APZ (by his litigation representative MC) *v* AQA and another
[2011] SGHC 94

Case Number : Originating Summons No 1034 of 2009

Decision Date : 13 April 2011

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Lim Bee Li and Irving Choh (KhattarWong) for the plaintiff; Andrew Tan (Andrew Tan Tiong Gee & Co) for the defendants

Parties : APZ (by his litigation representative MC) — AQA and another

Family Law

13 April 2011

Belinda Ang Saw Ean J:

Introduction

1 This Originating Summons No 1034 of 2009 ("OS 1034") was brought, initially, in the name of [MC] under the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed) ("IFPA"). OS 1034 was amended to enable the plaintiff, [APZ] (hereafter referred to as "the son" or "the plaintiff") to sue by his mother, [MC], as his litigation representative ("the mother"). The defendants are the daughters of the deceased, [MB] from his first marriage. They were named in OS 1034 as the trustees of the estate of their late father. Counsel for the defendants, Mr Andrew Tan, informed the court that the second defendant, [D], had renounced Probate. Accordingly, Grant of Probate was issued in favour of the first defendant, [AQA] on 26 March 2009.

Background facts

2 The mother was married to [MB] on 21 April 1998. At the time of the marriage, the mother was 34 years old, and [MB] was considerably older, 68. The son was born on 13 June 1998. He suffers from Autistic Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD). In May 2001, [MB] commenced divorce proceedings, and a Decree Nisi was granted on 15 May 2002.

3 At the hearing on ancillary matters on 25 May 2005, DJ Laura Lau, *inter alia*, ordered:

(a) Lump sum maintenance of $20,000 to the mother;

(b) Monthly sum of $650 as maintenance for the son;

(c) A sum of $21,478.44, being the net sale proceeds of the matrimonial flat, to be divided equally between [MB] and the mother.

4 The parties appealed against the 25 May 2005 Order. In her appeal, the mother prayed, *inter alia*, for lump sum maintenance of $200,000 for the son, and lump sum maintenance of $30,000 for herself. The cross appeals in RAS 720042/2005 and RAS 720043/2005 were dismissed by Justice Tan Lee Meng on 25 January 2006. The neutral citation of DJ Lau's written Grounds of Decision is *MB v MC* [2005] SGDC 181.

5 A few months later, the mother tried to vary the 25 May 2005 Order by filing Summons No 650212/2006 ("the 2006 Summons"). In the 2006 Summons, the mother wanted:

(a) [MB] to pay maintenance for the son at $2,500 per month, alternatively, a lump sum of $250,000 for the son; and

(b) [MB] to pay the mother a sum of $1,000 per month, alternatively, a lump sum of $100,000.

6 The 2006 Summons was dismissed by DJ Khoo Oon Soo on 11 November 2006. The mother's appeal was dismissed by Tay Yong Kwang J with no order as to costs on 7 March 2007. In his ruling, Tay J cautioned the mother about future costs orders if she persisted in taking out unmeritorious applications and appeals (see *MB v MC* [2008] SGHC 246 at [7]).

7 The mother filed Summons No 650228/2008 ("the 2008 Summons") on 24 June 2008. The 2008 Summons was heard by DJ Regina Ow. On this occasion, the mother limited her claim to lump sum maintenance of $250,000 for both her son and herself. DJ Ow dismissed the 2008 Summons. The mother's appeal was also dismissed by Woo Bih Li J on 14 November 2008. On appeal, it was made known that the lump sum maintenance of $250,000 was for the son only. The neutral citation of Woo J's written Grounds of Decision is *MB v MC* [2008] SGHC 246.

8 Several months before the 2008 Summons was taken out, [MB] made a new Will to replace an earlier one executed on 28 February 2001. In his Last Will and Testament dated 9 April 2008 ("the 2008 Will"), [MB] made two specific bequeaths: (a) $10,000 to the son, and (b) $5,000 to the mother. The residue of the estate, after payment of [MB]'s debts, funeral and testamentary expenses, was to be divided between [MB]'s two daughters, [AQA] and [D] in equal shares.

9 [MB] died on 23 January 2009. At the time of his death, [MB] and the mother were divorced. The mother believed that $10,000 was grossly insufficient for her autistic son. [note: 1] The mother applied under s 3(1)(c) of the IFPA for an order that reasonable provision for the plaintiff's maintenance be made out of [MB]'s estate (hereafter referred to as "the Estate"). Although there were short arguments on s 3(1)(d), counsel for the plaintiff, Mr Irving Choh, later on confirmed that the application was not made under s 3(1)(d) of the IFPA. [note: 2] At the time of the application, the plaintiff was about 11 years old. In all her affidavits filed in OS 1034, the mother had insisted on a lump sum payment of $250,000 as maintenance for the plaintiff.

10 I dismissed the application on 19 November 2010. I made no order as to costs. The plaintiff has appealed against my decision. I now set out the reasons for dismissal.

Section 3 of the IFPA

11 It is worthwhile setting out the provisions of s 3 of the IFPA in full:

Power for court to order payment out of net estate of deceased for benefit of surviving spouse or child.

3.—(1) Where, after the commencement of this Act, a person dies domiciled in Singapore

leaving —

(a) a wife or husband;

(b) a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself;

(c) an infant son; or

(d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself,

then, if the court on application by or on behalf of any such wife, husband, daughter or son as aforesaid (referred to in this Act as a dependant of the deceased) is of opinion that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's net estate for the maintenance of that dependant:

Provided that no application shall be made to the court by or on behalf of any person in any case where the disposition of a deceased's estate effected as aforesaid is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate and where the only other dependant or dependants, if any, is or are a child or children of the surviving spouse.

(2) The provision for maintenance to be made by an order shall, subject to subsection (4), be by way of periodical payments and the order shall provide for their termination not later than —

(a) in the case of a wife or husband, her or his remarriage;

(b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;

(c) in the case of an infant son, his attaining the age of 21 years;

(d) in the case of a son under disability, the cesser of his disability, or in any case, his or her earlier death.

(3) Periodical payments made under subsection (2) to any one dependant shall not be at an annual rate which exceeds the annual income of the net estate, and, where payments are so made to more than one dependant in respect of the same period, the aggregate of the annual rates at which those payments are made shall not exceed the annual income of the net estate.

(4) Where the value of a deceased's net estate does not exceed $50,000, the court shall have power to make an order providing for maintenance, in whole or in part, by way of a lump sum payment.

(5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's net estate and shall not order any such provision to be made as would necessitate a realisation that would be improvident having regard to the interests of the deceased's dependants and of the person who, apart from the order, would be entitled to that property.

(6) The court shall, on any application made under this Act, have regard to any past, present or future capital or income from any source of the dependant of the deceased to whom the application relates, to the conduct of that dependant in relation to the deceased and otherwise, and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant, to persons interested in the estate of the deceased, or otherwise.

(7) The court shall also, on any such application, have regard to the deceased's reasons, so far as ascertainable, for making the dispositions made by his will (if any), or for refraining from disposing by will of his estate or part of his estate, or for not making any provision, or any further provision, as the case may be, for a dependant, and the court may accept such evidence of those reasons as it considers sufficient including any statement in writing signed by the deceased and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

(8) The court in considering for the purposes of subsection (1), whether the disposition of the deceased's estate effected by the law relating to intestacy, or by the combination of the deceased's will and that law, makes reasonable provision for the maintenance of a dependant shall not be bound to assume that the law relating to intestacy makes reasonable provision in all

12 Recently, the Court of Appeal in *AAG v Estate of AAH, deceased* [2010] 1 SLR 769 at [40] noted that the IFPA must be read in light of the English authorities interpreting the English Inheritance (Family Provision) Act 1938 ("the UK 1938 Act"):

> We would reiterate that by the Minister stating that Singapore was adopting the IFP (UK) Act 1938 because it had worked well in England, he must necessarily mean that the scheme of things under the Act as interpreted and applied by the courts there. That was Parliamentary intention, and under s 9A of the Interpretation Act, we are obliged to give effect to such intention.

Discussions and decision

Was OS 1034 a proper application?

13 OS 1034 was the latest set of proceedings in a history of litigation involving many ancillary applications and appeals under the Women's Charter (Cap 353, 2009 Rev Ed) when [MB] was alive, and now against his Estate under the IFPA. There was no dispute that the plaintiff being an infant son was a "dependent of the deceased" and eligible to make an application under s 3(1)(c) of the IFPA. For the purposes of the IFPA, I agreed with the defendants that the net value of the Estate was $454,709.71.

14 The plaintiff was a beneficiary under the 2008 Will. It is for the plaintiff suing by his litigation representative to prove his case. In the context of this case, the defendants were left with the residue of the net Estate which their father meant them to have when he made the 2008 Will. By

making an order under the IFPA, the court would be invading or interfering with what would be normally a testator's privilege to dispose of his own money in his own way. The relevant words of s 3(1) are "if the court ... is of the opinion that the Will does not make reasonable provision" *not* that the testator has acted unreasonably. The first question is whether the specific bequeath of $10,000 being "the disposition of the deceased's estate effected by his Will ... is not such as to make reasonable provision for the maintenance" of the infant son, a dependant of the deceased within the meaning of s 3(1). If the court finds that it was unreasonable that the disposition made no provision or not a larger provision, the second question then arises: What provision should be made out of the deceased's net estate for the maintenance of the dependant? There is likely to be an overlap, evidentially, between the first and second questions. In considering the questions, the court will have regard to all the circumstances, including the history of previous proceedings which I have related in brief. In addition, the court will also look at s 3(6) and s 3(7) in coming to a conclusion as to whether [MB] in his 2008 Will had made reasonable provision for the infant son. The opening sentence of sub-sections (6) and (7) is unambiguous. It states that "the court shall, on any application made under this Act... " to the matters referred to in the respective sub-sections. Before me, counsel did not touch on s 3(5) of the IFPA. Nevertheless, s 3(5) is also relevant depending on the facts and circumstances. For present purposes, suffice it to say that under sub-section (5), the court should not order any provision that would necessitate a realisation that would be improvident having regard to the interests of the deceased's dependant and of the person, who would, apart from the order, would be entitled to that property.

15 It must be stated here at the outset that a number of factors taken cumulatively weighed heavily against granting the application. One major difficulty with this case was the affidavit evidence of the mother which had been embellished with half-truths and exaggerations. She had plainly contradicted herself in her affidavits. There were serious concerns about the veracity of her affidavit evidence. I will elaborate in the discussions below.

16 In OS 1034, the mother's contention was that [MB]'s bequeath of $10,000 under the 2008 Will was grossly insufficient for her autistic son. In all her affidavits filed in OS 1034, she had insisted on $250,000 as her son's maintenance, and that a lump sum payment was to be ordered out of the Estate. If the figure of $250,000 sounded familiar, it was because it was the same amount that the mother had wanted from [MB] way back in 2006 and 2008. In fact, the mother deposed to her unsuccessful applications in paragraphs 16 and 17 of her 1st Affidavit filed in support of OS 1034 on 8 September 2009. In the 2006 Summons, she asked for lump sum maintenance of $250,000 for her son; and a further lump sum maintenance of $100,000 for herself. [note: 3] Additional maintenance was sought by her even though she had been awarded lump sum maintenance of $20,000 by DJ Lau, and on appeal to Tan J, she had asked that her award be increased by $10,000 to $30,000. I think it is useful to look at DJ Lau's reasons for granting lump sum maintenance of $20,000. It was a short marriage. It lasted for four years up to its dissolution by the grant of the Decree Nisi. However, [MB] had ceased to have contact with the mother after 12 March 2001. Thus, the parties were together for slightly less than three years. The parting was described by DJ Lau to be highly acrimonious, and she decided that a clean break was desirable. In the DJ's opinion, the sum of $20,000 would enable the mother to adjust herself to her situation (see [30] of DJ Lau's grounds of decision).

17 In the 2008 Summons, the mother sought lump sum maintenance of $250,000 for herself and her son. Before Woo J, she changed her mind, and the hearing of the appeal proceeded on the basis that the lump sum maintenance of $250,000 was for the son. [note: 4] How the figure of $250,000 was derived was not stated. It is worthwhile repeating Woo J's astute remarks at [14]. He said:

> The Wife's cancer and the child's ADHD were already known and taken into account by DJ Lau

> when she made the 25 May 2005 order and must have been known by the other courts which heard the appeals and applications I set out above [this included Tay J's ruling]. From the Wife's affidavits and submissions for the 2008 Summons and the appeal which I heard, *I was of the view that the real reasons for the 2008 Summons and the appeal was that the Wife was concerned over the old age of the Husband and wanted a share of the sale proceeds of the JU property. I was of the view that the Wife had used her child (and herself) as a reason to get the $250,000 lump sum maintenance*."
>
> [emphasis added]

By way of brief background, [MB] owned a property known as [JU] and he sold it in 2005 for $2.7m. It was not matrimonial property, and the mother had no claim against it. As Woo Bih Li J noted his decision in *MB v MC* [2008] SGHC 246, the [JU] property was already dealt with at the ancillaries, and the in-principle question of lump sum maintenance for the son was already considered by DJ Lau and other judges.

18 Mr Tan for the defendants reminded that it was therefore no coincidence that the mother asked for $250,000 in the present proceedings. It was exactly the same amount she had sought in her past ancillary applications and appeals. Being without merits, the ancillary applications and/or appeals were dismissed. This similar fact had prompted the defendants to question the real motive behind the present proceedings. Judicial observations showed that the mother had an obsessive approach in bringing proceedings devoid of merits, unarguable, and had refused to take no for an answer. Her conduct was even discredited by Woo J who saw through her ploy to use her child to get lump sum maintenance of $250,000 when the real reason for filing the 2008 Summons was that she wanted a share of the sale proceeds of the [JU] Property. The mother's gripe had always been that [MB] had given the sale proceeds to his daughters from his first marriage, but nothing to her and the son. In the present application, she repeated the same dissatisfaction and unhappiness.

19 The mother had attributed the value of the Estate at $565,457.23 based on figures lifted from the Schedule of Assets filed in OS Probate No. DCP 360/2009/W. The first defendant pointed out that the Schedule of Assets comprised trust accounts for [MB]'s grandsons. Therefore, a sum totalling $107,219.18 held in the trust accounts had to be excluded thereby leaving the net value of the Estate at $454,709.71. [note: 5] I agreed with the defendants' position. Be that as it may, on either opposing views, the value of the Estate far exceeded the prescribed limit of $50,000 in s 3(4) of the IFPA. Section 3(4) provides:

> Where the value of a deceased's net estate does not exceed $50,000, the court shall have power to make an order providing for maintenance, in whole or in part, by way of a lump sum payment.

20 The wording of s 3(4) is clear. In the context of the IFPA, the Estate is not a small estate as it was more than $50,000. Hence, the court had no statutory power to order lump sum payment as the net value of the Estate far exceeded the statutory limit of $50,000 (see s 3(4) of the IFPA).

21 The purpose of the IFPA is limited to the provision of reasonable maintenance. Therefore, if an order for provision of maintenance is to be made under s 3(1), the statutorily prescribed method for provision of maintenance out of the net estate is by way of periodical payments until the infant son reaches 21, or in any case his earlier death (see s 3(2) of the IFPA). Crucially, maintenance is provided by the payment of some part of the income of the estate. Hence, the periodic payments under s 3(3) cannot be for an annual rate that exceeded the annual income of the net estate. By s 2 of the IFPA,

"annual income" means, in relation to the net estate of a deceased person, the income that the net estate might be expected at the date of the order made under this Act, when realised, to yield in a year; and

"net estate" means all the property of which a deceased person had power to dispose by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities and estate duty payable out of his estate on his death;

Consequently, the annual income of the estate should be calculated based on what the net value of the testator's estate might be expected to yield when realised *at the date of an order made under the IFPA*. Furthermore, the words "when realised" in s 2 of the IFPA suggest, as a matter of construction, that the annual income must be received by the estate before it can be distributed. Above all, it is significant that the legislation does not empower the court to award a lump sum by way of capitalisation of maintenance.

22 Given the net value of the Estate, right from the very outset (*ie*, as early as 1 September 2009 when the mother affirmed her 1st Affidavit in support of OS 1034), it was obvious that the plaintiff would not be entitled to a lump sum payment under the IFPA. Yet in all her affidavits, the mother had repeatedly insisted on $250,000 as lump sum payment which was a sum equal to approximately 54% of the net value of the Estate (*ie*, $454,709.71). The mother's insistence on lump sum payment could not have been misguided since she was legally represented throughout the proceedings. In my view, she was plainly after capital payment out of the Estate, and the claim of $250,000 as presented and advanced on behalf of the plaintiff was only explicable as legacy, and not maintenance. I reached this conclusion after closely studying the mother's affidavit evidence, and the written submissions tendered on behalf of the plaintiff.

23 OS 1034 was the mother's chance to use her son's condition to try once again to win the elusive $250,000; this time through the IFPA for a bigger slice of the Estate. In light of the provisions in s 3 of the IFPA, I found her reasons for lump sum payment really dubious. My view that the claim in OS 1034 was for capital payment is an important point which I want to flag here because of the objective of the IFPA. To reiterate, the purpose of the IFPA is limited to the provision of reasonable maintenance; the legislation is not for the purpose of obtaining legacies out of the testator's estate. Moreover, outside of s 3(4), the IFPA does not envisage any capital payment, and the court is not empowered to make such an order. See generally *In Re Vrint* [1940] 3 All ER 470. My view is reinforced by the fact that the characterisation of the claim as maintenance was illusory. The basis of $250,000 or how the $250,000 was derived was never explained, and curiously, by her subsequent admission that the amount of $250,000 was insufficient to cover the infant son's maintenance until he reached age 21. [note: 6] I will now elaborate on the points made in this paragraph.

24 The mother's affidavits filed in OS 1034 talked about the sale of the [JU] property for $2.7m; that [MB] gave away the sale proceeds to his daughters, and not a cent to the son and her; that the value of the Estate was $565,457.23 (and not $$454,709.71), but [MB] left them $15,000 collectively under the 2008 Will; that the daughters were financially well off; and that even after deducting $250,000, the Estate would still have a balance sum of $315,457.23. In her 6th Affidavit filed on 24 June 2010, the mother again voiced her dissatisfaction with the small bequeath of $10,000 to her son as compared to $107,219.18 set aside in trust accounts for [MB] 's grandsons. To her, the grandsons were adequately provided for, but in the case of her son, [MB] had left him very little.

25 The mother in her 1st Affidavit deposed that $3,265 was the monthly expenses of *both* mother

and son. She even produced a table with figures itemising the expenses (at paragraph 14). However, eight months later, without explanation and using the same figures that appeared in the table in her 1st Affidavit, she surprisingly claimed in paragraph 5 of her 5th Affidavit of 28 June 2010 that the sum of $3,265 was her son's monthly personal expenses. I did not believe her. Some of the items in the table were meant for mother and son, and this point is elaborated below. Furthermore, the lie in paragraph 5 is plain for all to see from the explanation note to the expenditure itemised as "Miscellaneous Expenses" where she stated: "Miscellaneous Expenses" included expenses for "stationery, clothes, etc. for my son and myself." In her 5th Affidavit, the mother claimed a further sum of $1,702 per month for medication, consultation, therapy and private tuition. She estimated her son's total monthly expenses to be $4,967. For ease of reading, a breakdown of the monthly expenses is now set out:

Monthly Expenses	
Medication	$ 56.20
Consultation	$ 22.00
Occupational Therapy Sessions	$ 280.00
Speech Therapy Sessions	$ 560.00
Psychological Therapy Sessions	$ 304.00
Private Tuition for English, Mathematics and Science	$ 480.00
School fees	$ 500.00
School bus fees	$ 115.00
Rent for flat	$1,200.00
Food	$1,000.00
Miscellaneous Expenses (including stationary, clothes etc. for my son and myself)	$ 300.00
Telephone Bills	$ 50.00
Electricity/ Water Bills	$ 100.00
Total	**$4,967.20**

26 Going down the list, items like rent for the flat, food, miscellaneous expenses, telephone and utilities bills were for the son and mother's monthly expenses, and it would be double-counting to simply compute them into the reasonable provision calculus. The mother listed the full rate of school fees at [E] School even though a subsidy was available. Third, the mother's figure of $1,702 per month for medication, consultation and therapy was grossly out of step with the estimates provided by Dr [F], the son's consultant psychiatrist at [G] Clinic. [note: 7] The mother's figure was almost four times higher than Dr [F]'s most conservative course of treatment which was estimated at $5,245 per year (*ie*, $437.08 per month). Even if I were to take Dr [F]'s most intensive course of treatment at $8,820 per year (*ie* $735 per month), the mother's figure would still be more than two times higher.

27 As I pointed out, the mother did not explain how the lump sum figure of $250,000 was derived. It was fanciful, and this explained why she was not able to correlate it with her calculations for

monthly expenses, which were inflated. She must have realised this for in her 5th Affidavit, she made an about turn when she suddenly introduced the word "subsidy" in an attempt to explain the claim figure of $250,000. To her, the figure of $250,000 was a "subsidy" because it would not be sufficient to meet all the monthly expenses of her son until he turned 21 (*ie*, in 125 months) leaving her to pay the monthly balance of $2,967. By her computation, the figure of $250,000 would work out to $2,000 per month ($250,000 ÷ 125) and was, thus, inadequate as monthly expenses were $4,967. Earlier, in written submissions of 26 March 2010, the same lump figure was sought. Mr Choh stated that the plaintiff was merely asking for a lump sum of $250,000 which works out to be a monthly sum of $2,000 until the plaintiff turns 21. [note: 8] Indeed, if the mother's contention that $250,000 was a "subsidy" and that she would have to pay the difference is to be believed, then she could not be in as bad a financial position as she had tried to portray. I have highlighted her contradictions and inconsistencies in her affidavits. In my judgment, all these inconsistencies can be taken into account as relevant to reinforce the conclusion that she wanted all along a legacy out of the Estate, and not maintenance in the sense presented and generally understood.

28 There were other material contradictions. For instance, in paragraph 21 of her 1st Affidavit, the mother claimed that the application in OS 1034 was taken "out of extreme and genuine financial desperation"; that she has had no maintenance for her son since the death of [MB]; that the figure of $3,265 was the monthly expenses of both mother and son; [note: 9] and that she was in poor health, could not work and was in debt. Some three months later, she filed her 3rd Affidavit. Her position then was as follows:

> "I am unable to earn enough for my son's necessary expenses. However, his late father's estate has sufficient funds to do so." [note: 10]

In paragraph 18, she deposed that she does "not have the financial means any more to take care of [her] son".

29 I now come to plaintiff's written submissions of 2 August 2010. Paragraph 32 of the submissions repeated paragraph 21 of her 1st Affidavit - that is to say, the present application was "made out of desperation and purely for survival". Significantly, the revelation that the money was to buy a property as her motive for the application exposed the lies in the mother's affidavit evidence outlined above. At [30], it was submitted:

> If the sum of S$250,000.00 is given to the Plaintiff, the mother intends to purchase a Property for the Plaintiff so that the Plaintiff can benefit from the growth of the investment.
>
> [emphasis added]

30 I agreed with Mr Tan that plainly the mother's intention to use the money to purchase a property contradicted the dire need for monthly maintenance, and everything else relating thereto and deposed to in her affidavits. As Mr Tan pointed out, she was not without financial means as she had wanted the court to believe. All things considered, Mr Tan questioned the mother's sincerity in making the application. He maintained that in truth the application for reasonable maintenance was a "facade". In my view, the mother's aspiration is for the plaintiff to live in his own home rather than in rented accommodation, but it is not the object of the IFPA to bring about such an improvement from the Estate. As stated, the object of the legislation is to provide maintenance for persons of the classes mentioned by way of periodic payment of some part of the income of the estate. As a corollary, the court is not empowered to order capital payment where the net value of the estate exceeds $50,000. In short, the IFPA would not operate in the circumstances.

31 I now take up Mr Tan's point that the mother had not disclosed her true financial position, and his point is related to her contradictions, and hence the veracity of her affidavit evidence. In her 1st Affidavit, she claimed at [19]:

> I cannot work and earn any stable income. My income is 0. My son and I cannot depend on my brother, sister and mother for financial help, but they cannot help me indefinitely.

Notice of Assessment for the Year of Assessment 2009 was submitted as proof of nil income. The plaintiff's submissions of 2 August 2010 also noted that the mother was "a recovering cancer patient who is presently 47 years of old and, she herself cannot even work properly to earn a fix and steady income at all." However, the cancer had been in remission for over 19 years now, and this ought not affect her ability to earn a fix and steady income, for instance, in her last stated occupation as a housing agent with an earning capacity of $2,000-$3,000 per month (*MB v MC* [2005] SGDC 181 at [19]-[21]). At the hearing of the ancillaries, DJ Lau had castigated the mother as a manipulative person. At [20], DJ Lau said:

> To my mind, the wife was a manipulative woman who forced the husband to part with large sums of money which were meant for his old age. Thus, it is not inconceivable that the wife had either concealed her true income in 2001 or had drastically reduced her income by deliberate means in order to portray herself as living from hand to mouth and thereby her claim for maintenance for both herself and the child. Indeed, the wife claimed a hefty $300,000 to $500,000 as maintenance for herself and the child at first instance. It is more than mere coincidence that the wife had purportedly suffered a severe financial setback in 2001 which was also the year the husband commenced divorce proceedings against her. In this connection, the wife's non-disclosure of her income from 2002 onwards is telling.

32 Like DJ Lau, Woo J, in dismissing the 2008 Summons, was critical of the mother (see [17] above). The omission of the mother's income from 2009 onwards was glaring. There was also no evidence to corroborate her bald allegation that her family had assisted her financially. Given the duplicity of the mother, it was not reliable to accept her evidence in the absence of corroboration by contemporaneous documentary evidence.

33 By all accounts, in my judgment, the application was to obtain a $250,000 legacy out of the Estate. For these reasons, this application could not stand and was duly dismissed.

Other matters

34 For completeness, I will now comment on some of the arguments raised, but not necessarily in the order in which they were raised at the hearings.

Section 3(3): Annual income and annual rate

35 The affidavits did not deal with s 3(3) of the IFPA. While the defendants confirmed the net value of the Estate at $454,709.71, there was no estimate of its annual income. This omission was not unexpected given their defence. On the part of the plaintiff, even after a four-week adjournment at the request of Mr Choh to deal with s 3(3), [note: 11] the plaintiff did not muster any evidence other than a bald statement on annual income at [46] of the plaintiff's submissions of 16 September 2010 which stated: "a skilful investor may even yield a sum of $100,000.00." This submission was entirely arbitrary and speculative.

36 In *Re Gale* [1966] Ch. 236 ("*Re Gale*"), Harman LJ, in the context of s 1(3) of the UK 1938 Act,

which is identical in all material aspects to s 3(3) IFPA, applied a rough and ready figure of 4% which worked out to £640 as the annual income of the net estate which was valued at about £16,000. Diplock LJ and Russell LJ were less precise, being content to hold that the court mandated provision of £600 "probably" did not exceed the statutory ceiling. Harman LJ's approach of substituting a rough and ready figure is not of general application. Much of the testator's property in *Re Gale* consisted of houses subject to the Rent Restriction Act (UK) which produced a residuary income of about £500 pounds annually. This figure was easily ascertainable and provided a convenient and plausible starting point that enabled Harman LJ to devise his figure of £640. In contrast, in the present case, the majority of assets in the Estate consist of shares, and dividend income of each counter would vary. It was not credible to pluck a figure out of the air, especially, where no genuine attempt was made to ascertain the annual income of the Estate. Even if the mother was able to tender a more plausible figure for the annual income of the Estate together with a substantially pared down estimate for the maintenance of the son, I would still dismiss the claim on the basis of s 3(6) and 3(7) of the IFPA which I will now discuss.

Section 3(6) of IFPA

37 Section 3(6) of the IFPA requires the court to consider any past, present or future capital or income from any source of the dependant, to the conduct of that dependant in relation to the deceased as well as "any other matter or thing which in the circumstances of the case" that the court finds relevant or material in relation to the dependant or persons interested in the estate of the deceased. In *Jeanne Christine Monteiro v Ling Mie Hean & Anor* [1997] SGHC 296, it was held that the court should consider any *inter vivos* gift by the testator to the applicant in determining whether to order reasonable provision for maintenance.

38 In the present case, the mother admitted to receiving $127,900 from [MB] during the period between 1998 and 2001. [note: 12] In addition, the court may take into consideration the 25 May 2005 Order as it is in my view clearly evidence of "any other matter or thing which in the circumstances of the case" the court finds relevant or material in relation to the dependant within the ambit and meaning of s 3(6) of the IFPA. Notably, DJ Lau awarded a half share of the sale proceeds of the matrimonial flat to the mother despite her 28.7% contribution on the basis that the sale proceeds would be for the benefit of the mother *and* son. The equal division also took into consideration that she would have to raise the child on her own (DJ Lau's GD at [39]). In monetary terms, her half share of the net sale proceeds of the matrimonial flat was $10,739.22.

Section 3(7) of IFPA

39 I now come to s 3(7). Under this sub-section, the court could take cognisance of [MB]'s reasons, objectively ascertained, for not making a larger provision for the son in his 2008 Will. Mrs Anne Tan, the solicitor who was instructed by [MB] to draw up his 2008 Will, deposed in her affidavit of 14 May 2010 that the testator had on or about 9 April 2008 wanted to change his earlier Will of 28 February 2001. Specifically, he asked that two sums of money for $5,000 and $10,000 be given to the mother and the son respectively. As explained in the solicitor's affidavit at [7]:

> He [the husband] harbours an apprehension that his ex-wife may legally harass his two daughters for more money for herself and her son and felt that, if he had made some monetary provision for them he would be able to keep them at bay after his death. Accordingly his instruction was to give his ex-wife the mother $5,000 and his son $10,000.

40 Mrs Tan's evidence is admissible as a matter of law under s 3(7) (see *In re Vrint* (see above [23]) and *In re Smallwood, deceased* [1951] 1 Ch 369). An express reason by the testator for the

monetary provision is relevant to the plaintiff's claim. It is now convenient to remind that during his lifetime, the mother had on many occasions taken [MB] to court to vary the monthly maintenance of $650 (see [4]-[7] above). [MB] had faithfully kept up with the monthly payment until his death. In all, [MB] paid a total of $35,100 over a period of 54 months from 1 June 2004 (date of commencement of maintenance payments) to 23 January 2009 (death of [MB]). At this monthly rate, the specific bequeaths totally $15,000 would last for approximately 23 months, long enough for the mother and the plaintiff to adjust to the situation (*ie*, [MB] 's death).

Section 4: Time Bar

41 The defendants raised a preliminary objection that the application contravened s 4(1) of the IFPA. Section 4(1) reads:

> 4.—(1) Except as provided by this section or section 6, an order under this Act shall not be made save on an application made within 6 months from the date on which representation in regard to the deceased's estate is first taken out.

42 The defendants argued that since the date on which "representation in regard to the deceased's estate was first taken out" referred to the date of filing for Probate (*ie*, 11 February 2009). In the present case, the plaintiff's application under the IFPA was taken out on 8 September 2009. Since the six months expired on 10 August 2009, the application was time-barred.

43 The defendants' submission was incorrect. *Halsbury's Laws of Singapore* (Vol 15, 2006 Reissue) ("*Halsbury's*") at [190.320] notes that, "[t]ime only runs from the valid grant of representation." *Re Freeman* [1984] 1 WLR 1419 was cited for this proposition. This position is also supported by a local case interpreting s 4 of the IFPA (see *Nirmala Devi d/o Vengadasalam v Danalakshmi Nee Krishnan and Ors* [1990] SGHC 130).

44 In the present case, time started to run when the grant of probate was extracted on 6 May 2009. The six-month limitation expired on 5 November 2010. Accordingly, the son's application under the IFPA on 8 September 2009 was not time-barred.

Conclusion

45 Even if under s 3(1) the court is of the opinion that $10,000 was unreasonable, in considering what order to make under s 3(2), the court will have to consider the matters under ss 3(6) and 3(7). In a proper case, it is possible that having regard to the matters to which the court is to pay attention to under s 3(6) and s 3(7), the court may conclude that in the circumstances no provision be ordered. An example is where the court finds that the testator had in his lifetime given substantial *inter vivos* gifts to the dependant and, hence, concludes that in the circumstances it is reasonable not to grant the application. Put another way, a nil provision may in the end be regarded as a reasonable provision given the circumstances of the case.

46 In the present case, assuming, for the sake of argument, that the provision of $10,000 in the 2008 Will was unreasonable under s 3(1), and if it was necessary to decide on the matter, the court having regard to the mother's failure to provide a full and frank account of the son's monthly expenses, which were unsubstantiated and plainly inflated, as well as the many other factors outlined in [35]-[40], when taken cumulatively would weigh against granting the application.

Result

47 In all the circumstances and for the reasons stated, I dismissed the application with no order as to costs since the defendants did not seriously press for costs. I made clear to the plaintiff's counsel, Mr Choh, that the "no cost order" was not intended to give the impression that the application had some merits but the court did not agree with the litigation representative this time or that she could continue to file applications at no risk of costs orders being made against the plaintiff.

[note: 1] MC's Affidavit filed on 8 September 2009 at [11]; MC's Affidavit filed on 8 January 2010 at [9]

[note: 2] Notes of Arguments of 16 September 2010 at [21]

[note: 3] AQA's affidavit filed on 18 February 2010 at [4]

[note: 4] AQA's affidavit filed on 18 February 2010 at [4]

[note: 5] AQA's affidavit filed on 18 February 2010 at [14]

[note: 6] MC's Affidavit filed on 28 June 2010 at [13]-[14]

[note: 7] Dr [F]'s Report dated 17 May 2010

[note: 8] Plaintiff's written submissions of 26 March 2010 at [32]

[note: 9] MC's Affidavit filed on 9 September 2009 at [14]

[note: 10] MC's Affidavit filed on 21 January 2010 at [16]

[note: 11] Notes of Arguments of 2 August 2010 at p 19

[note: 12] MC's Affidavit filed on 9 March 2010 at [20]