

VXQ v VXR
[2021] SGHCF 38

Case Number : Divorce (Transferred) No 2664 of 2019
Decision Date : 11 November 2021
Tribunal/Court : General Division of the High Court (Family Division)
Coram : Choo Han Teck J
Counsel Name(s) : Cheryl Cheong Siao Ling and Sara Binte Abdul Aziz (Gloria James-Civetta & Co) for the Wife; The Husband in person and unrepresented.
Parties : VXQ — VXR

Family Law – Matrimonial assets

Family Law – Maintenance – Child

11 November 2021

Judgment reserved.

Choo Han Teck J:

1 The plaintiff wife (“the Wife”) and the defendant husband (“the Husband”) were married in the United States in 1998. They lived in Singapore from 2003 and 2019, when the Wife had a job here. They have both returned to the United States of America (“US”), and are now living in Florida. They commenced divorce proceedings in 2019, when they were still in Singapore, and interim judgment was entered on 10 December 2019. Their marriage of 21 years bore them a child who is now 20 years old, pursuing her tertiary education in the US.

2 The Husband is an IT professional, and the Wife, a marketing professional. The Husband has held various IT positions since he graduated from university, but says that he has not been employed since June 2020 as he is reading for a master’s degree in data science. Thus, he says that he will not have any income for the foreseeable future. The Wife used to be a vice-President of a marketing firm, but was eventually self-employed. Custody, care and control is not an issue, as parties have entered a consent judgment at the time of interim judgment that they have joint custody of the child, with care and control to the Wife until when the child commences tertiary education.

3 On the issue of matrimonial assets division, the value of the assets in joint names is undisputed. But the Husband claims that the Wife’s assets are undervalued, while the Wife wants the Husband to account for \$36,811.14, being value of the Microsoft stocks that he used to own. The assets in the Husband’s name amount to \$449,165.90. The parties agreed that the exchange ratio for the USD dollar to SGD shall be 1:1.32 for the purposes of these proceedings.

4 The matrimonial home in Singapore was sold on 16 May 2019. The proceeds, amounting to \$2,889,130.77 are held by the lawyers pending the disposal of the ancillary matters. In January 2021, the Husband and Wife entered a consent order to withdraw \$600,000 from the sale proceeds. They have each received \$108,327.68, after paying off the relevant agreed tax liabilities. After deducting this sum, the remaining proceeds should thus be \$2,289,130.77. They also have a piece of property in Florida (“the Florida Property”), where the Husband currently resides in. Based on parties’ valuation as of May 2021, the Florida Property is worth \$1,032,410.28. There is an outstanding mortgage of \$395,227. For the purpose of the Judgment, I will adopt the net value of \$637,183.28 for the estimated value of the Florida Property.

5 The Wife's counsel submits that the total pool of matrimonial assets, taking into account parties' joint and respective liabilities, is \$4,688,005.91. The Husband disputes several items that the Wife has excluded from the pool of matrimonial assets. He contends that the assets in the Wife's name amount to \$2,212,246.15, instead of the figure the Wife suggests, which is \$1,181,693.41.

6 Both parties have made submissions that certain shares disposed of by the other spouse should be added back to the pool. I reiterate the court's observations in *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609. Where one spouse has expended substantial sums after interim judgment but before the ancillaries are concluded, these sums must be returned to the asset pool if the other party has at least a putative interest in them and has not agreed to such an expenditure. These sums are to be added regardless of whether such an expenditure is an attempt to dissipate assets, or was for the benefit of the children. But these sums need not include daily run-of-the-mill expenses. This means that the court also needs to take into account the reasonable expenses by parties. In this case, the Husband and Wife both have periods of unemployment such that it would only be fair to both that such reasonable expenses be considered. The Husband says that he has not been employed since April 2019, and the Wife was not employed from June 2019 to November 2020.

7 The Wife also had stock under her Fidelity account, and her Morgan Stanley account, but says that she had sold some of the shares after the interim judgment to provide for her and her child:

- (a) Janus stock funds, valued at US\$108,705.77 as at December 2019 (\$143,491.62);
- (b) Jones Lang Laselle 401k shares: valued at US\$763,514.99 as at 31 May 2020, which is the closest to the date of the interim judgment (\$1,091,826.44);
- (c) C&W shares: valued at \$104,456.59, including shares valued at US\$53,899.37 as at 31 March 2020 (\$71,147.17) plus US\$25,234.41 (\$33,309.42) sold by the Wife on 30 July 2019 and 15 November 2019; and
- (d) Morgan Stanley account: valued at US\$51,071.68 (\$67,414.62), based on the sum of the shares sold by the Wife on 9 September 2019, 2 October 2019, and 1 November 2019.

8 From January 2020 to June 2020, the Wife sold some of her shares to a total of US\$102,000 (around \$134,640) but that was after the interim judgment. Therefore, as at the date of the interim judgment, those assets were part of the matrimonial pool. The Wife neither disputes the value nor the fact that the shares were only sold after the interim judgment. Her riposte is that she had to liquidate the shares because the Husband refused to pay maintenance for her and the child, or to purchase the new house in Florida for her and the child to live in — but maintenance for the Child is a separate matter and does not affect my decision that these shares were part of the matrimonial assets.

9 Having had sight of the Wife's affidavit of asset and means, I find that the Wife's expenses of \$5,100 (including her payment for the Florida Property mortgage) to be reasonable expenses for the period of December 2019 to September 2020, when she was renting. Since the Husband is occupying the Florida Property, she would need to rent another place for her and the Child. She stopped renting from September 2020, when she bought her own home in Florida. It would not be fair to the Husband that the mortgage payment for this new house is accounted for in these proceedings, since the new house would be in the Wife's name and the Husband has never agreed to that purchase. Hence, from October 2020 to November 2021, the expenses excluding the rental expenses amount to \$97,200. Hence, for the purpose of determining what forms part of the matrimonial assets, and their value, I will deduct the expenses from the disposal of the IRA shares, and add back \$46,000 for the Janus IRA shares; I will also add the C&W shares and the Morgan Stanley shares back to the matrimonial pool.

10 As for the Wife's salary and bonus, which amount to a total of \$221,875.66, the Husband claims that the Wife had concealed them. But they are in plain sight, to be found in the Wife's Citibank bank statements. I am not minded to add them back to the matrimonial pool, as what was in the Wife's Citibank account has been factored in. On the Wife's jewellery, the Wife accepts that the total amount amounts to US\$7,850 (\$10,362).

11 The Husband also argued that their three horses, Puffin, Henri and Sammi, should form part of the matrimonial pool because they were purchased using joint funds. However, as these are horses for the Child's equestrian training, and the Husband has not provided any evidence of the value of the horses, except their purchase price, which is not indicative of their value, I will not take them into account for the purpose of matrimonial asset division. They can be considered trust items for the benefit of their daughter who is still riding them. No one knows for how long, nor how long the horses can continue. I am certain that unlike motorcars, they are unlikely to have any antique value. It is more likely that the parties are going to end up quarrelling over the costs of putting them to pasture.

12 As for the Husband's assets, the Husband used to own shares in Microsoft. The Wife claims that as at 29 February 2020, there was a balance of US\$25,923.34 (\$34,218.81) in the Husband's account, which has been liquidated. The Husband should therefore account for the same. But the Husband claims that he had to sell the shares to support his living expenses. Based on the Husband's affidavit of assets and means, I find that \$34,218.81 would have been used for his reasonable expenses. Thus, I exercise my discretion not to include this in the pool of matrimonial assets.

13 The figures I have adopted in the figure below are based on the parties' Joint Summary Table. In the light of my findings regarding the assets held in parties' sole names, the total value of the matrimonial asset pool is:

S/N	Manner of Holding	Asset	Net Value / in SGD
1.	Joint Names	Matrimonial home	2,889,130.77
2.		Florida Property (net value after mortgage payment)	637,183.28
3.		BBVA Account	\$1,915.08
Total assets in joint names			\$3,528,229.13
1.	Husband's Name	Car	26,400.00
2.		UOB Bank account	9.50
3.		Citibank Bank account	(933.73)
4.		IRA (US Retirement Account)	39,645.74
5.		CPF (Ordinary Account)	193,323.48
6.		CPF (Special Account)	131,858.28
7.		CPF (Medisave)	58,655.26
Total assets in the Husband's Name			\$448,958.53

1.	Wife's Name	Citibank Checking Account No. ending 2628	361.27
2.		BBVA Checking Account No. ending 2468	201.00
3.		CPF Ordinary Account	6,079.98
4.		CPF Special Account	2,080.78
5.		CPF Medisave Account	4,067.84
6.		Fidelity - Janus IRA	46,000
7.		Fidelity / Jones Lang LaSelle 401k	1,091,826.44
8.		Fidelity / C&W	104,456.59
9.		Jones Lange LaSalle Equity/ Morgan Stanley	67,414.62
10.		Jewellery	10,362
Total Value of Wife's Assets			\$1,332,850.52
Total Value of Matrimonial Assets			\$5,310,038.18

14 There is no dispute that since they have fully paid off their US and Singapore income taxes, their total liabilities would be \$132,643.32. Hence, the total value of the matrimonial assets less the liabilities would be \$5,177,395.

15 I turn now to address the issue of parties' respective direct and indirect contributions. The Husband submitted that there should be an equal division of assets. The Wife sought 30:70 in her favour because she had contributed more, financially and non-financially.

16 In terms of direct financial contribution, the Wife's counsel submits that the Wife had always deposited the full amount of her salaries into the joint account until October 2018, when she opened her own Citibank account, and it was the Husband who determined how their joint incomes would be used for household expenses since he managed the household finances. The Husband, however, claims that the Wife started crediting her salary into a separate account in October 2018, without his knowledge.

17 For the matrimonial home, the Wife's claim is that this was paid for from their joint account, where their salaries and funds commingled. Hence, the Wife's counsel submits that the direct financial contribution was 70:30 as between the Wife and Husband, in accordance with the ratio of their respective incomes. The Wife was more consistently employed than the Husband, and earned substantially more during the marriage. The Wife relied on a report from a US certified public accountant, who reviewed parties' tax documents between 1999 and 2019. He reports that the Wife earned a total of US\$4,786,524, and the Husband, US\$2,173,406.47. The Wife claims that she also cashed out part of her Morgan Stanley stock to make the down payment of \$56,545.50 in 2007. For the Florida Property, she had used \$75,767.44 out her stock holdings towards the down payment on 31 May 2011.

18 As for indirect contribution, the Wife claims that throughout the marriage, she held higher paid jobs than the Husband, and her entire salary was deposited into the joint account, which was used

for their living expenses, paying for their helper, and their holidays and trips. The Husband, however, was uncommitted to holding down a job despite his qualifications. In addition, the Wife claims that the Husband had refused to pay for the Child's maintenance since May 2019. As a result, she has been bearing the Child's living expenses alone. She also claims to be the primary caregiver of the Child, supporting the Child's passions and ambitions in equestrian sports, while the Husband was less involved in the family's activities.

19 The Husband's position on the division of matrimonial assets is that it should be a 50:50 split. The Husband agreed that this accountant's report was reflective of parties' respective incomes, but he disagrees that this would be reflective of their respective contributions to the household. For the matrimonial home, he claims that they contributed equally for the 20% down payment of \$240,000. He also claims that he had paid for 100% of the monthly mortgage, with money from his UOB account where his salary was credited to. Thus, he should be entitled to 75% of the proceeds of sale from the sale of the matrimonial home. For the Florida Property, he claims that this was financed in equal shares. As for the mortgage payments, he says that he would usually transfer funds from their Citibank joint account (XXXXXX1577) to the US BBVA account (XXXXXX0422) to pay. Since November 2019, parties bore the mortgage payment equally.

20 Both the Matrimonial Home and the Florida Property were financed using the joint account of the parties. But since December 2020, the Wife stopped contributing her half-share of the mortgage payment of the Florida Property as the Husband denied her access to the property. The Wife claims that the financing of the Florida Property was not borne equally. The down payment was paid using with the cashing of her stock in the amount of \$75,767.44, while the remaining was from the joint account. She adds that it was only from November 2019 that they contributed to the monthly mortgage in equal proportions. Prior to that, the monthly mortgage was paid using the joint account. The Husband denied the Wife's allegation that he denied her access to the Florida Property, as he had told the child that the child would always be welcome to stay with him in the Florida Property. As a result of the Wife's failure to contribute to the monthly mortgage payments, he had paid a total of USD\$3,610 for the property as at January 2021.

21 I will now decide what they contributed, and how it should best be apportioned, with fairness being the guiding principle. I will first determine the parties' direct contributions relative to each other, having regard to the amount of financial contribution each party made towards the acquisition or improvement of the matrimonial assets. Secondly, I will determine parties' indirect contributions relative to each other, having regard to both financial and non-financial contributions. The overall contributions by parties would be based on an average of the two ratios, but adjustments have to be made for the direct and indirect contributions. Other relevant factors include the duration of marriage, and the relative income of the parties. The court often has to take a broad-brush approach especially when it is not possible to account for every single item in the family's account book. And that is certainly the case here because in the course of their twenty-year marriage, they have mostly used their joint accounts for both the acquisition of matrimonial assets, and for the family's expenditure.

22 In terms of direct financial contribution, there is no evidence on either side as to how they each contributed to the down payments of the two properties. The Wife claims that she has sold off her shares to pay for the down payments. But there is no evidence that the sale proceeds from the shares were in fact used for the down payments. Similarly, there is no evidence to back up the Husband's claim that he paid for 100% of the mortgage payments for the matrimonial home.

23 The mortgage payments for the matrimonial home in Singapore were made from their joint account from October 2007 until 2017. After September 2017, mortgage payments were made using the Husband's UOB account where he deposited his salary. The Wife's suggestion that there was

some commingling of funds is not without basis; she pointed to seven transactions in 2017 and 2019 amounting to \$34,000 where funds were transferred from parties' joint account to the Husband's UOB account. For the year 2018, I accept that the mortgage payments were made using the Husband's monies. For the Florida Property, the evidence indicates that the parties paid equally for the mortgage starting from November 2019. Prior to that, it was paid using their joint account in the US.

24 Taking into account parties' income difference, the lack of evidence of how the down payments were made, and that the Husband had contributed to the mortgage payments of the matrimonial home, I incline to a 60:40 ratio for parties' direct financial contribution, in favour of the Wife.

25 In terms of indirect contributions, the Wife, who is better paid than the Husband, has contributed more to the joint account, which was used for the family's expenditure, including their helper, the Child's living expenses and *etc.* The Husband pointed out that the Wife had spent more, which led to his decision to take up the loans in his sole name to pay back the Wife's credit card bills. As for non-financial contributions, both have contributed to the upbringing of their Child. When they first moved to Singapore in 2002, the Husband was unemployed and took care of the Child. The Wife was also active in coordinating in the Child's schedule to attend different classes, preparing the Child for the equestrian competitions. Although there is no clear evidence as to who the primary caretaker was, I can infer from the little there is, that the daughter seemed closer to the Wife. It can thus be inferred that the Wife contributed at least more than the Husband in the bringing up of their child.

26 In light of the above, I am inclined to a 60:40 ratio in terms of indirect contributions. Though the Wife is better paid, the Husband also contributed substantially to both parties' tax liabilities and household expenses. A 60:40 ratio would broadly capture their respective contributions.

27 I therefore hold that the overall ratio of their respective contributions is 60:40. This would mean that the Husband is entitled to \$2,070,958, and the Wife to \$3,106,437. Parties are to retain assets in their sole names, which leaves the assets in their joint names for division, namely the sale proceeds of \$2,289,130.77 from the sale proceeds of the matrimonial home, and the Florida Property with an estimated value of \$637,183.28. Taking into account the assets they retained in their sole names, and the sale proceeds they have withdrawn (\$600,000), the ratio after they retained their individual assets is around 53:47 in favour of the Wife. I shall give effect to parties' respective entitlement in the following manner:

(a) With respect to the remaining sale proceeds of \$2,289,130.77, parties are entitled to a 60:40 split. The Wife would receive \$1,373,478.46, and the Husband \$915,652.31.

(b) As for the Florida Property, since the Husband is residing in the said property, he could either pay the Wife \$255,000, which is around 40% of the value of the Florida Property, for the latter to transfer her shares in the Florida Property to him, with him bearing the expenses of the transfer. Or the house should be sold in open market, and the proceeds to be divided 40:60, in favour of the Husband.

28 As for maintenance for the Wife, the Wife asked that the Husband pay a monthly sum of \$1,500 for five years from the date of this judgment until the Wife turns 65 years old. The Husband, however, objects to this, as the Wife is gainfully employed while the Husband is not, and the Wife is likely to earn significantly for the foreseeable future. I agree with the Husband that this is not a case where the Wife has no earning capacity, and thus no maintenance for the Wife is needed.

29 On the issue of maintenance for the Child, there was a court order dated 23 February 2021 which states that the Husband shall transfer a sum of \$63,727.30 to the Wife to be utilised for the

Child's expenses. The Wife claims that the Husband has failed to pay for the said sum, and as a result, the Wife has been the sole provider for the Child.

30 For the maintenance of the Child, the Wife asks that the Husband contribute S\$2,189.50 per month towards the Child's expenses until she concludes her four-year tertiary education. Further, instead of paying for the Child's maintenance monthly, the Wife's counsel submits that parties shall each pay one lump sum of \$100,000 (estimated to be the Child's expenses for 48 months), to be taken from their respective shares of sale proceeds from the matrimonial home, to the Child's account. In addition, the Wife asks that the Husband pay the maintenance for the Child for the following period:

- (a) May 2019 to December 2020, in the sum of \$106,212, being half of the Child's total expenses of \$220,658 spent during her gap year in New Zealand; and
- (b) January 2021 to August 2021, in the sum of \$17,516, for the Child's expenses.

31 With respect to the child's gap year expenses amounting to \$220,658, I note that the Husband has previously agreed to pay for 30% of the expenses in SUM 218 of 2020. Although the Wife should have applied for enforcement of the consent order, I would deal with all matters relating to maintenance of the Child to put this protracted dispute to an end by making the following orders:

- (a) The Husband is to pay for 30% share of the child's gap year expenses from May 2019 to December 2020 (\$63,727.30);
- (b) The Husband has had sight of the Child's expense table, and mostly challenged the expenses relating to the horses. I will deduct items that are not entirely supported by affidavit evidence. This includes the telephone bills and the medical expenses. The telephone bills amounting to \$160 per month is excessive for one person, and should be shared between the Wife and Child. The Wife also did not substantiate how the medical expenses amounted to \$600 per month for the Child. Though the expenses for the horses amount to more than \$2,000, I do not think them excessive in light of the contemporaneous record the Wife exhibited for the livery costs, and since the Husband expressed his support for the Child's equestrian activities. Hence, based on the value provided by the Wife which is \$4,361, I shall deduct a total of \$530 from the expenses. This would amount to \$1,915.5 payable by the Husband; and
- (c) I will backdate the maintenance order to January 2021. The Husband is to reimburse the Wife for his share of the Child's expenses from January 2021 to the date of this Judgment. Hence, the Husband is to reimburse the Wife for January 2021 to October 2021, which amounts to \$19,155.
- (d) I am of the view that parties should deposit half of the Child's future expenses into the Child's bank account directly. This continues until the Child finishes her tertiary education. As the Child has commenced tertiary education, this will be the future expenses for the next four years, which would amount to \$91,944. This would be borne by parties equally.

32 I make no order as to costs.