Chan Teck Hock David v Leong Mei Chuan
[2002] SGCA 3

Case Number : CA 600059/2001,600064/2001

Decision Date : 16 January 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Davinder Singh SC, Harpreet Singh and Tang Li-Wen Shirin (Drew & Napier LLC) for the appellant in CA 600059/2001 and the respondent in CA 600064/200; Tan Kok Quan SC, Chin Li-Yuen Marina and V Kanyakumari (Sim Hill Tan & Wong) for the respondent in CA 600059/2001 and the appellant in CA 600064/2001.

Parties : Chan Teck Hock David — Leong Mei Chuan

Family Law – Custody – Education of children – Wife having custody, care and control of children – Whether need to consult husband on children's education

Family Law – Maintenance – Amount of maintenance – Whether award for maintenance of wife and children inadequate or excessive – Factors to be considered – ss 68, 69(4) & 114(1) Women's Charter (Cap 353, 1997 Ed)

Family Law – Matrimonial assets – Division – Status of non-statutory stock options – Whether stock options constitute matrimonial assets – Distinction between vested and unvested stock options – Whether vested but unexercised stock options and unvested stock options constitute matrimonial assets – 'If as and when' order in respect of unvested and/or unexercised stock options – ss 112(5)(e) & 112(10) Women's Charter (Cap 353' 1997 Ed)

Words and Phrases – 'Matrimonial asset' – s 112(10) Women's Charter (Cap 353, 1997 Ed)

Judgment

GROUNDS OF DECISION

1. These are two related appeals brought by both parties who were husband and wife before the dissolution of their marriage. For convenience, we shall continue to refer to them as husband and wife. They have appealed against the orders of the High Court relating to custody, maintenance and the division of matrimonial assets between them following the grant of a decree nisi. The wife is asking for a greater share of the matrimonial assets and an increase in maintenance and the husband for a reduction of the maintenance awarded and for a say in the education of the children.

Background

2. The parties were married on 21 September 1983. Some thirteen years later, on 10 February 1997, the husband moved out of the matrimonial home. In fact, for sometime before, the wife had already suspected the husband of having an extra marital affair. On 21 November the same year, the wife petitioned for divorce on the ground of the unreasonable behaviour of the husband. On 29 July 1998, the wife filed a supplemental petition alleging adultery on the part of the husband as a further ground for divorce. Eventually, the petition was heard on an uncontested basis. Decree nisi was granted by the Family Court on 24 September 1998 dissolving their marriage.

3. The husband joined Dell Computer Corporation (Dell), a Delaware corporation in August 1996. From time to time he received agreements from Dell granting him stock options in the company. Under each agreement the husband was granted what was called non-statutory stock options ('stock

options') to purchase a certain number of Dell's shares which options would vest in the husband on some future dates, e.g., 1/5 on each of the first, second, third, fourth and fifth anniversary of the date of the agreement. Even where an option had vested, there were also other restrictions placed on the exercise of such options, e.g., there was a final exercise deadline and further, the company could determine that during certain periods the options could not be exercised.

4. The stock options which are the subject of contention between the parties fall under the following three situations:-

(i) stock options which were vested and exercised by the husband by the date of the decree nisi, with profits made;
(ii) stock options which were vested in the husband but not yet exercised on the date of the decree nisi;
(iii) stock options which were not vested in the husband on the date of the decree nisi.

For ease of reference, they will hereinafter be referred to as the first category, second category and third category stock options respectively.

5. The Family Court, upon the hearing of ancillary matters, made a number of orders. The pertinent ones are the following:-

(i) The wife shall have custody, care and control of the three children of the marriage with reasonable access to the husband;
(ii) The husband shall pay maintenance for the three children in the sum of $5,000 each and for the wife in the sum of $1,000;
(iii) With regard to the first category stock options the wife shall be entitled to 15% of those options and consequently of the profits made therefrom. However, there is to be no division of the second and third categories of stock options.

> We should add that the wife was also given 15% of the Dell shares which the husband had bought in the open market as well as those bought under the Employee Stock Purchase Plan. For ease of reference, Dell's shares which were so bought by the husband will hereinafter be referred to as the "purchased Dell shares".

Decision below

6. Both the husband and wife were dissatisfied with the above orders of the Family Court judge (FC judge). The husband appealed to the High Court against the custody order only to the limited extent that he should be given a say in the children's education, i.e., his consent be obtained. He also appealed against the quantum of maintenance which he was required to pay for the wife and children. The wife's appeal related to the quantum awarded for maintenance as well as the division of the purchased Dell shares and the three categories of stock options.

7. The High Court judge (HC judge) varied the maintenance sum ordered by the Family Court by reducing the total amount slightly to $15,000. The amount for each child was reduced to $4,000 and that for the wife increased to $3,000. The judge also granted the wife a 15% entitlement to the second and third categories of stock options provided that the agreements granting those options were executed before the date of the decree nisi.

Issues before us

8. Before us the appeals of both the husband and wife touched on the following three areas:-

(i) Dell shares and stock options.

(a) Are the second and third categories of stock options "matrimonial assets" within the meaning of s 112 of the Women's Charter?

(b) What is the fair percentage to be awarded to the wife in respect of the purchased Dell shares and the profits made from the exercise of the first category stock options?

(c) What is the fair percentage to be awarded to the wife in respect of the second and third categories of stock options (if they are matrimonial assets)?

(ii) Maintenance: what is the correct quantum of maintenance which should be awarded to the wife and the children? Furthermore, should the maintenance awarded be made payable from February 1996?

(iii) Education: should the husband be given a say in the education of the three children,

(a) in the event that the wife proposes to send any of the children overseas for education, and,

(b) on the proposed course and institution of study overseas of each child.

Education

9. We shall take the third issue first as it can be disposed of shortly. In refusing to accord the husband a say in the education of the children, the judge below felt that in view of the acrimony between the parties, it was "unrealistic to compel the wife to consult and seek the prior consent of the husband on the children's education. That would be a recipe for disaster."

10. While we recognise that there is considerable bitterness between the parties, having regard to the way they have fought over ancillary matters, we do not think that per se is a sufficient reason to deny the father (the husband) a say in the education of the children who are now aged 16 (Cheryl, a girl), 12 (Sean, a boy) and 11 (Valerie, a girl). It is clear that there will not be anything serious for the parties to discuss until the time comes when each of the children is about to finish his/her secondary or pre-university education here. Until then, they will presumably follow the normal course which is being pursued by students here.

11. Before us, that is indeed what the husband seeks, namely, that his consent be sought as to (i) whether a child should be sent for overseas education and (ii) the course which the child should pursue and the institution of study. If, for whatever the reason, it becomes necessary to send a child for further education abroad, we find it hard to deny the father a say in the matter, especially when he is expected to bear the financial burden for the education.

12. Furthermore, it is our opinion that the interest of the children demands that both parents should be involved in determining what is best for them in that regard. While as between the parties there is bitterness, it does not necessarily follow that this would spill over in determining the educational needs of the children. The court should not decree an arrangement which gives an impression to a child that either the father or mother does not care about his welfare. As we have no doubt that both parents have and will continue to have the children's interest at heart, we do not think that there would be any insurmountable difficulties. In the unlikely event that an impasse should arise, the assistance of the court could always be sought. We would add that there is an aspect of the case which demonstrated that the parties had not completely allowed their heart to rule. This is the question of physical care and control. Upon the Family Court's ruling that custody, care and control of the children should go to the wife, the husband did not pursue his claim for custody any further. Good sense prevailed. All he is now seeking is a say in their further education.

13. We, therefore, disagree with the courts below that the father should be denied his parental rights as to the education of the children. We hold that the father should be consulted and his consent obtained in relation to the two aspects mentioned in 11 above. If eventually there is really an impasse, the assistance of the Family Court could always be sought.

Division of matrimonial property

14. We now turn to the question of division of matrimonial assets, and specifically in relation to the stock options. To recap, the Family Court granted the wife 15% of –

> (i) the purchased Dell shares consisting of 111,100 shares which the husband purchased from the open market and 10,821 shares bought under the Employee Stock purchase plan;
>
> (ii) the gain of US$2,573,328 (less tax) which the husband obtained upon the exercise by him of the first category stock options.

It did not grant to the wife anything in relation to the other two categories of stock options.

15. The High Court varied this aspect of the order and granted the wife a 15% entitlement to all the categories of stock options. The judge was of the opinion that "matrimonial assets" are not confined to tangible assets in as much as a debt owed to a spouse would be a matrimonial asset if the debt was acquired during the marriage.

16. Section 112(10) of the Women's Charter defines "matrimonial assets" to mean –

> "(a) any asset acquired before the marriage by one party or both parties ….
>
> (i) (not relevant)
>
> (ii)
>
> (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage."

17. It will thus be seen that the term "matrimonial assets" has been given a very wide meaning by

the legislature to include any asset of any nature, subject only to the specified exception. Accordingly, with regard to the second category stock options, we do not see how it can be disputed that a stock option which is vested is a matrimonial asset as it confers on the optionee the right to purchase a specified number of shares at a specific price. The difficulty is with the third category stock options.

18. In Singapore, the question of the status of stock options has yet to be addressed by the courts here. However, in the USA, where it would seem that the scheme of granting stock options was first introduced, there is a fair amount of legal material on it. But the approaches of the US courts are far from consistent. We will now examine some of them.

19. As a general observation,it may be said that the object of a stock option scheme is really for the purpose of attracting and retaining the services of key employees of a company by providing an incentive to encourage and stimulate increased efforts by them, so that if the company does well the employees will also benefit. But it would appear that there is no uniformity as to the terms of such a scheme. As King J of the California Court of Appeal said in *Maria Hug v Paul Hug* 1984 Cal App LEXIS 1925:-

> Treatises which describe employee stock options in the context of general corporations law strongly suggest that contractual rights to such benefits vary so widely as to preclude the accuracy of any but the most general characterization of them. Thus, there is no compelling reason to require that employee stock options must always be classified as compensation exclusively for past, present, or future services. Rather, since the purposes underlying stock options differ, reference to the facts of each particular case must be made to reveal the features and implications of a particular employee stock option.

20. In *John Hall v Eileen Hall* 1987 NC App LEXIS 3521, the husband was on 8 March 1979 granted options to purchase 1,500 shares, of which 500 each were exercisable on 8 March 1981, 8 March 1983 and 8 March 1985 respectively. As of the date of separation, the husband was entitled to exercise his options to purchase 1,000 shares. On 12 March 1981 the husband was granted rights to purchase 1,200 additional shares. As of the date of separation, only 400 options could be exercised. On 28 April 1982, the husband received further options to purchase an additional 1,500 shares but none of which was exercisable as of the date of separation. Again, in March 1983, the husband received an option to purchase 1,200 shares, but none of the options was exercisable at the time of separation. In all, the husband was granted options to purchase 5,400 shares in his company, but at the date of separation he had a vested right to exercise options to purchase only 1,400 shares. At the date of the hearing of the divorce, the husband had not exercised any options to purchase any of the shares in the company. It should also be mentioned that in this case the stock options which were not yet exercised were subject to cancellation if the husband's services with the company were terminated for cause. The trial judge held that the stock options for all 5,400 shares were marital property. The husband appealed against that determination as none of the options had been exercised as of the date of the parties' separation; in the alternative he argued that at most only the options for 1,400 shares should be classified as marital property. The Appellate Court accepted this alternative contention. Martin J said –

> We believe that the approach most consistent with North Carolina's equitable distribution statutes is to classify stock options granted (to) an employee by his or her employer which are exercisable upon the date of separation or which may not be cancelled, and which may, therefore, be said to be vested as of the date of separation, as marital property. Options which are not exercisable as of the date of separation and which may be lost as a result of events occurring thereafter, and are, therefore, not vested, should be treated as the separate property

> of the spouse for whom they may, depending upon circumstances, vest at some time in the future. In our view, this rule more closely recognizes the purpose of stock options granted to an employee which are designed so that they vest and become exercisable over a period of time; such options represent both compensation [***21] for the employee's past services and incentives for the employee to continue in his employment in the future. Those options which have already vested are clearly rewards for past service rendered during the marriage, and, therefore, are marital property; options not yet vested are in essence, an expectation of a future right contingent upon continued service and should be considered separate property.

21. However, in *Barbara Green v Michael Green* (1985) Md App LEXIS 452, the options under two plans were irrevocable and unassignable but they were to be exercised over a period of five years on each anniversary date. The options could be exercised by the employee, even if his employment had been terminated provided such termination occurred not more than 90 days before the date of exercise. The options could also be exercised by the employee's estate. At the time of the trial, some options had been exercised and it was not disputed that the shares obtained thereby were marital property. But there were some options which were exercisable at the time of trial but not yet exercised and some were only exercisable after the trial. The trial court took the view that both the vested and the unvested stock options were valueless as they had no "fair market value". The Court of Special Appeals of Maryland, while recognising that an unassignable and unsaleable option had no fair market value, nevertheless was of the opinion that it was an economic resource, comparable to pension benefits, on which a value can be attributed. The appellate court did not differentiate between the vested stock options and the unvested options. The approach taken by the court was set out in the following passage of Karwacki J:-

> As with pension plans, restricted stock option plans like those we consider here are a form of employee compensation, providing to the employee the right to accept within a prescribed time period and under certain conditions the corporate employer's irrevocable offer to sell its stock at the price quoted. If the employer attempts to withdraw that offer, the employee has "a chose in action" in contract against the employer. We therefore conclude that stock option plans, like other benefits in an employee's compensation package, constitute "property" as used in the definition of marital property. Furthermore, because the plans in the case sub judice granted stock options to the appellee while he was married to the appellant, those options were "acquired" during the marriage. See *Harper v Harper*, 294 Md. 54, 448 A2d 916 (1982). The stock options are therefore marital property under the terms of @8-201(e) and as such are subject to valuation and equitable adjustment in the form of a monetary award.

22. It may be noted that in Maryland, USA, the term "marital property" was defined to some extent like how the term "matrimonial assets" is defined in our Women's Charter. There, it was defined as "the property, however titled, acquired by one or both parties during the marriage" but it did not include property –

> "(i) acquired before the marriage;
> (ii) acquired by inheritance or gift from a third party;
> (iii) excluded by valid agreement; or
> (iv) directly traceable to any of these sources."

23. In *Michael Grich v Tamara Grich* (1996) Conn Super LEXIS 3451 the object of the stock option plan was stated to be to provide key employees of the company additional incentives to continue and increase their efforts on the company's behalf and to remain in the employ of the company. It was designed to increase the ability of the company to attract and retain individuals of exceptional skill. The options could only be exercised by the optionee while he remained employed by the company.

The Superior Court of Connecticut found that the husband "could not have arrived at his position at the company as a 'key employee' without the prior concentration of his time, energies, and labour in the computer industry, and from the evidence his concerted effort was aided significantly by the wife who helped to further his career." It held that the unvested stock options were part of the marital estate and were subject to equitable distribution between the spouses.

24. In contrast, in *Bonnie Balanson v Richard Balanson*, 2001 Colo LEXIS 437, the Supreme Court of Colorado, reversed a decision of the Colorado Court of Appeals relating, inter alia, to the determination of the status of certain stock options. Under the Colorado Uniform Dissolution of Marriage Act, a court must make an equitable distribution of marital property after considering all relevant factors. The State Supreme Court held that an employee stock option constituted property for purposes of dissolution proceedings only when the employee had an enforceable right to the options. To determine this question, the court must look to the terms of the contract granting the options. It said:-

> "If an employee has a presently enforceable right under the contract, regardless of whether the options are presently exercisable, such a right constitutes a property interest rather than a mere expectancy … if the contract granting the options indicates that they were granted in exchange for present or past services, in the situation for instance, where an employer offers stock options as a form of incentive compensation for joining a company, the employee, by having accepted employment, has earned a contractually enforceable right to those options when granted, even if the options are not yet exercisable. On the other hand, if the options were granted in consideration for future services, the employee 'does not have enforceable rights under the option agreement until such time as the future services have been performed'".

25. In the *Balanson* case, the parties did not dispute the trial judge's finding that the husband's stock options were granted in exchange for future services. The record indicated that the husband had only completed the employment required to enforce his right to exercise 62,500 shares. On this basis, the trial judge determined that only 21% of the options constituted "property". The State Supreme Court held that the Court of Appeal erred in holding that the husband had earned the right to exercise additional options over and beyond those shares.

26. In *Hahn v Hahn* (1995) Ind Appeal LEXIS 1137 the Circuit Court found that only the vested stock options granted to the husband by his employer that were exercisable upon the date of filing of petition, or that became exercisable before the entry of the decree of dissolution, were marital property subject to division. This decision was affirmed by the majority of the Court of Appeals of Indiana. They held that this determination was most consistent with the statutory scheme. However, the minority, Chezem J, preferred the views taken, inter alia, in *Hug v Hug* and *Green v Green* and held that accrued but unmatured or unvested stock options were marital property which were subject to division upon dissolution of marriage. In particular, he concurred with the approach adopted by the Washington State Supreme Court in *Re Short* (1995) 125 Wash 2d 865, 890 P.2d 12 which distinguished between stock options granted for present employment services and options granted for future employment services. The question of vesting was not an issue in determining ownership rights upon marital dissolution. He was of the opinion that the gravamen should be "whether the options (were) present, albeit deferred compensation or future compensation."

Our determination

27. From the above review it can be seen that there is no uniformity in the US courts' treatment of unvested or unmatured stock options, with *Hall v Hall* and *Hahn v Hahn* deciding that for the stock

options to be treated as marital property they must be vested in the employee-husband and exercisable by him and with *Green v Green* and *Grich v Grich* giving it a wider meaning to cover even unvested stock options*. Re Short* propounded the criterion by asking whether the stock options were for past/present service or for future services. But it does appear that there was a concurrence of views in all the cases that even in respect of the unvested stock options, the employee did have a "chose in action".

28. Halsbury's Law of England, 4th Edition Reissue, Vol 6, para 8,

listed "an option to purchase shares" as a chose in action. Of course, a contract to grant an option upon the fulfilment of a condition is one step removed from having a present option to purchase shares. Still, so long as the grantor may only revoke the agreement to grant an option with cause, the grantee under the agreement has a valuable right, a contractual right, and that is an asset, even though its exact value may be hard to determine. We agree with the HC judge that one should differentiate between the question of the existence of an asset from the difficulties of evaluating that asset.

29. Having regard to the very wide definition which is given in s 112 to the term "matrimonial assets" it is our opinion that it encompasses a "chose in action", including an agreement which gives an employee-husband the right to subscribe to shares, subject to his continued service with the company for a specified future period.

Apportionment

30. Turning now to the question of apportionment, the wife seeks a 30% of the purchased Dell shares instead of only 15% granted by the Family Court. Like the matrimonial home, she says she should be given a 30% share representing her indirect contribution. She also seeks 30% of the profits obtained by the husband from the exercise of the first category stock options.

31. The way the judge below differentiated between the matrimonial home and the stock options was this. The matrimonial home was acquired when the marriage had not broken down. However, the same clearly cannot be said about the stock options, because even at the time of the first agreement to grant stock options to the husband on 12 August 1996, the marriage was already on the brink of breakdown. It was barely six months later that the husband left the home in February 1997. Indeed, from 1994, when the husband was with his previous employer, Quonum, the wife had harassed him at his work place because of her suspicion that he was indulging in extra marital activities. So, instead of helping him in his work, she was doing just the reverse. These were the considerations which influenced the FC judge and HC judge in awarding a lower percentage to the wife, instead of 30%.

32. However, in this connection, the HC judge noted a significant positive contribution of the wife. This was the fact that while the husband was in Hong Kong pursuing his career with Dell, she was taking care of the children in Singapore. He further observed that in relation to the marital problems between the parties, the husband was not "as blameless as he would like the court to think." We have serious doubts whether just because the wife was anxious about her husband's alleged extra marital affairs, and had threatened to contact the Chairman of Dell, her contribution to the well-being of the family should be deemed any less and thus her share to the stock options should thereby be reduced. The fact remains that, notwithstanding her threats, she did not expose the alleged extra-marital affairs of the husband to the Chairman of Dell.

33. More importantly, while he was working in Hong Kong, the wife was maintaining the home here for the children and taking care of them. It seems to us that her contribution to the family was largely

no different from what it was before disputes between them arose. It is probably true to say that because of her care for the children here, the husband was able to work in Hong Kong and focus on his job. So while he was away, she was shouldering the burden of taking care of the home and family all by herself, even though she had a maid to assist her.

34. As regards the threats which was hanging over the husband's head, it seems to us that if there was in fact no basis for the wife's suspicion, he would not and should not have been concerned about them. However, if, in fact, what the wife suspected was true, then there would really have been cause for him to be concerned, but in that event, the blame must squarely fall on him.

35. Having said that, it appears to us that there is a need to further differentiate between the purchased Dell shares (111,100 Dell shares from the open market and the 10,821 Dell shares under the Employee Stock Purchase Plan) which were bought and paid for by the husband and the profits already made on the exercise of the first category options on the one hand and the second and third categories stock options on the other. The funds for the purchased Dell stocks would probably have come from savings. Similarly with regard to the exercise of the first category options, the money required to exercise the options would probably have also come from savings. As we see it, for those purchased Dell shares and the profits obtained from the exercise of the first category stock options, the wife's indirect contributions were largely the same as those for the matrimonial home. So for those shares/profits we hold that the wife should similarly be entitled to 30%.

36. As for the second and third categories stock options, we noted the arguments of the husband that there must be certainty of ownership before anything could be treated as a matrimonial asset which is divisible; the situations of these two categories of stock options are fraught with some uncertainties. While we recognise these points, the fact remains that the husband was in possession of contractual rights under the stock options agreements. We would reiterate that the fact that there are difficulties in valuation or division does not render a contractual right any less an asset.

37. We would hasten to add that even as between the second and third categories of stock options, there is a need to differentiate between them. Whereas, in respect of the second category options, they were already vested (i.e., already earned), the same is not so in respect of the third category options. The husband had to continue rendering services to Dell beyond the date of the decree nisi to acquire the options. So in respect of those third category stock options, they were given not just for services rendered prior to the decree nisi but also for services to be rendered post the decree. Otherwise there would have been no necessity to post-date the vesting of options. In this regard, we would adopt the "time rule" advocated in *Maria Hug v Paul Hug* (supra) by the Court of Appeal of California. The effect of the rule is to treat only that portion of the stock options as matrimonial assets as is obtained by multiplying the stock options in question by the fraction obtained between the period in months between the commencement of the husband's employment with Dell and the date of the decree nisi as the numerator and the period in months between his commencement of employment with Dell and the date when the stock option was exercisable by him as the denominator. Only that portion of the third category stock options as so computed would be reckoned as matrimonial assets.

38. In view of the uncertainties, and the fact that the husband would have to make available funds required to exercise the option, there is probably justification to treat the second and third categories options differently from the first category (which options were really no longer options, as they had been exercised and profits made). Taking a broad view of things, we are not persuaded that the apportionment of 15% in respect of the second and third categories of stock options is so unreasonable (either being too high or too low) that this Court ought to intervene.

39. We note that in respect of the second and third categories stock options, the court below, recognising that the fact that either the stock options might not be exercised or might not vest in the husband, granted an "if as and when" order. Effectively, this approach, which is sanctioned under s 112(5)(e) of the Women's Charter, means that the division of these assets was to be postponed until the stock options were exercised and profits made. In our opinion, this is entirely fair and sensible. It recognises the special situation and does not accord any undue advantage to any party. A similar approach was adopted in *Green v Green* (supra).

Maintenance

40. We now turn to the question of maintenance for the wife. There were two interim maintenance orders. On 13 February 1998, there was a consent order for a global sum of $11,000. Again, by consent it was increased to $14,500 with effect from 15 August 1998 with the proviso that this order was without prejudice to the appropriate maintenance to be granted upon dissolution of marriage.

41. The starting point for the consideration of the question of the maintenance of a wife must necessarily be the earnings of the parties. The other relevant factors which the court should take into account are listed in s 114(1) of the Women's Charter. The wife was, at the time of the hearing before the court below, earning a basic salary of $4,000 (excluding bonuses) as a Private Client Advisor (from August 1996) with Kim Eng Securities (Pte) Ltd. Before that, in 1993, she was for a short period, the Regional Treasurer at Carnaud Metal Box (Pte) Ltd but she resigned apparently to look after their three children.

42. The husband was, at the time of the hearing before the Family Court, employed by Dell. There was some conflict in evidence as to the time he commenced employment with Dell. The judge below seemed to think it was from January 1997 and on our part we would accept that. He left Dell at the end of September 2000, after the hearing before the Family Court. For the year April 1999 to March 2000 he earned the equivalent of about S$33,200 per month, plus S$24,600 per month as bonus. In addition, he made huge profits from the exercise of the first category stock options.

43. The wife seeks to have the total maintenance sum awarded by the High Court enhanced to $20,000, so that she and the children will each obtain $5,000 as maintenance. She argues that she and the children should continue to enjoy the same standard of living as they did before the breakdown of the marriage. Though the wife is now unemployed, she was at the time of the order of the Family Court, earning a basic salary of $4,000 with Kim Eng Securities.

44. Based on the assets awarded to the wife by the Family Court, as varied by the High Court, it is estimated that they were worth some $3.4 million, of which more than half is in cash. In the light of our decision herein that her entitlement to the purchased Dell shares and the profits made on the first category stock options should be doubled to 30%, the total assets which she would get will be increased significantly. Besides, she would also be able to obtain an income from the assets. Taking these circumstances into account, we do not think the award of $3,000 per month as maintenance of the wife could be considered to be either inadequate or excessive. While we are aware that she had the capacity to earn substantial salary, it does not appear likely that she would be able to return to full-time employment, having to take care of three growing children. The highly paid jobs which she earlier held had required her to travel frequently.

45. Turning next to the question of maintenance for the children, s 68 of Women's Charter provides that a parent is under a duty to maintain his children with "such accommodation, clothing, food and education as may be reasonable having regard to his or her means and status in life." Under s 69(4),

one of the factors which the court shall take into account is also the standard of living previously enjoyed by the child. The wife had, in her affidavits, set out the needs of the children, some of which are rather exaggerated. We are not persuaded that $4,000 per month for each child is so inadequate as not to provide the child with a standard of living which is close to that enjoyed by him/her before the breakdown of the marriage.

46. Finally, the wife seeks to back-date the order on maintenance from February 1996 on the ground that it was the time the husband first ceased to provide for her and the children. The HC judge was not satisfied that the wife has established that the husband had failed to maintain her between February 1996 and 15 February 1998, the date of the first interim order. The husband only left the matrimonial home in 1997 and it is inconceivable that he did not support the family from February 1996. Perhaps his support might not be adequate from her point of view. But to say that there was no support at all from the husband is quite another matter. We are not minded to disturb this determination of the judge below.

Judgment

47. In the result, the appeal of the husband (CA 600059/2001) is allowed only to the extent that he is granted a say in the education of the children in so far as it involves overseas education, as we have held in 13 above.

48. The appeal of the wife (CA 600064/2001) is also allowed to the extent that, in respect of the purchased Dell shares and the profits made under the first category stock options, her entitlement thereto shall be 30% instead of 15%.

49. Both parties have succeeded only in part, and have failed in other respects. In determining how costs are to be apportioned, we have taken into account the issues which each party had raised and succeeded or failed and the extent to which work had to be done in relation to each issue. On this basis, and applying the principle of offsetting, we think that a fair order on costs would be to require the husband to bear of the costs of the appeal in CA 600064/2001.

50. The security for costs furnished by the husband in CA 600059/2001, together with any accrued interest, shall be paid out to the wife's solicitors to account for her costs in CA 600064/2001. The security for costs furnished by the wife, together with any accrued interest, shall be refunded to the wife or her solicitors.

Sgd:

YONG PUNG HOW
Chief Justice

Sgd:

L P THEAN
Judge of Appeal

Sgd:

CHAO HICK TIN
Judge of Appeal