BUX *v* BUY
[2019] SGHCF 4

Case Number : Divorce (Transferred) No 354 of 2016

Decision Date : 21 January 2019

Tribunal/Court : High Court (Family Division)

Coram : Debbie Ong J

Counsel Name(s) : Irving Choh and Melissa Kor (Optimus Chambers LLC) for the plaintiff; The defendant in person.

Parties : BUX — BUY

Family Law – Matrimonial assets – Division

Family Law – Matrimonial assets – Pre-marital asset – Substantial improvement by both spouses

Family Law – Maintenance – Wife

Family Law – Maintenance – Child

Family Law – Custody – Care and control

[LawNet Editorial Note: The plaintiff's appeal in Civil Appeal No 226 of 2018 was dismissed by the Court of Appeal on 30 October 2019 with no written grounds of decision rendered. The Court of Appeal agreed with the decision and reasoning of the High Court.]

21 January 2019

Debbie Ong J:

Background

1 The plaintiff ("the Wife") and the defendant ("the Husband") were married on 9 September 2009. They have two daughters who were nine and four at the time of the hearing. The Interim Judgment of Divorce ("IJ") was granted on 20 October 2016. I heard the Ancillary Matters on 16 August 2018, and delivered my decision on 29 October 2018 after the parties filed further written submissions on specified issues on 25 September 2018 and 3 October 2018. The Wife has appealed against my decision and I now give the grounds of my decision.

2 The Wife was a managing director earning an income of around $9,825.50. The Husband earned an average monthly income of $4,000, but this could vary from around $3,000 to $5,000. At the hearing, the Wife pointed out that according to paragraph 6 of the Husband's affidavit of assets and means dated 24 August 2017, he had also been earning a monthly income of $1,500 to $5,000 from "online options trading" on top of his monthly salary. However, the Husband explained at the hearing that he no longer engaged in online trading because he had taken a "retainer". With this explanation and no other evidence that the Husband was earning any such extra side income, I accepted that he was no longer earning such income.

3 I had highlighted to the parties that the joint summary of relevant information ("joint summary")

they had jointly submitted was a key document which I would use as a summary of their latest submissions on their respective positions. I made it clear that their positions stated in this document would be used for my decision.

Division of assets

4 As a general position, all matrimonial assets ("MAs") and liabilities should be identified at the time of the IJ and valued at the time of the ancillary matters ("AM") hearing. It is noted that balances in bank and CPF accounts are to be taken at the time of the IJ, as the MAs are the moneys and not the bank and CPF accounts themselves. Thus, in general, available values as close to the AM hearing date as possible will be used. Nevertheless, where the parties had specifically agreed to use a value for the asset or liability as at a different date, I adopted that value.

Undisputed matrimonial assets

5 The parties agreed that the following were MAs: the matrimonial home ("the Home") and a property in Australia ("the Australian property").

6 Both parties agreed that the Home should be valued at $2.8 million. They also agreed that the outstanding mortgage on the Home was $1,853,226.55. The net value of the home was therefore taken to be $946,773.45.

7 In respect of the Australian property, neither party was able to procure a valuation, as the property is under construction. It was undisputed that the Husband contributed $5,000 to this property, while the Wife contributed $57,196.50. No loan had been taken out in respect of this property. As there was no other evidence on its value, I assigned to it a value of $62,196.50, the sum of both parties' contributions.

8 I point out that the Husband had included HSBC account -0496 in the joint summary as a matrimonial asset and assigned it a value of $8,549.93. However, I agreed with the Wife's counsel that this was not an asset, as it was a holding account used for the repayment of the mortgage loan for the Home.

Disputed matrimonial assets

9 The table below sets out the assets which parties disputed were MAs. Unless otherwise specified, their values were undisputed.

	Asset	**Net Value ($)**
Wife's Name	Prudential policy -0751	54,361.00
	Prudential policy -6537	Nil
	Great Eastern policy	RM 41,874.77 (13,961.54)
	CPF monies	202,324.62
	POSB account -5544	6,087.39

	POSB account -8792	619.19
	POSB account -5159	12,261.14
	Maybank account	RM 19.45 (6.48)
	Wadiah account	RM 489.79 (163.35)
	U Gateway ("the Company") shares	Disputed
Husband's Name	Prudential policy -2286	944.17
	Prudential policy -2301	1,823.49
	CPF monies	91,672.34
	DBS account -7080	412.40
	POSB account -6476	1,393.81
	DBS account -4030	1,098.50
	OCBC account -4651	Nil
	OCBC account -0001	Nil

10 I found that the above assets were MAs.

11 Save for the Wife's Great Eastern policy and her shares in the Company, neither party denied that the assets were acquired during the course of the marriage. Their argument was that those assets should not be included in the pool of MAs because they were acquired by their individual efforts. However, this argument has no merit, because s 112(10)(*b*) of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Charter") defines an MA as including any asset "acquired during the marriage by one party or both parties to the marriage". As the Court of Appeal held in *Lau Siew Kim v Yeo Guan Chye Terence and another* [2008] 2 SLR(R) 108 at [80]:

> … s 112 … has empowered the courts with a broad discretion to divide "matrimonial assets" between spouses during or after matrimonial proceedings to terminate their marriage; it is based on the principle of "community of property", under which *both spouses have a joint interest in certain property, regardless of which spouse purchased or otherwise acquired it*. [emphasis added]

Great Eastern policy

12 The Wife claimed that the Great Eastern Policy was acquired before the marriage. Even if the Wife had purchased this policy before the marriage, I was of the view that it was substantially acquired during the marriage. As Professor Leong Wai Kum ("Prof Leong") noted, the question of what is acquired during the subsistence of marriage should be understood sensitively (*Elements of Family Law in Singapore* (LexisNexis, 3rd edn, 2018) ("*Elements*") at para 16.047):

> It is not unusual for big items of property, especially real estate, and financial resources to be acquired over a period of time. While the conveyance of legal title may be executed prior to the

> solemnization of marriage, it is more than likely that the spouses continue to discharge the bank loan and mortgage attached to that property or financial resource for a long time during the subsistence of the marriage. The court should pause here to consider whether it is the conveyance of legal title or the mortgage payments that truly constitute "acquisition" of the property or financial resource. It is not wrong for a court to prefer the mortgage payments, as being more substantive, than the initial conveyance of legal title to constitute "acquisition of the property or finance source. By such sensitive reasoning it is not impossible for property or financial resource that had legally been conveyed to one spouse before marriage to be considered by court as quintessential matrimonial asset for having been substantively acquired during the subsistence of the marriage by the exertion of personal efforts by one or both spouses.

13 While Prof Leong had in mind mortgage loan repayments in the context of the acquisition of immovable property, the same analysis can be applied to insurance premiums. The value that the court adopts for insurance policies is the surrender value, which increases over time as premiums continue to be paid. It may be said that premium payments, rather than the mere act of purchase, constitute "acquisition" of insurance policies. Further, insurance policies may lapse if premiums are not paid when due. Since the Wife continued to pay premiums over the course of the marriage, I found that the Great Eastern policy was acquired during the marriage. Without evidence of the pre-marriage value of this policy or the date of its purchase, I included its full surrender value in the pool of MAs.

The Company shares

(1) Whether the shares are MAs

14 I now address the issues relating to the Company shares. The first issue is whether this can be considered a MA under s 112(10)(*a*)(ii), given that the Wife acquired these shares before the marriage. Section 112(10)(a)(ii) provides:

> (10) For the purposes of this section, "matrimonial asset" means —
>
> (a) any asset acquired before the marriage by one party or both parties to the marriage —
>
> …
>
> (ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage;

15 In *Koh Kim Lan Angela v Choong Kian Haw and another appeal* [1993] 3 SLR(R) 491 ("*Koh Angela*"), the Court of Appeal considered the former s 106(5) of the Women's Charter (Cap 353, 1985 Rev Ed), which is the material equivalent of the current s 112(10)(*a*)(ii) of the Charter. In that case, the husband acquired a 20% share of the family company prior to the marriage. The wife argued that those shares should be included in the pool of MAs. The court considered the degree of effort from the wife necessary to satisfy the requirement of "joint efforts" in s 106(5) which provides:

> For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

16 The court held that the contribution by the wife "in a small way" would be sufficient if there had been a substantial improvement by the joint efforts of both spouses. As Prof Leong has stated in *Elements* at para 16.133, the flexible approach adopted in *Koh Angela* is sensible, because:

> … [i]n the traditional division of roles of marriage, it is particularly pernicious to require that it be the home-maker and child-carer who must have exerted personal efforts that substantially improved the property if the property were to convert into [a] 'matrimonial asset'. By their division of the roles, it would be far more likely for the bread-winner to have so exerted personal efforts that substantially improved the property.

17 In the present case, as the Wife was the Managing Director of the Company, it was clear that she had been and continued to "substantially improve" the value of the shares. The Husband, who was a director of the Company from January 2011 to May 2015, claimed that he had contributed by employing and managing a full time member of staff, assisting in marketing and design, and attending business trips, exhibitions and meetings. In response, the Wife argued that the Husband attended only cocktail parties during business trips, and that the member of staff was hired because the Husband complained that he needed help. She also argued that the Husband had a limited role in running the Company, and pointed out that in any event, the Husband was remunerated for his work. In her request for further arguments to be heard by this court ("RFA"), she also added that the Husband did not contribute to the Company in his capacity as a director of the Company. She submitted that parties entered into arm's length transactions, with the Husband acting in his capacity as a director of his own company, Company F. In this context, the Wife pointed out that Company F had issued invoices to the Company for work done.

18 I note that the Wife did not dispute that the Husband had done design and "other miscellaneous work" for the Company. Her case was that the Husband's contributions were not "meaningful". The fact that the Husband was remunerated for his work in the Company does not of itself inevitably result in the company shares being excluded as a MA. On the logic underlying the Wife's argument, the Wife's efforts in "substantially improving" the Company shares must also be ignored since she had been earning a salary as the Managing Director. It is noted that in *Koh Angela*, the fact that the wife had earned a salary while helping out in the family company did not detract from her contributions, nor did it preclude the court from including that company in the pool of MAs: see [32]. Furthermore, while it was technically Company F which provided services to the Company, an invoice issued by Company F to the Company, which was signed by the Husband, states that the "supplier" of the project was the Husband. The Wife also claimed that she had helped Company F by providing it over $50,000 worth of jobs, "primarily in the hope that this would enable the Husband to clear his debt". It would appear that she would not have done so if she had regarded Company F as an entity separate from the Husband. Indeed, her conduct contradicts her assertion that parties had dealt with each other at arm's length. I find it more likely that it was effectively the Husband who provided services to the Company.

19 The Company shares were therefore included in the pool of MAs. However, as I will explain below, only a part of the value of the Company shares were included in the pool.

(2) Valuation of the shares

20 The Wife obtained a valuation report which states that the Company shares were worth $2,157,370 in 2016, valued on a net-asset basis. She also obtained another report stating that the shares were worth $2,138,555 in 2017. The Husband did not accept the valuation reports, which he argued were prepared by an "unknown business consultant with no official website or track record". At the hearing, I gave the Husband the opportunity to present further evidence in this matter, including obtaining a valuation of the company. However, the Husband declined to obtain another valuation report. He highlighted instead that the Company owned properties in Boon Lay and Woodlands, as well as a car, and pointed out that the combined value of all these properties exceeded $2,157,370. On this basis, he submitted that the shares of the Company were worth more

than that.

21 The Wife pointed out that the Husband's approach did not consider the Company's liabilities (which could include mortgages on those properties). While the valuation reports submitted by the Wife lack detail, they were prepared by professionals, whereas the Husband's approach to valuation is speculative at best. Thus, I accepted the value of the Company's shares as stated in the reports tendered by the Wife.

(3) Proportion of shares to be included

22 I note that the Company was incorporated in 2006, three years before the marriage, and had continued to be built up during the marriage. I therefore gave an opportunity for parties to submit on the "proportion" of this asset which ought to be placed into the pool of MAs. The Wife submitted that the Company shares were worth $226,209 in 2009, and $2,160,000 in 2016, when IJ was granted. She accepted that if the Company shares were included in the pool of MAs, the proportion that should be counted to the pool ought to be the difference between these values, which is $1,933,791.

23 While the Husband was granted leave to file reply submissions on this particular issue, the submissions which he eventually filed on 3 October 2018 touched on various other points which do not address the question of what "proportion" of the Company shares ought to be included in the pool of MAs.

24 I observed that the Wife had adopted the value of the Company shares at the time when IJ was granted in her calculations. However, as I have noted above, assets should generally be valued at the time of the AM hearing. Thus, the proportion of the Company shares to be included in the pool of MAs should be the difference between the value of the shares at the time of marriage ($226,209) and the value in 2017 ($2,138,555), which is $1,912,346.

Liabilities

25 At the hearing, counsel for the Wife did not dispute that the Husband owed $59,179 in debts. Neither did the Wife indicate that she was disputing the Husband's debts in the joint summary, even though she was represented by counsel. I had made clear to both parties at the hearing that the joint summary would represent their final positions on all the issues, and any departures, corrections and clarification should be made at the hearing. However, after I delivered my decision, the Wife submitted in her RFA that the Husband's debts should not be discounted from the pool of MAs. I declined to consider the Wife's new arguments.

Total pool of Matrimonial assets

26 Given my findings above on the values of the various assets, the net value of the pool of MAs liable for division was $3,249,266.37.

27 Omitting the assets with no value, the total pool had the following value:

	Asset	**Net Value ($)**
Joint Names	Home	946,773.45
	Australian property	62,196.50

	Sub-total for net value of assets in joint names	**1,008,969.95**
Wife's Name	Prudential policy -0751	54,361.00
	Great Eastern policy	13,961.54
	CPF monies	202,324.62
	POSB account -5544	6,087.39
	POSB account -8792	619.19
	POSB account -5159	12,261.14
	Maybank account	6.48
	Wadiah account	163.35
	Company shares	1,912,346
	Sub-total for net value of assets in Wife's name	**2,202,130.71**
Husband's Name	Prudential policy -2286	944.17
	Prudential policy -2301	1,823.49
	CPF monies	91,672.34
	DBS account -7080	412.40
	POSB account -6476	1,393.81
	DBS account -4030	1,098.50
	Debts	-59,179
	Sub-total for net value of assets in Husband's name	**38,165.71**
Total Pool	**Grand Total**	**3,249,266.37**

Proportions of division

28 Since both parties worked during the marriage, this was a dual-income marriage to which the structured approach outlined in *ANJ v ANK* [2015] 4 SLR 1043 ("*ANJ*") applies in the determination of the just and equitable division of the matrimonial assets.

Direct financial contributions

29 In the present case, neither party asserted that he or she contributed to the acquisition of the assets held in the other party's sole name. The contributions towards the Australian property were undisputed as well: see [7] above. Thus, the only dispute lay in the parties' contributions towards the Home.

30 The Husband claimed that the Home was jointly purchased with the sale proceeds of two of the Company's properties known as "Sin Ming industrial units" ("Sin Ming"), part of which was transferred to him. He submitted that these should therefore count towards his contributions towards acquiring the Home. The Wife admitted that $400,000 from the net sale proceeds were transferred to the Husband's account for him to apply towards the Home, but it was only a "symbolic" gesture. She explained that the $400,000 transferred to the Husband should be attributed to her, because that was part of the repayment of a loan which the Company owed her. The Husband did not refute the Wife's account. Considering the evidence on this issue, I accepted that those funds should be attributed to the Wife.

31 The Husband also asserted that his parents provided $10,000 in "ang pow wedding monies" which went towards the acquisition of Sin Ming. However, as the Wife pointed out, there was no evidence of this.

32 The Husband further claimed that he contributed to monthly mortgage payments from November 2014 or February 2015 to February 2016. The Wife strenuously disputed this. She claimed that during this period, she made the instalment payments by transferring money to the Husband's account or handing the Husband cash. The Husband would then apply the moneys provided by her towards the mortgage payments. Unfortunately, there was no direct evidence of each party's contributions to the mortgage during this period. The Wife pointed to several bank statements in her AOM to support her contention. However, those statements only state that the relevant sums were withdrawn or transferred, and do not show the destination of the transfers. They do not conclusively show that those sums were given to the Husband. On the other hand, the Husband claimed that he would transfer his moneys from his DBS to OCBC account, then from the OCBC account to the HSBC account which is used to pay the mortgage. However, the Husband was only able to provide the statements of his OCBC account from August 2016 onwards. Thus, it was unclear whether the Husband made transfers from his OCBC account to the HSBC mortgage account from November 2014 to February 2016.

33 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. Nevertheless, the court will make a rough and ready approximation of the figures, having regard to the available evidence. I note that, according to the Husband's Notice of Assessment, his total income for 2015 was $40,389.00, which translates to about $3,300 a month. I further note that in his affidavit of evidence-in-chief dated 29 July 2016, the Husband stated that he "lost quite a substantial amount from October 2014", and that "due to losses [his] funds are kept minimal and have continued to do so till this very date". On the other hand, the Wife was earning a stable income during that period. I therefore found that even if the Husband had contributed to the mortgage payments of the Home, his contributions would be small compared to the Wife's.

34 I further note that the Husband had contributed to the Company by doing design and other miscellaneous work: see [18] above. As a result, some of the value of the Company shares can be attributed to the Husband's efforts. A similar approach was adopted in *TNC v TND* [2016] 3 SLR 1172, where the High Court recognised the wife's efforts in the parties' real estate business as direct financial contributions: see [47]–[53]. This finding was not disturbed on appeal in *TND v TNC and another appeal* [2017] SGCA 34. I recognise, however, that the Wife was the main driving force behind the Company's success.

35 Considering all the circumstances, and adopting a broad-brush approach, I attributed parties' direct financial contributions in the ratio of 95:5 in favour of the Wife.

Indirect contributions

36 The Husband claimed that he was responsible for the care of both children since they were born from 2009 until 2016 when they were removed from his care. He also asserted that "all matrimonial properties were researched, sourced, [and] recommended from [his] experience and during [his] course of work as a real estate agent". He also said that he had contributed to household payments and the children's expenses.

37 The Wife claimed that she was the primary caregiver of the children. She argued that even though the Husband worked from home, "his care and interaction with the children were minimal". While the Wife did not deny the Husband's assertion that he was "scouting and searching" the potential investment value of the Home and the Australian property, she pointed out that the Husband was a property agent. Thus, it was not a case where the Husband had no prior knowledge and had to conduct his own research from scratch. The Wife also stated that she paid most of the household expenses. On this basis, the Wife submitted that the ratio of indirect contributions should be 90:10 in her favour. The Husband, who was not legally represented, did not propose a ratio.

38 I found that prior to 2016, the Husband played a greater role in the caring of the children than the Wife. I note that during this period, the Husband stayed at home while the Mother was working. I did not think that the Husband's interactions with the children during this period were "minimal". Having regard to the relevant professional reports, I found that the children remained close to *both* parents, even though the children had not been living with the Husband since 2016. It is more likely that the Husband's relationship with the children were formed and strengthened while he was actively caring for them in their early years.

39 Further, while the Husband was no longer the children's primary caregiver, he had access to the children on Tuesdays and Wednesdays from 2.00pm to 7.30pm, as well as Saturday 10.00am to Sunday 11.15am. He continued to send and pick them up from school, and provide them with meals when they are with him. The Husband's efforts in caring for the children were substantial.

40 I also found that the Husband had made indirect financial contributions by contributing to household expenses. As stated above, it is not the Wife's case that the Husband contributed nothing, but that the Wife had contributed the "majority" of those expenses. I also accepted, and the Wife did not deny, that the Husband had made indirect contributions to the Home and the Australian property by keeping an eye on potential investment opportunities.

41 Considering all the circumstances, I found that the indirect contributions are 55:45 in the Husband's favour.

Average ratio and adjustments

42 The average of parties' contributions are as follows:

	Husband (%)	**Wife (%)**
Direct contributions	5	95
Indirect contributions	55	45
Average ratio	30	70

43 Using the average ratio as the final division proportions, the Wife would be entitled to 70% while the Husband would be entitled to 30% of the MAs. This was not a long marriage but one which lasted seven years. As the total value of the pool of MAs is $3,249,266, the Wife's share would amount to $2,274,486 and the Husband's share would amount to $974,780.

44 The Wife lamented in her RFA that "with the Husband's little contribution, he is now virtually a millionaire by marrying a capable wife". I point out that the Court of Appeal had remarked in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*") at [20] that:

> … The division of matrimonial assets under the [Women's Charter] is founded on the prevailing ideology of marriage as an equal co-operative *partnership of efforts*. The contributions of both spouses are equally recognised *whether he or she concentrates on the economics or homemaking role, as both roles must be performed equally well if the marriage is to flourish*. When the marriage breaks up, these contributions are translated into economic assets in the distribution according to s 112(2) of the [Women's Charter]. … [emphasis added]

45 This principle holds true even when the breadwinning spouse has amassed great wealth. For example, in *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157, the wife, who was a full-time homemaker throughout the entire marriage, was awarded 35% of the pool of MAs, determined to be worth around $69 million: see [71] and [82]. This principle also holds true when, as in this case, the wife is the substantial breadwinner. In *NK v NL*, the Court of Appeal observed:

> 37 As a point of principle, we note that there has been hardly any discussion concerning the husband's indirect contributions towards homemaking and child caring. While it may be that in the vast majority of cases the indirect contributions of the sole breadwinner pale in comparison to those of the homemaker wife, this should not simply be assumed to be the case. Particularly in our modern societal context, where both parties work to support the family – an inevitable result of the current equal education opportunities – *we see no reason why the husband's indirect contributions to the welfare of the family should not be considered in the process of division*. The objective of s 112 of the Act is to remedy any economic prejudice caused by the performance of different roles in the family, not to asymmetrically enrich the wife on the basis of the stereotypical role that women are perceived to play. Each case must therefore be dealt with on its unique facts. Where each spouse has discharged his or her homemaking role equally (although this would be rare), this must be taken into account in achieving a just apportionment... [emphasis added]

46 In *Chan Yeong Keay v Yeo Mei Ling* [1994] 2 SLR(R) 133, the wife was the sole breadwinner of the family while the husband did the household chores and cared for their three children. The wife "repeatedly insisted that the husband should be paid nothing", but K S Rajah JC rejected her submission as being an "arithmetic exercise". He held that the husband's indirect contributions should be recognised as well, and awarded the Husband about a third of the total assets. He observed:

> 67 The welfare of a family is also determined by the love, care and attention given to the family. Like damages for pain and suffering, these are not easily converted into dollars and cents but it has to be done fairly.

47 Both spouses' contributions in the financial and non-financial spheres are equally valuable in their marriage. I have made note of the Wife's substantial efforts in both breadwinning and the homemaking spheres by granting her 70% of the pool of MAs, or $2,274,486. She has already been awarded the larger proportion of the assets and I find no merit in her protest.

48 The Wife also submitted that the division ratio would be "unduly onerous" to her, because the assets to her name were largely illiquid, that she was living in a rented apartment with the children and bore the bulk of their living expenses. I note that the Husband was also living in a rented accommodation, and I had ordered the Husband to pay maintenance of $1,300: see [58] below. I had directed parties to work out the consequential orders and granted them liberty to apply. I had intended the parties to consider and work on a practical level how the pool of MAs could be divided in the most convenient way that is acceptable to both. I note the Wife's concern that she would have to liquidate the Company's assets to comply with my orders. But that may not be the only solution. For instance, one possibility would be for the Home to be sold and the net sale proceeds to be paid to the Husband, with the balance of his share of his MAs to be paid by the Wife in instalments. The parties do not appear to have even begun to consider how the MAs could be divided. In these circumstances, the Wife's submission is somewhat premature.

Custody, care and control and access

49 The Wife sought sole custody of the children, on the basis that parties were completely unable to co-operate with each other, and that the Husband had allegedly been using his time with the children to "further his position in these proceedings, and to besmirch her name before the elder child's friends". However, joint custody orders ought to be the norm unless there are exceptional circumstances, as joint parenting is in the children's welfare: *CX v CY* [2005] 3 SLR(R) 390. In my view, there is nothing exceptional about the present case to warrant a sole custody order. It is not uncommon for parents to experience some conflict as a result of a difference in parenting styles, but this does not inevitably mean that major decisions for the children should be made unilaterally by one parent. It is in the welfare of the children to have the guidance of both parents in their lives in matters that significantly affect them. I ordered that parties were to have joint custody of the children.

50 The Wife sought sole care and control. At the hearing, the Husband did not seek shared or sole care and control, and only asked for additional overnight access, as he recognised the need to focus on his work in order that he could pay off his debts. Thus, I granted the Wife sole care and control of the children. The Husband appeared to have changed his mind *after* I delivered my decision: in an email to court dated 5 November 2018, he indicated that he would like sole or shared care and control of the children. I was nevertheless satisfied that the children were doing well in the Wife's care, and saw no reason to vary my order on care and control.

51 At the time of the hearing, the Husband had access to the children on Tuesdays and Wednesdays from 2.00pm to 7.30pm, as well as Saturday 10.00am to Sunday 11.15am. He sought additional overnight access on Tuesday nights. He was willing to swap access on Wednesday afternoons with overnight access on Tuesday. The Wife objected on the basis that an additional night with the Husband would be disruptive to the children's lives. In my view, granting the Husband's request would be less disruptive, as it would result in an uninterrupted period of access with the Husband, compared to two distinct blocks of access. The additional overnight access to the Husband would promote bonding between him and the children. Hence, I ordered that the Husband was to have access to the children from Tuesday after school to Wednesday morning, when he sends them to school. I also ordered that there be no access on Wednesday afternoon, and clarified that there would be no change to the existing access arrangement on weekends. In coming to this decision, I had taken into consideration the fact that the Husband had only rented a room and did not have the entire apartment to himself. Indeed, at the hearing, counsel for the Wife expressed the Wife's concern that the Husband was living in a rented room. Thus, I did not accept the Wife's submission in her RFA that the Husband had lied to the court that he had the whole of the tenanted apartment to himself.

52 After the hearing, the Husband wrote to the court seeking provision for holiday access. However, since this issue was not brought up during the proceedings, I declined to make any further orders at this stage. I reminded parties to cooperate on the matter of access to the children, and urged them to work out arrangements for holiday access. I also granted them liberty to apply.

53 As it would also be helpful for this family to have counselling support, I directed both the Husband and the Wife to undergo DSSA counselling and the "Children in Between" programme for parents. I also directed the elder daughter to attend the "Children in Between" programme for children.

54 On this note, I observe with hope that parties had come to some agreement over the children's care arrangements, even though there was significant conflict at the commencement of these proceedings. The Wife accepted at the hearing that the Husband should have access to the children, while the Husband recognised that at this juncture, the Wife ought to have care and control. I am also heartened by the Husband's comment at the hearing that he wanted the children to be proud of *both* parents. I am hopeful that parties will be able to co-operate with each other to raise the children in a loving and nurturing environment. As I observed in *TAU v TAT* [2018] SGHCF 11 at [33], co-parenting is always necessary whichever party is granted care and control. In the present case, the parents possess complementary parenting strengths – the Wife's structure and focus on academics in combination with the Husband's creative engagement of the children – which may enable the children's optimal growth in all aspects of their development.

Maintenance for the Wife

55 The Wife sought lump sum maintenance from the Husband in the form of a greater proportion of the pool of MAs. When queried, counsel indicated that the basis for the Wife's request were (1) her contributions to household expenses; and (2) a clean break. However, as I indicated to counsel at the hearing, maintenance is based on need and not on parties' contributions to the marriage: see *Foo Ah Yan v Chiam Heng Chow* [2012] 2 SLR 506. As the Wife was earning almost $10,000 a month, which was more than twice that earned by the Husband, I was of the view that she was self-sufficient and did not require maintenance.

56 The Wife sought, in the alternative, nominal maintenance, so that her right to apply for maintenance in the future could be preserved should circumstances change. However, there is no duty on a spouse to act as a general insurer of sorts to the former spouse: see the Court of Appeal's decision in *ATE v ATD and another appeal* [2016] SGCA 2 at [29]. Considering the parties' respective incomes and finances, I made no order for maintenance for the Wife.

Maintenance for the children

57 The Wife submitted that the expenses of each child amounted to around $1,500, and that the Husband should contribute half, or $750 each. The Husband submitted that he could only afford at most $700 a month for each child. I note that while the Husband's average income was around $4,000 a month, it was not a fixed income, *ie*, it could be higher or lower. Further, his monthly expenses, including rent and instalment payments to his debtors, exceeded $2,500. I also note that under the new access orders, the Husband would be paying for several meals with the children.

58 Considering all these circumstances, and the Wife's stable income of almost $10,000, I initially ordered the Husband to pay the Wife a sum of $700 a month for the children's maintenance until his debt of $59,179 was fully paid up. However, after considering the Wife's RFA, I was satisfied that the Husband's debt can be satisfied from his share of the MAs, and that with his forthcoming share, he

should not have difficulty paying $1,300 a month. Thus, I ordered the Husband to pay maintenance of $1,300 from the date of the order.

Other matters

59 After I made the above orders, the parties wrote in to seek "ancillary directions". The Wife sought an order that the children's passports be released to her so that they can be renewed, while the Husband proposed that the children's passports and birth certificates be jointly held. The Husband also requested for "the court's assistance" on matters including the clothes that the children should be allowed to wear, the elder daughter's Christmas present allegedly confiscated by the Wife, medical costs relating to an alleged domestic violent incident involving the elder daughter, the younger daughter's kindergarten enrolment and the Wife's alleged non-compliance with access orders. He also raised issues pertaining to enrichment classes for the children and sought extended access on Sundays, "flexibility" for the children to stay with him while the Wife is travelling and permission for third parties to be involved in picking up the children in "emergency" situations. As these issues were not brought up during the course of proceedings where both parties would have had the opportunity to make submissions, I declined to make further orders. I reminded parties to cooperate on matters relating to the children. I also granted them liberty to file the appropriate applications where necessary. The parties have many more years of joint parenting ahead; they must fulfil their parental responsibility of working out such issues, and avoid the mindset of looking to the court as a first resort to sort out these disputes. They must do so for the sake of their children's welfare. Non-litigious avenues such as counselling and mediation, as well as the engagement of Parenting Coordinators are possible resources for the parties.

Costs

60 I urged parties to agree on costs, failing which they would be at liberty to write in to the court for directions.