was 50:50. Each party shall receive an equal share of the MAs.

Maintenance for the Wife

65 The Wife sought \$4,800 for herself as monthly maintenance. Counsel for the Wife confirmed at the first hearing that the Wife was not asking for medical expenses, but only living expenses. The Husband submitted that the Wife should not be entitled to maintenance as she was "capable of working as there is no medical evidence stating otherwise". After those submissions, the Wife tendered a medical note which stated that she was unable to return to work indefinitely (see [51] above).

66 There were two key considerations that arose because of the Wife's medical condition: her medical expenses and her income. While the Wife's medical expenses may be a practical and real expense for her, she had received

about half a million in insurance payouts that were not included in the MA pool. It was her decision whether or not to apply them to conventional medical treatment and expenses. In this particular situation, as she chose to pay R for the “healing” he could provide, the Husband should not have to bear those costs.

67 As to her income, the Wife was originally earning a salary of \$7,485 a month, close to the Husband’s salary of \$8,655 a month. She had been on no-pay leave since March 2017, and was on sick leave as of 13 February 2019. She had given vague accounts of her medical condition. There was no full medical report that detailed her cancer diagnosis and the present state of her prognosis. At the last hearing, the Wife told the court that she was doing fine and was taking a daily oral drug for treatment. I note that the Wife received rental income of \$3,400 per month from the Butterworth property. She would also receive an equal share of the MAs (amounting to more than \$3 million). Thus she should have sufficient moneys to cover her ordinary expenses; she had been provided with the insurance payouts to cover her medical expenses. I ordered no maintenance for the Wife.

Maintenance for the children

68 The Wife submitted that the Husband should pay maintenance of \$2,500 for the Daughter and \$2,000 for the Son. The Husband offered to pay \$1,713 for the Daughter and \$989 for the Son. According to the Wife, the Daughter’s personal expenses amounted to \$2,598 while the Son’s personal expenses amounted to \$1,116. The Wife submitted that the Husband should bear all of it because she was not working.

69 The Husband has had no meaningful contact with his children since March 2018. He was willing to provide financial support and I commend his commitment to the family. The amount of maintenance awarded is not

dependent on the access issue – both parents are responsible for maintaining the children. I had ordered that there shall be no maintenance for the Wife; she would have to provide for herself from the resources she has, and from income (whether employment or investment income) she can obtain in future. Her medical condition was not disputed, though to what extent that affected her ability to work was not fully proven. In these circumstances, I considered it fair and just to order the Husband to pay a monthly maintenance sum of \$2,800 for both children, which is a sum close to what he had offered to provide and was reasonable for the children.

70 The Wife also sought backdated maintenance for the children from November to December 2017 and July to December 2018. However, I noted that her initial application for maintenance was dismissed on 24 August 2017. The decision to backdate maintenance is within the discretion of the court: *AMW v AMZ* [2011] 3 SLR 955 at [13]. In the circumstances, I found it fair for the maintenance order to take effect from the date of this decision.

Conclusion

71 It is unfortunate that the divorce proceedings developed in this manner. The courts, counsellors and schools have done their best to help the children, but ultimately it is the parents above all who must protect and promote their children's welfare. It is my hope that, in time, the children will appreciate the importance of having both parents in their lives and that their relationship with the Husband will be repaired. Children do grow up and with newly gained maturity and understanding, they may be better placed to have a good relationship with their father. They may then be able to see how their father had tried to care for them, and remember the times when they enjoyed spending time with their father. I encourage the Husband to be patient and maintain a positive

outlook.

Debbie Ong J
Judge

The plaintiff in person;
Luna Yap Whye Tzu (Luna Yap LLC) for the defendant.
