ZO *v* ZP and another appeal
[2011] SGCA 25

Case Number	: Civil Appeals Nos 94 and 96 of 2010
Decision Date	: 25 May 2011
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Foo Siew Fong, Koh Tien Hua and Adriene Cheong (Harry Elias Partnership LLP) for the appellant in Civil Appeal No 94 of 2010 and the respondent in Civil Appeal No 96 of 2010; Chelva R Rajah SC (Tan Rajah & Cheah) and Yap Teong Liang (T L Yap & Associates) for the respondent in Civil Appeal No 94 of 2010 and the appellant in Civil Appeal No 96 of 2010.
Parties	: ZO — ZP

Family Law

[LawNet Editorial Note: These were appeals from the decision of the High Court in [2010] SGHC 364.]

25 May 2011

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

Introduction

1 This case concerned appeals by both the wife and husband against orders made by the trial judge ("the Judge") in respect of custody, care and control of the children of the marriage, maintenance and division of matrimonial assets (see *ZP v ZO* [2010] SGHC 364 ("the GD")).

2 The Judge had made the following orders with regard to the issue of custody, care and control (which includes access orders) (see the GD at [5]):

(a) The [wife] be granted sole custody, care and control of the three children of the marriage, subject to the following orders;

(b) Prior to any decision being made on the change of school, course of study or major education milestones, both parties shall consult the child, her teachers and each other, and shall agree to a decision, failing which either party is at liberty to apply to court within a reasonable time;

(c) The [wife] shall inform the [husband] of all meetings with the children's school teachers, children's performances and other school events to which parents may be invited and the [husband] is at liberty to attend them;

(d) The children of the marriage shall continue their catechism classes at [XXX] Church and the [husband] shall fetch the children from the [wife's] residence on the weekend when the children are with the [wife] to take them for their catechism classes and return the children to the [wife's] residence after the catechism classes;

(e) If it is the practice of [XXX] Church to issue reports to parents on the child's spiritual development, the [husband] is to promptly forward such reports to the [wife];

(f) The [husband] shall take the three children of the marriage for their regular checkups with the dentist and optometrist and the [husband] shall bear all costs associated with such checkups;

(g) The [husband] shall have reasonable access to the three children of the marriage as follows:

(i) Weeknights: one weekday night each week from 6.00 pm to 9.00 pm;

(ii) Weekends: alternate weekends from 5.00 pm on Friday to 8.00 pm on Sunday;

(iii) School holidays:

(A) PSLE marking days, National Day and March and September school holidays to be divided equally by mutual arrangement.

(B) June holidays: first two and a half weeks.

(C) December holidays: first three and a half weeks.

(D) The [husband] and [wife] are to alternate access from 2.00pm on Christmas Eve to 2.00pm on Christmas Day and from 2.00pm on Christmas Day to 2.00pm on 26 December.

(E) The [husband] and [wife] are to alternate access from 2.00pm on New Year's Eve to 2.00pm on New Year's Day.

(F) The [husband] and [wife] to share the Christmas week equally (from 2.00pm on Christmas Eve to 2.00 pm on New Year's Day and the handover of the children during the week shall be at 4.00 pm on 28 December).

(iv) Other public holidays to be alternated and access shall be from 6.00pm on the eve of the public holiday to 8.00 pm on the day itself.

(v) Parents' birthdays: children to be with respective parent on the day of his/her birthday.

(vi) Father's Day and Mother's Day: children to be with the respective parents.

(vii) If a child's birthday falls on a weekday when the [husband] does not have access, the [husband] shall have two hours of access after school from 5.30 pm to 7.30 pm. If the birthday falls on a weekend, the [husband] shall have access for four hours from 12.00 pm to 4.00 pm. If the birthday falls on the weekend when the [husband] has access, the [wife] shall have access for four hours from 12.00 pm to 4.00 pm on the day of the birthday.

3 In so far as the division of matrimonial assets was concerned, the Judge ordered that the assets be divided in the ratio of 57 per cent to the husband and 43 per cent to the wife (see the GD at [6]).

4 In so far as the issue of maintenance was concerned, the Judge held as follows (see the GD at [7]–[8]):

> 7 I awarded a nominal maintenance of $1.00 for the wife in the light of her employment and earning capacity and to preserve her right to apply for maintenance in the event of changed employment or earning capacity. With respect to the maintenance of the children, taking into account the respective earnings of the parents, I ordered that the [husband] and [wife] bear the costs of maintenance of the children in the approximate proportions of 60%/40% respectively. The wife estimated the monthly expenditure for the children and maid to be as follows: eldest daughter S$2,401; second daughter S$2,100, third daughter S$1,884 and maid S$842 per month. Following submissions by the [husband] disputing these costs, I ordered that he pays S$3,500 per month for the children's maintenance and that this order take effect from 1 May 2010.
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> 8 The [wife] next sought arrears of maintenance as the [husband] had not made any contribution for the maintenance of the children since January 2009. The [husband] disclosed that the parties had maintained a joint savings account in the [wife's] name and as of August 2008 there had been a balance of S$99,000 in this account which has been reduced to S$11,000 by the [wife]. The [wife] explained that she had used S$74,000 from this account to pay for a property agent's commission. In the light of this being disputed, I decided to make no order relating to the arrears of payment by the [husband] of the children's maintenance.

5 The wife appealed in Civil Appeal No 94 of 2010 ("CA 94/2010") against most of the Judge's orders in relation to the issue of custody, care and control as set out above (at [2]) – in particular, Orders (b), (d), (e) and (g). She also appealed against the quantum of maintenance (of $3500 per month) ordered by the Judge in favour the children. Finally she appealed against the Judge's decision in relation to the division of matrimonial assets.

6 The husband, on the other hand, appealed in Civil Appeal No 96 of 2010 ("CA 96/2010") against the Judge's order of sole custody in favour of the wife as well as the Judge's computation of the total value of the pool of matrimonial assets inasmuch as he claimed that the Judge had erred in failing to exclude the sum of $395,000 which was a loan from his mother.

7 At the end of oral submissions by the parties, we affirmed the Judge's decision for the reasons he delivered, with the exception of certain orders. Consequently, we made the following orders:

> (a) that the husband and wife have *joint* custody of the children (the Judge having awarded sole custody to the wife in the court below);
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> (b) that if there is an application to vary the orders relating to custody (Orders (d) and (e)) and access (Order (g)) in the future, then *the views of the children are to be taken into account* – if appropriate, by way of interviews with the judge concerned;
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> (c) that the $395,000 given by the husband's mother does *not* form part of the pool of matrimonial assets available for division between the parties;
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> (d) that the available pool of matrimonial assets be divided *equally* between the parties; and
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> (e) that each party bear his or her own costs both here and in the court below.

8 We now give the detailed grounds for our decision, albeit only with regard to those aspects of the Judge's decision we differed from. As already mentioned, we affirm the rest of his decision for the

reasons he gave in the GD.

The issue of custody

9 Turning first to the issue of custody, the seminal decision is that of this court in *CX v CY (Minor: custody and access)* [2005] 3 SLR(R) 690 ("*CX v CY*") (see also the valuable commentary in Debbie Ong Siew Ling, "The Next Step in Post-Divorce Parenting" (2005) 17 SAcLJ 648 and Chan Wing Cheong, "Custody Orders, Parental Responsibility and Academic Contributions: *CX v. CY (minor: custody and access)*" [2005] Sing JLS 407). Indeed, it appears that the principles laid down in this decision had – in certain respects at least – been overlooked by the court below and we therefore take this opportunity to remind all counsel not only of the significance of this decision but also (and more specifically) of the relevant principles contained therein. In this last-mentioned respect, we will set out the relevant passages in the judgment in *CX v CY in extenso* by way of a useful legal *aide mémoir* for all concerned.

10 It is important to observe, at the outset, that the decision in *CX v CY* established that there is *a clear and well-established distinction between custody on the one hand and care and control on the other*. In this regard, the following important observations (by Lai Siu Chiu J, delivering the judgment of the court) merit being set out in full, as follows (at [30]–[35]):

> 30 It would be appropriate at this juncture to define what "custody" and "care and control" orders entail. *The lack of an authoritative opinion on what each order involves has contributed largely to the constant "custody" disputes, and the law of custody in Singapore is in a state of confusion because the demarcation between the two orders has not been made clear. Often, in an attempt to limit the powers of the custodial parent, which is indicative of a trend towards joint or no custody orders in support of joint parenting, the definition of "custody orders" has been muddled with that of "care and control orders"* (see *L v L* [1996] 2 SLR(R) 529 at [21]). The statutes are also of little assistance in the definition of either order. The [Guardianship of Infants Act (Cap 122, 1985 Rev Ed)] is silent as to the definition of "custody orders", and the closest definition we have is in s 126(1) of the [Women's Charter (Cap 353, 1997 Rev Ed)], which states that the person given custody shall be entitled to decide all questions relating to the upbringing and education of the child. The reference to "non-custodial parent" in Form 27 of the Schedule, pursuant to s 8(1)(b) of the Women's Charter (Matrimonial Proceedings) Rules (Cap 353, R 4, 2004 Rev Ed), as the "parent who does not live with the child" also does not help to clarify the law. It appears to give the impression that the non-custodial parent is the parent who does not live with the child and conversely, the custodial parent is the one who lives with the child. This leaves out the possibility that a custodial parent, who is not granted a care and control order, may also not live with the child.
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> 3 1 *To understand what each order entails, we must first realise that, where parties are splitting up, custody as a general concept is divided into two smaller packages, ie, "care and control" and residual "custody". In this context, residual "custody" is no longer the same concept as our general understanding of custody. Instead, residual "custody" is the package of residual rights that remains after the grant of a care and control order that dictates which parent shall be the daily caregiver of the child and with whom the child shall live*. ***To put it simplistically, "care and control" concerns day-to-day decision-making, while residual "custody" concerns the long-term decision-making for the welfare of the child*** .
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> 32 As was appropriately summarised by Anthony Dickey in *Family Law* (LBC Information Services, 3rd Ed, 1997) at pp 326-327:

> [A]t common law, care and control concerns the right to take care of a child and to make day-to-day, short-term decisions concerning the child's upbringing and welfare. Custody without care and control (that is, custody in its narrow sense) concerns the right to make the more important, longer-term decisions concerning the upbringing and welfare of a child.

33 In other words, *a "custody order" only gives the parent the residual right* to decide on *long-term matters affecting the child's welfare*. For instance, the right to decide on the type of education resides with the parent(s) with custody as it concerns the more important and long-term aspects of a child's upbringing. The right to decide the particular school may also reside with the custodian(s) depending on the importance of this decision to the child's education. However, the right to decide how a child should dress or travel to school, what sport he should take up or musical instrument he should play and similar ordinary day-to-day matters, resides with the parent who has care and control. Such a demarcation between the two types of orders proposed by Dickey is generally consistent with our local jurisprudence where matters such as choice of schools, tutors or healthcare have been regarded as matters for the custodian(s) to decide (for example, see *Yeap Albert v Wong Elizabeth* [1998] SGHC 97 at [16]).

34 For the development of the law of custody, we deem it necessary to lay down a general definition detailing the scope of each order. *Our observation is that in most custody cases, parties are simply concerned over which parent has care and control and access. Parties labour under the mistaken impression that if they are denied custody, they will be unable to see their child anymore and will lose all contact with the child. We regret to say that some family law practitioners further muddy the waters by failing to advise their clients adequately as to what "custody orders" actually entail. If parties are assured of their respective rights to care and control and access, we foresee lesser tension and acrimony in disputes over custody issues*.

3 5 *Adopting this narrow definition of "custody", it appears that there will be relatively few occasions where significant and longer-term decisions need to be made for the child. Hence, parties will seldom need to come together to make a joint decision even if joint or no custody orders were granted. We should add that it is an almost impossible task for us to lay down an exhaustive list of matters which will fall under the concept of residual custody*. The line is not always clear as to what matters would be considered the important and longer-term decisions concerning the upbringing and welfare of a child. It suffices to say that decisions pertaining to religion, education and major healthcare issues would fall into such a category.

[emphasis added in italics and bold italics]

11 Further, as this court pertinently observed in *CX v CY* (at [18]–[19], [21], [24], [26]–[29] and [38]):

> 18 As a preliminary point, we noted that both parties did not take issue with the judge's variation of the district judge's "no custody order" to that of a "joint custody order". We should make it clear from the outset that a "no custody order" is not tantamount to depriving both parents of custody. It is generally accepted that the practical effects of a "no custody order" and a "joint custody order" are similar where a "care and control order" has been made. In the normal course of events, the parents of a child will have joint custody over him. We thus agree with Prof Leong Wai Kum's comments in *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 538-539 that the making of a "no custody order" should be seen as leaving the law on parenthood to govern the matter, as both parents continue to exercise joint custody over the child. Such an order also affirms the approach of the courts not to intervene unnecessarily in the parent-child relationship where there is no actual dispute between the parents over any serious

matters relating to the child's upbringing (see *Re Aliya Aziz Tayabali* [1992] 3 SLR(R) 894 and *Re G (guardianship of an infant)* [2004] 1 SLR(R) 229 ("*Re G*")).

19 Since the practical effects of a "no custody order" and "joint custody order" are similar, the more important question to address is: Under what circumstances should a "no custody order" be preferred over a "joint custody order"? As mentioned earlier, where there is no actual dispute between the parents over any serious matters relating to the child's upbringing, it may be better to leave matters at status quo, and not to make any custody order. As was suggested by Assoc Prof Debbie Ong in her article "Making No Custody Order: *Re G (Guardianship of an Infant)*" [2003] SJLS 583 at p 587-588, in other circumstances where there is a need to prevent parties from drawing the child into the battle over the extent of their custodial powers, or where there is a need to avoid any possibly negative psychological effect that comes about when one parent "wins" and the other parent "loses" in a custody suit, it may also be appropriate not to make any custody order.

...

21 ... In support of her case, the mother relied on the decision of Winslow J in *Ho Quee Neo Helen v Lim Pui Heng* [1974-1976] SLR(R) 158 ("*Helen Ho*"), that joint custody orders should only be made where there was a reasonable prospect that parties would co-operate. She also cited various cases such as *CJ v CK* [2004] SGDC 135, *EY v EZ* [2004] SGDC 91 and *T v C* [2003] SGDC 304 which had applied the principle in *Helen Ho*.

...

24 ... We accepted the father's submission that the judge's view on the law of custody was consistent with ***the notion that acrimony alone was not sufficient to justify a sole custody order*** . We were of the view that the decision of *Helen Ho* should be clarified. *Helen Ho* was *decided more than 30 years ago, and in our view, it has been given too much weight not only by practitioners but also by subsequent judicial decisions. To our minds, the notion that joint custody should only be made where there is a reasonable prospect that the parties will co-operate is no longer appropriate in this day and age*. ***Instead, we felt that in line with the outlook that parental responsibility is for life, the time was right for us to expressly endorse the concept of joint parenting. We believe that, generally, joint or no custody orders should be made, with sole custody orders being an exception to the rule*** . We will now elaborate on our views.

...

26 This idea of ***joint parental responsibility*** is *deeply rooted in our family law jurisprudence*. *Section 46(1) of the Women's Charter* (Cap 353, 1997 Rev Ed) ("the Charter") exhorts both parents to make equal co-operative efforts to care and provide for their children. Article 18 of the United Nations Convention of the Rights of the Child 1989, to which Singapore is a signatory, also endorses the view that both parents have common responsibilities for the upbringing and development of their child. Similarly, jurisdictions like England and Australia have adopted approaches that impose on both parents the concept of life-long parental responsibility. With parliamentary intervention in these jurisdictions, the very concept of custody orders was abolished as it was acknowledged that it was in the interests of the child to have both parents involved in his life. There can be no doubt that the welfare of a child is best secured by letting him enjoy the love, care and support of both parents. The needs of a child do not change simply because his parents no longer live together. Thus, in any custody proceedings, it is crucial that

the courts recognise and promote joint parenting so that both parents can continue to have a direct involvement in the child's life.

2 7 *We note that local academic opinion has long advocated using the law of custody to preserve joint parental responsibility*. The making of joint or no custody orders is very much in the welfare of the child. As was aptly put by Debbie Ong in her article, "Parents and Custody Orders - A New Approach" [1999] SJLS 205 at p 223:

> When a marriage breaks up, the child is in fear of losing his parents, his siblings and his familiar home. Joint custody protects the child from the reality and the fear of losing a parent. A child who can understand that both his parents have custody of him and be assured that both parents continue to be involved in his life may feel more secure. He will feel less abandoned even though family life has to undergo some changes. If the child believes that both his parents are still cooperating and raising him together despite the breakdown of their own relationship, he may be spared from suffering "from a conflict of loyalties". Further, in granting joint custody, parents are expected to consult each other regarding important matters and it is beneficial that the perspectives from a mother and a father are brought together in a decision.

28 ***More significantly, we feel that the making of joint or no custody orders reminds the parents that the law expects both of them to co-operate to promote the child's best interest*** . *With the grant of joint or no custody orders, the likelihood of the non-custodial parent being excluded from the child's life is much reduced. It also encourages the parent who does not reside with the child to continue to play his or her role in joint parenthood*.

29 *Accordingly, we agree with the recognition by the judge below that joint custody* ***can still be ordered even if there is an apprehension that the parties may be unable to agree*** . *This is a move in the right direction* ***in support of joint parenting*** . Recent cases have revealed an emerging trend where the courts are no longer inclined to assume that sole custody orders should be made simply because parents display animosity towards each other in the midst of litigation. As Tan Lee Meng J rightly observed in *Re G* ([18] *supra*) at [8], even where the parents have an acrimonious relationship at the time of the custody proceedings, making a sole custody order is not the only possible outcome. We have mentioned earlier that cases like *Helen Ho* must be viewed in their proper perspective and should not always be relied on to justify an order for sole custody merely because the child's parents have an acrimonious relationship. *Helen Ho* was a unique case in itself where there was cruelty on the part of the father. Moreover, Winslow J made the statement in response to a request for joint custody, as well as care and control orders. It is obvious that a joint care and control order, requiring the parties to agree on every day-to-day decision relating to the child, is unworkable where the parties have a bitter relationship with each other. However, a joint custody order is of a different nature.

...

38 *We would emphasise that recent decisions have been inclined towards making joint or no custody orders due to the need to ensure that the child becomes attached to both parents*. The idea behind joint or no custody orders is ***to ensure that neither parent has a better right over the child and that both have a responsibility to bring the child up in the best way possible. Similarly, the child has a right to the guidance of both his parents. Parenthood is a lifelong responsibility and does not end at a particular age of the child, but continues until the child reaches adulthood*** . The question we have to answer will ***always*** be ***what is best for the child in the future. We agree with Assoc Prof Debbie Ong that the exceptional***

circumstances where sole custody orders are made may be where one parent physically, sexually, or emotionally abuses the child (see Debbie Ong, "Making No Custody Order" ([19] *supra*) at p 586), ***or where the relationship of the parties is such that co-operation is impossible even after the avenues of mediation and counselling have been explored, and the lack of co-operation is harmful to the child*** (see Debbie Ong, "Parents and Custody Orders" ([27] *supra*) at p 222-223).

[emphasis added in italics and bold italics]

12 The principles set out above are of special relevance in the context of the present appeal as counsel for the wife, Mr Koh Tien Hua ("Mr Koh"), argued that the *sole* custody order made by the Judge in the court below in favour of the wife was the appropriate order as the husband had been uncooperative and disruptive throughout. However, given the very nature of divorce proceedings, a certain (or even high) degree of animosity between the former husband and wife must (unfortunately) be expected. Hence, as correctly pointed out by this court in *CX v CY* (at [24], also quoted in the preceding paragraph), "acrimony alone was not sufficient to justify a sole custody order". More importantly, as the same decision emphasises, there is a highly significant concept that not only cannot be ignored but must also be given effect to, *viz*, that of *joint parenting*. As the extracts from the decision in *CX v CY* quoted in the preceding paragraph underscore, sound and effective parenting is best achieved when *both* parents are involved. This is both logical and commonsensical. The input by *both* parents furnishes a *balance* that enhances the development of that child (or those children, as the case may be) until adulthood is reached. In contrast, the *exclusion* of one of the parents in this particular regard would – absent an exceptional reason – contribute towards a *less* balanced as well as *less* rounded development of the child (or children) concerned. Hence, the pronouncement made by the court in *CX v CY* that a joint (or no) custody order would henceforth be *the norm rather than the exception*. We could not agree more.

13 And, as that very decision emphasises – relying on the excellent scholarly (yet wholly practical) contributions by Associate Professor Debbie Ong Siew Ling (in "Parents and Custody Orders – A New Approach" [1999] Sing JLS 205 (at 222–223) and "Making No Custody Order: *Re G (Guardianship of an Infant)*" [2003] Sing JLS 583 (at 586) – *exceptional situations or circumstances* in which a joint (or no) custody order would *not* be made involve *extreme situations or circumstances*, including the infliction of physical, sexual or emotional abuse on the child (or children) concerned by the parent who is therefore denied custody *as well as* situations "where the relationship of the parties is such that co-operation is impossible even after the avenues of mediation and counselling have been explored, and the lack of co-operation is harmful to the child" (see *CX v CY* at [38], also quoted above at [11]). In fairness to the wife, it was, we assume, this last-mentioned exception that Mr Koh was also referring to on her behalf in the context of the present appeal. However, there was, in our view, *no* evidence on the record to indicate that – apart from the animosity that existed between the wife and the husband – there was that *extreme* kind of negative situation that would actually result in *harm to the children*. It would, with respect, constitute a leap in logic to infer from the animosity between the parties that *extreme* situation that constitutes an *exception* to the general rule that joint (or no) custody orders should be made to give effect to the concept of joint parenting.

14 Having regard to the circumstances in the present case, we reversed the order of the court below and ordered that there be *joint* custody between the parties of the children, although care and control would continue to reside in the wife. It followed that sub-paragraph (b) of the order of court below (reproduced above at [2]) ought to be deleted, and we so ordered.

15 We also ordered that, if there is an application to vary the orders relating to custody in the future, then *the views of the children* are to be taken into account – if appropriate, by way of

interviews with the judge concerned. In our view, this is both logical and commonsensical (especially where the parents are at odds with each other to begin with, as is the case in the present appeal) – provided that the children are mature enough to convey their views *independently*. There is no particular age when this may be appropriate as different children may mature sufficiently at different ages. In this case, there was no issue of consultation not being appropriate as the children were sixteen, thirteen and nine years of age, respectively. Such an approach is also consistent with – and, indeed, embodied in – the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act"), in particular, s 125(2)(*b*) of the Act, which reads as follows:

> (2) In deciding in whose custody a child should be placed, the paramount consideration shall be the welfare of the child and subject to this, the court shall have regard —
>
> (a) to the wishes of the parents of the child; and
>
> (b) *to the wishes of the child, where he or she is of an age to express an independent opinion*.
>
> [emphasis added]

16 We do acknowledge, however, that there is always the possible concern that a child (or children) might be primed or coached prior to the interview with the judge. We should think that parties would be sufficiently wise not to indulge in such a practice and that their counsel would advise them against such action as well. Further, we are confident that the judge concerned would, given the very nature of his or her vocation, be sufficiently astute to discern whether or not the child concerned has in fact been so primed or coached. In any event, to allow such a possibility to *completely* negate the implementation of such a helpful as well as practical procedure would be to throw out the legal baby together with the bathwater. Having said that, such a procedure must not itself become ossified by being applied in a mechanical fashion. The possible fact situations are too numerous for general guidelines to be laid down. All that can be said is the judge concerned should – absent exceptional circumstances – be not only aware of this procedure but (more importantly) also be prepared to implement it as this would facilitate his or her decision.

17 Returning to the facts of the present appeal, we would strongly encourage both husband and wife to put aside their acrimony and co-operate in a manner that would yield positive results in so far as the nurturing of their children is concerned. After all, as s 125(2)(*a*) of the Act (reproduced above at [15]) states, the court must have regard to their views as well. But such views must not be coloured by any personal prejudice and animosity toward each other. In the nature of things, this is probably easier said than done. However, we trust and hope that, ultimately, the children's best welfare will encourage them to do so.

18 We turn now to the issue relating to the division of matrimonial assets.

The division of matrimonial assets

19 An important issue arose as to whether or not the amount of $395,000, which had been contributed by the husband's mother after the marriage had broken down, ought to be included in the pool of matrimonial assets. Mr Koh conceded, correctly in our view, that that amount ought not to be included. We should record here our appreciation for his candour which ensured that no unnecessary court time was wasted on this particular issue.

20 The other important issue in this appeal was whether or not the Judge had erred in ordering

that the pool of matrimonial assets be divided in the ratio of 57 per cent in favour of the husband and 43 per cent in favour of the wife. This represented, in point of fact, the direct financial contributions of both the parties. Counsel for the husband, Mr Chelva R Rajah SC, submitted before this court that this was an eminently just result as the husband's *indirect* contributions were *equal to* those of the wife. He pointed, *inter alia*, to the fact that, during the initial years of their marriage at least, the wife had worked extended hours and was in fact earning more than the husband. However, this was not, in our view, conclusive of the relative amount of indirect contributions of the parties themselves. In many families nowadays, both spouses hold full-time jobs. However, it does not necessarily follow, in our view, that a wife who holds a full-time job necessarily contributes less to the family by way of indirect contributions. Neither does it necessarily follow that the husband would contribute more in this context. Indeed, any number of situations is possible. For example, *both* spouses might contribute little – or nothing – by way of indirect contributions, resulting, as a whole, in a poorer quality of life for the family as a whole. It is also true that a working wife might even contribute *more* by way of indirect contributions by *stretching* her time and efforts on behalf of the family even after a long day at work. This is not to state that the husband's indirect contributions might not also be substantial as well. However, all this demonstrates the point made earlier in this paragraph to the effect that much will depend, in the final analysis, on the precise facts before the court. In this appeal, however, we were not persuaded that the husband had contributed at least as much as the wife by way of indirect contributions. In fairness, the evidence does demonstrate that he was a loving and caring father and we hope that this will continue to be the case in the future.

21 At this juncture, we should emphasise that direct and indirect contributions are to be given due weight and no single factor is determinative of the outcome. This is clear from the wording of Section 112(1) of the Act, which places no emphasis on any particular type of contribution:

> **Power of court to order division of matrimonial assets**
>
> 112. — (1) The court shall have the power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial assets or the sale of any asset and the division between the parties of the proceeds of any such asset in such proportions as the court thinks just and equitable.

22 In the decision of this court in *NK v NL* [2007] 3 SLR(R) 743 ("*NK v NL*"), it was held (at [23]–[27]) that a spouse's direct financial contribution must be only one among many factors for consideration, and due weight had to be given to all indirect contributions of the other party which by their nature are not reducible to monetary terms. It was also held in *NK v NL* that the traditional approach of considering the amount of direct contributions as a starting point for division should be rejected as it may not be a particularly accurate reflection of the amount of actual contributions by either party to the marriage (at [24]).

23 Ultimately, the court is directed to take a "broad-brush" approach to the process of division of matrimonial assets by resisting the "temptation to lapse into a minute scrutiny of the conduct and efforts of both spouses, which may be objectionable in disadvantaging the spouse whose efforts are difficult to evaluate in financial terms" (see *NK v NL* at [28]). Therefore, on our facts and having regard to all the available evidence, we were of the view that a just and equitable division of the pool of matrimonial assets would be by way of equal division to both husband and wife, respectively.

24 In the circumstances, and taking into account the fact that the $395,000 given by the husband's mother ought to be excluded from the pool of matrimonial assets as well as the value of matrimonial assets currently held by the wife, the husband was to pay the wife a total of $119,353.36, being 50 per cent of the remaining value of matrimonial assets that are to be distributed

to the parties.

Conclusion

25 In the circumstances, the appeal in CA 94/2010 was allowed in part and the appeal in CA 96/2010 was allowed in its entirety. We were also of the view that, having regard to all the circumstances, each party ought to bear his or her own costs both here as well as in the court below. The usual consequential orders were to apply.