

YG v YH
[2008] SGHC 166

Case Number : D 5101/2005
Decision Date : 30 September 2008
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Engelin Teh, SC and Linda Ong (Engelin Teh Practice LLC) for the appellant;
George Lim and Brian Campos (Wee, Tay & Lim) for the respondent
Parties : YG — YH
Family Law – Matrimonial assets – Custody – Maintenance

30 September 2008

Judgment reserved.

Woo Bih Li J:

1 The Petitioner, YG (“the Husband”) and the Respondent, YH (“the Wife”) were married on 27 June 1998. They have two children: a son born in October 2001 and a daughter born in July 2003.

2 It was not disputed that in September 2004, the Husband had an extramarital relationship with a colleague (“XXX”). This appeared to be the final straw in what was already a strained marriage. On 18 November 2005, the Husband filed Divorce Petition No 5101 of 2005 against the Wife on the ground that the marriage had broken down irretrievably in that the Wife had behaved in such a way that the Husband could not reasonably be expected to live with her. The Wife filed a cross-petition against the Husband on 29 December 2005, based on the Husband’s unreasonable behaviour. The Husband eventually withdrew his petition and a decree nisi was granted on the Wife’s cross-petition with amended particulars on 21 April 2006.

3 The ancillaries came on for hearing before District Judge Jeffrey Sim (“the DJ”) on 26 April, 21 August and 17 October 2007. The following were issues under the ancillaries:

- (a) Custody, care and control of the parties’ two children as well as the extent of access to the two children by the party not awarded care and control;
- (b) Division of matrimonial assets; and
- (c) Maintenance for the children.

4 On 17 October 2007, the DJ gave his order (“the DJ’s Order”) in respect of the ancillaries (see *VF v VG* [2007] SGDC 321 at [3] of his grounds of decision (“the DJ’s GD”). On 30 October 2007, the Husband filed an appeal in RAS 107/2007. On the same day, the Wife filed an appeal in RAS 108/2007 against the same order. On 31 October 2007, the Husband filed Summons No 15534 of 2007 (“SUM 15534/2007”) for a stay of execution of the DJ’s Order pending the hearing of RAS 107/2007. The DJ granted a stay in respect of those parts of his order pertaining to the care and control of the parties’ son as well as the Husband’s obligation to pay the children’s maintenance to the Wife, with the issue of costs reserved to be determined by the High Court.

5 The Wife did not proceed with her appeal in RAS 108/2007. RAS 107/2007 came on for hearing before me on 14 January 2008, during which I heard first the part of the Husband's appeal against the award of care and control of the son to the Wife as there was some urgency in the matter. On 16 January 2008, I dismissed the Husband's appeal in respect of the care and control of the son. That part of the DJ's Order was to be implemented on 26 January 2008 onwards. The remaining issues in respect of the Husband's appeal on custody, access, division of matrimonial assets and maintenance were heard later in view of time constraints.

Details pertaining to joint custody

6 Before me, the Husband sought the following orders on the basis of his right to joint custody of the two children:

- (i) Parties are to communicate in writing through designated e-mail addresses of the parties;
- (ii) In the event that there is any change in either party's residential address, home telephone number and mobile telephone number, each party is to inform the other of such change within seven days;
- (iii) Both parties are to agree on the choice of schools for the children;
- (iv) The Wife shall furnish copies of the children's school calendar, school report books, progress reports, any notices or letters pertaining to school activities within two days of receipt of documents via e-mail through the parties' designated e-mail addresses. In particular, the Wife shall make copies of the children's handbooks for the Husband on the first day of every calendar month;
- (v) The Wife shall consult with and inform the Husband in writing of all decisions pertaining to the children's health including treatment sought, name(s) of attending doctor(s) and diagnosis made;
- (vi) For non-emergency medical procedures to be undergone by the children (such as extraction of wisdom teeth), the Husband's consent must be sought at least seven clear days in advance. For emergency medical procedures, the party who has physical care of the child (or children) at the time of the emergency procedure shall inform the other party within two hours of that emergency procedure.

7 Counsel for the Husband ("Ms Teh") submitted that as a parent having joint custody of his children, the Husband had the right to continue being involved in their upbringing. She argued that the principle that the welfare of a child is best served if his parents are allowed to exercise joint parental responsibility over him, even if they are divorced, was recognised and endorsed in the law: see *CX v CY* [2005] 3 SLR 690. She submitted that the orders sought were consequential orders that flowed from the Husband's rights of joint custody and that the orders served to facilitate the dissemination of information pertaining to the children between the parties, in turn facilitating the parties' exercise of joint parental responsibility.

8 Counsel for the Wife ("Mr Lim") submitted that some of the orders sought (specifically, the orders listed under (i), (ii), (iv), (v) and (vi) in [6] above) did not pertain to custodial matters, which involved long-term decision-making for the welfare of the child. Rather, they were on day-to-day matters: see *CX v CY* [2005] 3 SLR 690 at [31], [33] and [35]. He further argued that the order under (iii) was unnecessary as the right to joint custody of a child already includes the right to be

involved in decisions on that child's education. He also submitted that it was inappropriate for the court to make detailed orders on the parents' joint custody of their children. Parties to divorce proceedings have to learn to work with each other without the court's intervention. Having overly detailed orders may only lead to more disputes and litigation in the future.

9 I am of the view that, although parties who have been awarded joint custody of their children in divorce proceedings do have certain rights as part of that joint custody, the parties should take a sensible approach towards the exercise of those rights. It is not in the interest of the children for the parents to be overly insistent on or calculative in respect of their rights. Therefore, I conclude that the parties in the present case are to communicate by using whatever means suitable and appropriate. E-mail communication is one such means and is not the only means. Each party is to notify the other in writing within seven days of the notifying party's e-mail address and of the details of any change in the notifying party's residential address, as well as home telephone number and mobile telephone number. I make no order as to (iii) in [6] above as the right to make decisions on the choice of schools for his children is already part of the Husband's right to joint custody of his children. The Wife is to furnish to the Husband copies of the children's school calendar, school report books, progress reports, and any notices or letters pertaining to school activities within four (and not two) days of the Wife's receipt of such documents. The Wife shall make copies of the children's handbooks for the Husband on the first day of every calendar month. The Wife does not have to consult the Husband on every minor health issue of the children, *eg*, cold, cough and fever, but is to consult the Husband on every intended hospital admission or hospital procedure unless it is not possible to do so, as in the case of an emergency. If any of the children is hospitalised on an emergency basis, the party having physical care of the child at the time of hospitalisation is to inform the other party as soon as is practicable, for example, within two hours of the start of the emergency.

Access rights

10 The Husband sought several changes to the DJ's Order on access. The overall justification provided by Ms Teh for the changes was that granting generous access to the parent not vested with care and control would generally be in the children's best interests, see *BG v BF* [2007] 3 SLR 233 at [13]. In response, Mr Lim argued that generous access had already been given to the Husband under the DJ's Order and there was no evidence before the court that there was any need to change the current arrangements pertaining to access. I was referred to a table in the written submissions for the Wife filed on 7 January 2008 (at [126]) showing that under the DJ's Order the Husband would have access to the children amounting to 44% of the year. Mr Lim contended that, if the court were to give the Husband more access, this would be at the expense of the Wife's access times. He submitted that this would not in fact be in the children's best interests. Although there are overlaps in the Wife's table on the Husband's access times (*eg*, some public holidays may fall on his access time on Friday), the general point that the Husband already has generous access was valid. Nevertheless, I was prepared to consider his appeal on the specific points he had raised. Although Ms Teh submitted that the access the Husband has to his son under the DJ's Order was drastically reduced from the time when he had had his son in his care (during a period from May 2006 when the Wife left the matrimonial flat together with her daughter, until January 2008), I am of the view that the correct approach is to take the award of care and control of the son to the Wife as the starting point to assess the access which the Husband should be awarded.

11 Moving on to the specifics of the access sought by the Husband, the Husband was entitled under the DJ's Order, to have weekend access to the children every Friday from 7.00pm to 9.00pm on Saturday. The Husband sought for his weekend access to be extended as follows: on the first and third weekends of every month, access to commence after school (and not necessarily 7.00pm) on Friday and end at 9.00pm on Saturday; and on the other weekends of every month, to commence

after school on Friday and end at 10.00am on Sunday. Mr Lim argued that this would result in disproportionate access being given to the Husband as weekend access was split more or less equally under the DJ's Order, whereas the additional weekend access requested by the Husband would result in his having access to the children for the bulk of Sunday mornings on alternate weekends. I agree with the first part of Mr Lim's submission and the Husband's appeal for extension of access on alternate weekends is denied.

12 Under the DJ's Order, the Husband was to have weekday access to the children every Wednesday from 6.30pm to 9.00pm. The parties have consented for weekday access to be changed from Wednesday to Thursday from 6.30pm to 9.00pm and I so order.

13 The Husband was to have access to the children on alternate public holidays from 7.00pm of the eve of the public holiday to 9.00pm on the public holiday itself. The Husband sought an order that in the case of those holidays enjoyed only by one of the children, both children shall be handed over for the purposes of access. It was clarified that he had in mind holidays such as PSLE marking days on which his son, being in primary school, would be released from school, whereas his daughter, being in kindergarten, would not. Ms Teh contended that it would be more beneficial for the daughter to spend such time with her brother and her father rather than to attend one more day of school, as she is after all only in kindergarten. Mr Lim maintained that it was not in the best interests of a child to be taken out of school. I agree with Mr Lim and the DJ's Order on the Husband's access during alternate public holidays including school holidays such as Children's Day and PSLE marking days is to stand. Only the child who enjoys such holidays is to be handed over for the purpose of the Husband's access.

14 Under the DJ's Order, the Husband was given access to the children during the first half of the March, June, September and year-end school holidays. He sought an order, with effect from 2009 (as we are already in the second half of 2008), for this access to be alternated such that he would have access to the children during the first half of the March, June, September and year-end school holidays in odd years (*ie*, 2009, 2011 and so on) and access to them during the second half of the same school holidays in even years (*ie*, 2010, 2012 and so on). He also asked for access to start from the eve of the first day of the school holiday at 6.30pm and end on the last day of his half of the holiday at 9.00pm. Mr Lim pointed out that there is no need for such a specific order as to the timing of access since there have been no problems with access arrangements in respect of these holidays so far. He maintained that the parties should be left to work the specific details of the access out on their own. I see no harm in alternating the periods of access during these holidays as well as making clear orders as to the timing of access. The Husband's access for half of the March, June, September and year-end school holidays is to be alternated starting from 2009 when the Husband shall have access to the children for the first half of such holidays. However, as already mentioned, there is no reason to give the Husband more generous access and the access is to start from 7.00pm on the eve of the first day of the school holiday and end at 9.00pm on the last day of his half of the holiday.

15 In respect of the Husband's access on Fathers' Day and the Husband's birthday, the DJ had ordered that the Husband was to have access to the children from 11.00am to 8.00pm on those days if it is a non-school day, and otherwise from 6.30pm to 9.00pm. The DJ had also specifically provided that, in the event the Husband's access falls on the Wife's birthday, the Husband would not have access on that day from 11.00am to 8.00pm. The Husband asked for access on Fathers' Day and his birthday to start earlier (from 7.00pm of the eve of the Fathers' Day and his birthday) and to end later (at 9.00pm on the actual day) if the Fathers' Day and his birthday falls on a non-school day. He also sought to remove the provision for the restriction on his access on the Wife's birthday. Mr Lim submitted that the lack of provision for the Wife's access on her birthday was one-sided and unfair. I agree with him. The DJ's Order on the Husband's access on Father's Day and the Husband's birthday

is to stand.

16 Under the DJ's Order, the Husband was given access from 11.00am to 4.00pm on the children's birthdays if they fall on a non-school day, and otherwise from 6.30pm to 8.00pm. The Husband sought for this access to commence earlier (from 7.00pm of the eve of the children's birthdays) but still end at 4.00pm on the actual day if any of the children's birthdays falls on a non-school day, and to commence at the same time but end later (at 9.00pm on the actual day) if any of their birthdays falls on a school day. Mr Lim maintained that this was an illustration of how the Wife's access time would be eaten into in a manner that would not be in the children's best interests, if the access as sought by the Husband were granted. I agree with Mr Lim. The DJ's Order on the Husband's access on the children's birthdays is to stand.

17 The parties had also been given the liberty under the DJ's Order to take the two children out of the jurisdiction with at least seven days' prior written notice of the itinerary and accommodation details. Before me, the Husband sought an order specifying that the Wife is to hand the children's passports to the Husband *two days after* receipt of the notice of travel. It appeared that the Wife had only been handing the passports over when the children were about to leave with the Husband. The Husband was concerned that if she did not hand over the passports then, the travel plans would be jeopardised. The DJ's Order already provided for the Wife to hand over the passports "upon receipt" of the requisite notice. In any event, I will order the Wife to hand them over within *four days after* receipt of the requisite notice.

18 The Husband also asked for telephone access (including mobile phone access) to both children between 8.00pm to 8.30pm on the days that he does not have access to them. Such telephone access had not been provided for in the DJ's Order. Mr Lim argued that there was no evidence that the Wife had ever denied the Husband such telephone access. However, his further argument that such telephone access would eat into her access time suggests that there is a possibility that she might do so in future. Thus, I order that the Husband is to have telephone access to both children between 8.00pm to 8.30pm every Monday, Tuesday and Wednesday, including mobile phone access. He already has some physical access every Thursday, Friday and Saturday.

19 The Husband asked to be allowed to make up any lost access time by proportionately extending his access time during the school holidays. In [13] of the further arguments for the Husband, it was envisaged that he might lose his access time due to various unforeseen circumstances, including the children's school activities and his own work commitments. However, Ms Teh clarified that his real concern was that the Wife might arrange tuition for the children during his allotted access times, or encourage them to take up co-curricular activities (*ie*, extra activities which school students must attend alongside the standard study curriculum, previously known as extracurricular activities or "ECAs") during those times. The Wife was willing to accept make-up access in respect of any access time of which she had deliberately deprived the Husband, but Mr Lim maintained on her behalf that there was no evidence that she had ever deliberately engineered activities for the children so as to eat into the Husband's access time. He pointed out that she would be in contravention of court orders if she did so. He contended that if the children's activities should fall within the Husband's access times, the "loss" should lie where it fell and there should be no provision for make-up. I agree with Mr Lim and note that any make-up access given to the Husband would in turn eat into the Wife's access times. Thus, I reject the Husband's appeal for make-up access.

20 Finally, the Husband sought an order that, in the event that the children are requested by either party to attend special functions, such as birthday functions, written consent should be obtained from the other parent at least seven days in advance and make-up access is to be agreed on and put in place at least 24 hours before the children are handed over for the purposes of these

special functions. Mr Lim submitted that "special functions" had not been clearly defined and in any case the parties should be left to work out the details of the access in such situations. I am of the view that the sensible solution is for parties to work out the details of access as and when requests for the children's attendance are made. Thus, no order is given on this matter.

21 It remains to note that the Husband sought a general order clarifying that both children are to follow the Ministry of Education's guidelines on school holiday access regardless of whether they are attending childcare centres, and that the children shall be made available for access, with any activities scheduled for them during the Husband's access times to be re-scheduled accordingly save for school-designated activities and co-curricular activities requiring their compulsory attendances. It goes without saying that both parties are expected to comply with the court's orders as to access. Any deliberate attempt to deprive the other party of his or her rightful access times will not be looked upon kindly by this court. In view of this, I make no order in respect of this matter sought by the Husband.

22 It is a pity that although both parties professed to be thinking of the children's interests in maintaining their respective positions on access, each was actually using the children to get what he or she wanted, especially the Husband who, it seemed, would not be satisfied with the DJ's access orders.

Division of matrimonial assets

The DJ's decision

23 In respect of the division of the matrimonial assets, the DJ dealt first with a sum of \$101,474.13 that the Wife had withdrawn from the parties' Hong Leong Finance Limited joint time deposit ("the Hong Leong joint time deposit"). He found that the money was part of the matrimonial assets subject to division. However, he was of the view that the Wife should be awarded 30% of a motor car registered in the name of the Husband, a Toyota Picnic MPV (registration number SDVXXXXX) ("the current car"), which had an estimated value of \$43,800 as at 28 May 2006. He also awarded the Wife 15% of net value of a five-room HDB flat purchased by the parties in July 1999 ("the matrimonial flat") for her indirect contributions to the family, in addition to her 44% share for direct contributions. Based on his calculations, the Wife's 59% share of the net value of the matrimonial flat worked out to about \$112,000. Under the prevailing CPF regulations, however, she would only receive a refund of \$76,000 to her CPF account. To give effect to her 59% share of the matrimonial flat, the Husband would have to pay her \$112,000 less \$76,000, *ie*, \$36,000. As the sum of \$49,000 comprising this \$36,000 and the Wife's 30% share of the car (*ie*, \$13,000) was fairly close to half the sum of \$101,474.13 that the Wife had withdrawn from the Hong Leong joint time deposit, the DJ allowed the two sums to be offset against each other (see the DJ's Grounds of Decision at [41]).

24 The DJ also considered a sum of some \$118,000 withdrawn in a series of transactions by the Wife from her POSB Savings Account. He found that the withdrawals were legitimate and not done with the aim of dissipating the matrimonial assets (see the DJ's Grounds of Decision at [43]). Finally, he did not order the division of the parties' other assets (such as CPF balances and bank accounts) as he was of the view that having regard to all the circumstances of the case it was just and equitable that they retain their own assets (see the DJ's Grounds of Decision at [44]).

Methodology for division of matrimonial assets

25 The court's power to divide the matrimonial assets in divorce proceedings is found in s 112(1) of the Women's Charter (Cap 353, 1997 Rev Ed) ("the Act"), which states:

The court shall have 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 asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

26 Section 112(2) of the Act enumerates a non-exhaustive list of factors to be considered by the court in deciding whether to exercise its powers under ss(1), and if so, in what manner. These factors are:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and
- (h) the matters referred to in section 114 (1) so far as they are relevant.

27 The Act does not specify the methodology for the division of matrimonial assets, *eg*, what steps to take and in what sequence, as well as at which step each factor under s 112(2) should be considered. The Court of Appeal has recently elucidated the methodology for the division of matrimonial assets in *NK v NL* [2007] 3 SLR 743. In discussing how the parties' indirect contributions should be reflected in the division of matrimonial assets, the court cited two different approaches. The first is "the global assessment methodology", under which the court's duty is to (see *NK v NL* at [31]):

- (a) Identify and pool all the matrimonial assets pursuant to s 112(10) of the Act (the "identification" phase);
- (b) Assess the net value of the pool of assets (the "assessment" phase);
- (c) Determine a just and equitable division in the light of all the circumstances of the case (the "division" phase); and
- (d) Decide on the most convenient way to achieve these proportions of division (the "apportionment" phase).

28 There is both academic and judicial support for this approach; see Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths, 1997) at p 895 and *Elements of Family Law in Singapore* (LexisNexis, 2007) at p 559; see also *Tham Lai Hoong v Fong Weng Sun Peter Vincent* [2002] 4 SLR 464 (per Lee Seiu Kin JC at [12]).

29 The second approach is “the classification methodology”, under which the court apportions classes of matrimonial assets separately, for example, the matrimonial home, cash in bank accounts, shares, and businesses, etc (see *NK v NL* at [32]). Any direct financial contributions and indirect contributions are considered in relation to each class of assets, rather than by way of a global assessment. The court clarified (at [35]) that:

[P]ursuant to “the classification methodology”, only the direct contributions may vary. The element of indirect contributions in the context of homemaking and child caring must necessarily remain constant in relation to each class of asset.

30 Under the global assessment methodology, the court looks at each party’s overall financial contribution to the pool of matrimonial assets. Under the classification methodology, the court assesses each party’s financial contribution to each class of assets. Regardless of which methodology is adopted, the parties’ direct financial contributions are only one factor in determining the appropriate division of matrimonial assets (see *NK v NL* at [24] to [27], [29]). Other key factors include the parties’ indirect financial and indirect non-financial contributions (see ss 112(2)(a) and (d) of the Act).

31 The court did not decisively prefer one methodology over the other. It noted that both the global assessment and classification methodologies are consistent with the legislative framework provided by s 112 of the Act, which as mentioned in [27] above does not specify the sequence of the decisions the court has to make in an application for the division of matrimonial assets. Thus, in any given case, it is up to the court to choose which is the most appropriate methodology, bearing in mind that the paramount aim is to ensure that the matrimonial assets are divided in a just and equitable manner. The court did not say when either methodology should be used, except to suggest that the classification methodology would be appropriate where there are multiple classes of assets and where the parties have made different financial contributions (see *NK v NF* at [35]). On the facts of *NK v NF*, the court opted to apply the classification methodology. It considered the matrimonial home and remaining matrimonial assets separately, citing “special circumstances” such as the fact that an adverse inference arose against the husband in respect of the quantum of his cash assets available for distribution as he had not been totally forthcoming in the disclosure of those assets (see *NK v NF* at [33]).

32 In my view, the global assessment methodology is preferable in the present case. It is in close keeping with the court’s broad brush approach as well as reluctance to engage in minute scrutiny of the conduct and contributions of both spouses. It allows for the fact that when parties to a marriage contribute to the acquisition of assets, they usually do so in good faith without regard to the question of division or each party’s share in each asset acquired. For instance, a wife may pay less for the matrimonial home on the understanding that she will pay more for the family car, but it would usually be the case that both parties would not have considered whether she should then have a smaller share in the matrimonial home or a larger share in the family car.

33 The DJ in this case chose to divide the current car and the matrimonial flat individually. Strangely, although he had found that the Wife’s indirect contribution entitled her to 15% of the matrimonial flat, he did not apply this 15% to the current car and instead only took into account her direct contributions in awarding her 30% of the current car (see *NK v NL* at [41]). This is the danger

that arises when the classification method is used. In any case, there are no circumstances that would make it unjust or inequitable to use the global assessment methodology in the case before me. I shall apply that methodology.

The pool of matrimonial assets

34 It is not disputed that the matrimonial flat is part of the pool of assets subject to division. The sale price of the flat (when it was sold in April 2008) was \$428,000 and the outstanding housing loan as at 23 June 2008 stood at about \$138,376.94, leaving \$289,623.06. The amount that will be refunded to the Husband's CPF account under prevailing regulations is \$174,000, whereas the amount that will be refunded to the Wife's account is \$114,000. Taking into account the costs of sale, including agent's commission, which amounted to \$9,741.15 (as submitted in the further arguments for the Husband at [16]), there is in fact no balance left to be distributed to the parties outside of the refunds to their respective CPF accounts.

35 The current car is also subject to division, having been acquired during the marriage; see 112(10) of the Act. Its estimated net value as at 28 May 2006 was \$43,800. Furthermore, no objection was made to the insurance policies, cash accounts, shares and CPF balances of both parties being included in the pool (the values of these assets are set out in the table at [47] below). In respect of the Husband's shares, he had initially disclosed some \$11,000 worth of Singapore shares and some \$43,000 worth of US shares (see his affidavit filed on 8 June 2006). However, it became clear over the course of the hearing that the \$43,000 worth of US shares were in fact Microsoft shares acquired by the Husband as a result of his employment with Microsoft from 2002 to March 2006 and reflected in a Smith Barney trading account in his name ("the Smith Barney trading account"). The Smith Barney trading account was disclosed in his fourth affidavit filed on 15 January 2007 and the Husband averred it was created to deal with his Microsoft stock options. The value of the Smith Barney trading account stood at some \$61,100 at 31 March 2006 and Mr Lim submitted that this should be taken into consideration as part of the matrimonial assets. I agree with him. However, the value of the shares owned by the Husband which are taken into consideration as part of the matrimonial assets should correspondingly only be about \$11,000, *ie*, the value of the Singapore shares.

36 The Wife has not contested the DJ's finding that the Wife had failed to prove that the sum of \$101,474.13 withdrawn from the Hong Leong joint time deposit belonged to her parents and thus this amount also belongs in the pool of matrimonial assets.

37 Mr Lim submitted that the sum of \$10,259.94 in the Husband's OCBC joint fixed deposit account with his mother should be part of the pool of matrimonial assets. However, the Husband had explained that the money was intended for his mother as part of her monthly allowance since she had been helping him and the Wife to look after the children. He provided evidence (exhibited to his fourth affidavit filed on 15 January 2007) that the principal sum of \$10,000 was deposited into the account as early as December 2003, *ie*, before the marriage began to break down, and thus could not have been deposited with the intention of dissipating the matrimonial assets. I accept his argument and do not consider the money in the OCBC joint fixed deposit account to be part of the matrimonial assets.

38 I turn now to the sum of \$50,001 in two POSB trust accounts ("the trust accounts money") which the Husband had opened on 28 October 2005. Mr Lim submitted that although the Husband had described the accounts as "trust" accounts, the trust accounts money could be easily withdrawn by him and used for his own purposes at any time. Mr Lim contended that if the trust accounts money is really meant for the children, the Husband should include the Wife as a joint signatory. Ms Teh submitted that there was no evidence that the Husband would deal improperly with the trust

accounts money for his own purposes. She suggested that I make an order that the Husband is not to deal with the trust accounts money until the children reach the age of 21. I am of the view that the trust accounts money is not to be taken into account as part of the matrimonial assets. A separate order will be made to deal with this money.

39 Mr Lim also asked for the sum of some \$10,400 due to the Husband from Smith Barney, being the value of some Microsoft stock options exercised by the Husband in March 2006 and which has not yet been credited into his Smith Barney trading account, to be included in the matrimonial assets. Ms Teh had no objection to this and thus this amount will be taken into consideration as part of the matrimonial assets.

40 It remains to deal with the sum of \$118,100 withdrawn by the Wife from her personal bank account. The Wife withdrew \$118,100 from her POSB Savings Account on three occasions in the following manner:

Date	Sum withdrawn
27 October 2004	\$ 50,100
16 May 2005	\$ 50,000
5 June 2006	<u>\$ 18,000</u>
	<u>\$118,100</u>

41 Mr Lim submitted that the sum withdrawn on 27 October 2004 had been paid to the Wife's parents for the following purposes and in the following sums:

(a) Allowance for the year:	\$18,000
(b) Repayment of earlier loans from her parents (of \$11,445.89 and \$16,010.71):	\$27,500
(c) Grandparents' medical bills and grandmother's funeral expenses:	<u>\$ 4,600</u>
	<u>\$50,100</u>

42 He further explained that the sum withdrawn on 16 May 2005 had been paid to her parents in the following manner:

(a) Allowance for the year:	\$18,000
(b) Renovations of parent's flat:	\$27,000

(c) Parent's holiday tour:

\$ 5,000

\$50,000

43 Finally, he submitted that the \$18,000 withdrawn on 5 June 2006 had been paid to the Wife's parents as their allowance for the year (see submissions for the Wife filed on 7 January 2008).

44 Ms Teh submitted that the Wife should be made to account to the Husband for half of \$118,100 as she had withdrawn the money from her POSB Savings Account with a view to dissipating matrimonial assets. First, she argued that the explanation given by the Wife as to the payment of the moneys was contrived. If the \$18,000 withdrawn on 27 October 2004 had in fact been paid to her parents as expenses for the year, the next withdrawal should have been on or around 27 October 2005 and not 16 May 2005. There was also no cogent evidence that the Wife had made payments of allowance to her parents prior to October 2004. Ms Teh pointed out that the Wife was unable to provide particulars of the alleged loans from her parents. Instead, all that the Wife exhibited in her affidavits were credit entries in her POSB bank book showing a cheque deposit from an unknown source for the amount of \$11,445.89 banked into her account on 28 December 1998 and another cheque deposit from an unknown source for the amount of \$16,010.71 banked into her account on 21 July 1999. Nor was any documentary evidence of her payments for her grandparents' medical bills, her grandmother's funeral expenses, renovations to her parents' flat and her parents' holiday ever furnished. Ms Teh also submitted that the timing of the Wife's withdrawals made it clear that the withdrawals were made with the intention of depriving the Husband of his rightful share of the matrimonial assets. It was not disputed that the Wife had discovered the Husband's improper association with XXX in September 2004. The first withdrawal of \$50,100 from her POSB Savings Account was made a month later on 27 October 2004. Ms Teh submitted that there was no reason why she would have chosen that particular moment to repay the loans allegedly from her parents, which were allegedly received some five to six years ago (in 1998 and 1999).

45 On balance, I agree with Ms Teh's submissions on this issue. Although the Wife maintained that she had in fact been giving her parents an allowance before the marriage broke down (see Wife's submissions filed 7 January 2008 at [185]), she was unable to produce any documentary evidence of this. Furthermore, if the \$11,445.89 and \$16,010.71 paid into the Wife's account were indeed loans from her parents, she should have been able to obtain from them and exhibit documentary proof that the deposits into her savings account came from them. The Wife's failure to produce any such documentary evidence made the timing of her withdrawals look all the more suspicious. For these reasons, the \$118,100 withdrawn by the Wife from her POSB Savings Account is part of the matrimonial assets subject to division.

46 Mr Lim submitted that the Husband himself was guilty of dissipating his assets and pointed to large unexplained withdrawals from his Citibank and POSB Savings accounts. He submitted that the Husband had failed to account for these sums and asked me to draw an adverse inference that the Husband must have other undisclosed accounts to which he transferred these sums. However, I accept Ms Teh's response that, for the Citibank account, many of the sums alluded to by the Wife were small and had been withdrawn for the Husband's personal expenditure. Some of the relatively larger sums (eg, the \$2,562.66 withdrawn on 7 May 2005 and the \$2,662.56 withdrawn on 6 May 2005 from the Citibank account) had also been used for personal expenses, and the balance sums transferred into his POSB Savings Account. As for the POSB Savings Account, I accept Ms Teh's explanation that some withdrawals (in particular those marked as "CCC" or "GTR", which stand for "credit card payment" and "cheque withdrawal" respectively) had been for the Husband's business

expenses for which he was subsequently reimbursed by his employers. Furthermore, it should be noted that the Wife focused on the withdrawals made by the Husband without taking into account the deposits he had made. For example, the Husband's POSB Savings Account statements show that, from 16 August 2004 to 14 May 2005, he had withdrawn a consolidated amount of \$207,939.28 from the account, but he had also deposited a consolidated amount of \$197,300.68 into the account. In light of the foregoing, Mr Lim's submission that the Husband had improperly dissipated his assets cannot stand. I also find that whatever money the Husband may have already spent on XXX was part of his personal expenses and cannot now be claimed by the Wife as part of the matrimonial assets.

Summary on pool of matrimonial assets

47 In summary, the pool of matrimonial assets and approximate net values for consideration is as follows:

Asset	Husband	Wife
Insurance	\$ 18,600	\$ 5,400
Cash	\$ 89,000	\$ 76,700
Shares	\$ 11,000	\$143,900
Smith Barney Account	\$ 61,100	
Cheque from Smith Barney	\$ 10,400	
CPF (as at May 2006)	\$114,000	\$113,700
CPF (to be refunded from sale proceeds of the matrimonial flat)	\$174,000	\$114,000
Current car	\$ 43,800	
Amount withdrawn from Wife's personal account		\$118,100
Amount withdrawn from Hong Leong joint time deposit		\$101,500
Individual Total	\$521,900	\$673,300
Sub-total	\$1,195,200	
Asset	Joint names	

Matrimonial flat	No cash balance
Total	\$1,195,200

The appropriate division

48 I shall first assess the parties' direct contributions to the acquisition of the matrimonial assets.

49 One of the principal matrimonial assets is the matrimonial flat. The DJ found that, based on the undisputed documentary evidence, the percentage of direct contributions by the parties towards the acquisition of the matrimonial flat amounted to about 56% by the Husband and about 44% by the Wife (see the DJ's Grounds of Decision at [40]). This was not challenged by the Husband in the present appeal. Although there is no cash balance from the sale proceeds of the matrimonial flat, the focus in this part of the exercise is on the parties' contributions at or about the time of the augmentation of the pool of matrimonial assets. The nett sale proceeds of the matrimonial flat was as follows:

(a) Sale price	\$428,000.00
Less	
(b) Outstanding housing loan	\$138,376.94
(c) Costs of sale	<u>\$ 9,741.15</u>
	<u>\$279,881.91</u>

Thus, the Husband's direct financial contribution was \$156,733.86 (56% x \$279,881.91), *ie*, around \$156,700; the Wife's was \$123,148.04 (44% x \$279,881.91), *ie*, around \$123,100.

50 Another matrimonial asset is the current car. The parties purchased three cars during their marriage and this was the third. The sale proceeds of each car were used to make part payment for the next. In addition to these sale proceeds, cash contributions from the parties were used to meet the purchase prices of the second and current cars. In the proceedings below, the Wife had challenged the Husband's calculation of the parties' direct contributions to the purchase of the current car. She claimed that she had paid an additional \$40,000 towards the purchase price (see submissions on maintenance and division of assets for the Wife filed on 26 April 2007). The DJ awarded the Wife 30% of the current car. I am of the view that this was an accurate reflection of her financial contribution to the current car. Although the Wife exhibited her passbook records showing that she had withdrawn \$40,000 from her savings account, there was no evidence that this was in fact used for the purchase of the current car. Leaving aside this \$40,000 and taking into account the Husband's direct contributions to the purchase prices of all three cars, his direct financial contribution to the current car was about 70%, or \$30,660 (70% of the value of the current car, being \$43,800). I round this sum up to \$30,700. Accordingly, the Wife' direct financial contribution to the current car was about \$13,100.

51 I now turn to the Hong Leong joint time deposit. The Husband had claimed that he had

contributed proportionately to the Hong Leong joint time deposit (see the Husband's first affidavit filed on 8 June 2006 at [9]). The Wife had in turn claimed that her parents had given her the money in the joint time deposit over a period of time from 1996 to 2001 but was unable to produce any documentary evidence to support this claim (see the Wife's third affidavit filed on 15 September 2006 at [17]). The DJ found that the Wife had failed to prove that the money belonged to her parents (see the DJ's Grounds of Decision at [35]). However, this does not mean that the Husband contributed 100% of the Hong Leong joint time deposit. The Husband had averred that by bearing almost all the household expenses, he had contributed significantly to the Wife's "wealth creation" and therefore the Hong Leong joint time deposit should be considered as family savings (see the Husband's second affidavit filed on 28 July 2006 at [13]). This in fact suggests that his financial contribution to the Hong Leong joint time deposit was indirect. However, in light of the dearth of documentary evidence, I conclude that each party contributed 50% of the money in the Hong Leong joint time deposit, *ie*, about \$50,700 (50% of \$101,474.13).

52 As for the other assets held in the Husband's or Wife's sole name, I assume that those assets were acquired solely by the financial contribution of the party whose name the asset is in. For instance, I assume that the Husband paid for his shares and insurance policies and that the Wife paid for her shares and insurance policies.

53 I summarise below the parties' direct financial contributions to the pool of matrimonial assets. The assets in this table do not match those in the table at [47] because that table relates to the present value of the pool of matrimonial assets whereas the table below relates to the parties' direct financial contribution at or about the time of acquisition of the matrimonial assets. Thus, for example, the matrimonial flat is included and the refunds to the parties' CPF accounts from the sale proceeds of the matrimonial flat are not.

Asset	Husband	Wife
Insurance	\$ 18,600	\$ 5,400
Cash	\$ 89,000	\$ 76,700
Shares	\$ 11,000	\$143,900
Smith Barney Account	\$ 61,100	
Cheque from Smith Barney	\$ 10,400	
CPF (as at May 2006)	\$114,000	\$113,700
Current car	\$ 30,700 (70% of value of current car, being \$43,800)	\$ 13,100 (30% of value of current car, being \$43,800)
Amount withdrawn from Wife's personal account		\$118,100

Amount withdrawn from Hong Leong joint time deposit	\$ 50,700 (50% of value of Hong Leong joint time deposit, being \$101,474.13)	\$ 50,700 (50% of value of Hong Leong joint time deposit, being \$101,474.13)
Matrimonial flat	\$156,700 (56% of net value of flat, being \$279,881.91)	\$123,100 (44% of net value of flat, being \$279,881.91)
Sum of direct financial contribution to pool of matrimonial assets	\$542,200	\$644,700
Total direct financial contribution	\$1,186,900	
% of total direct financial contribution	46%	54%

54 Thus, I find that the parties contributed directly to the acquisition of the matrimonial assets in the following proportion: 46% (Husband) and 54% (Wife).

55 As for the parties' indirect contributions, the DJ had awarded 15% more of the matrimonial flat to the Wife on the basis of her greater indirect contribution (see the DJ's Grounds of Decision at [41]). Ms Teh submitted that the Wife's indirect contribution should not be assessed at 15% more than the Husband's for the following reasons. First, the Wife was not the primary caregiver of the children, nor was she a full-time housewife. Both parties were (and continue to be) full-time working adults and the Wife herself had extensive work and travel commitments. This was not a case where the Husband was the only party who worked long hours and travelled frequently, leaving the care of the children to the Wife. When the Wife was away travelling, the Husband's mother was the main caregiver of the children. When the Wife was not travelling, the Husband spent as much time as the Wife with their children (see the Husband's affidavit filed on 8 June 2006). Secondly, even if the Wife was the primary caregiver of the children, Ms Teh submitted that a 15% award for indirect contribution was excessive. The parties' indirect contributions were equal as the Husband had paid for almost all of the family expenses during the marriage and helped with the household chores. Also, the cases in which the court has given a 15% share to the wife usually involve lengthy marriages, whereas the parties' marriage only lasted eight years. The Husband submitted that in the present case the Wife should not get more for her indirect contribution and if she was to get more, it should be 5% to 7% instead of 15%.

56 In response, Mr Lim tendered a chart showing the Wife's indirect contributions to the family, including her payment of household expenses as well as her responsibility for household chores. He further tendered a chart comparing the Husband's and Wife's travel history from 17 February 2003 to September 2006, which showed that in that period, the Husband made 77 trips compared to the Wife's 22 trips (*ie*, the Husband made 3.5 times as many trips as the Wife). However, the chart did not disclose trips made by the Wife in 2002 which were more than, say, in 2003. He acknowledged that the Husband's mother did help to look after the children but submitted that the language of the

Women's Charter made it clear that the Husband's mother's contributions could not be attributed to the Husband for the purposes of assessing the parties' contributions to the matrimonial flat. The Wife claimed that she had sacrificed her career development to give birth to her two children. As proof of this, Mr Lim highlighted the table of earnings in the DJ's Grounds of Decision at [24] which shows that, up to 2000, the Wife had been earning more than the Husband but from 2001 onwards, the Husband's career development overtook hers and he began to earn a lot more. He also highlighted parts of the Wife's fourth affidavit filed on 26 October 2006 in which she averred that she had sacrificed her career advancement to give birth to her children and had taken an extra month of leave after each birth to take care of them. Mr Lim submitted that, even bearing in mind that the marriage was only for eight years, the 15% award for indirect contribution was fair as it would be difficult for the Wife to rebuild her career.

57 I shall first deal with the question of the parties' indirect financial contributions. I note that the Wife herself had conceded that the Husband had paid for a large part of the household expenses, including the utilities, telephone and broadband internet bills (see her third affidavit filed on 15 September 2006 at [12]). Although she claimed she had contributed to the household expenses, this was limited to items such as groceries and house maintenance, and only when the Husband was away (see her second affidavit filed on 19 July 2006 at [19]). Using a broad-brush approach, I infer that the Wife contributed about 25% of the household expenses and the Husband contributed about 75%.

58 Next is the question of the parties' indirect non-financial contributions. On weighing the evidence, I came to the conclusion that as between the Husband and the Wife, the latter was the primary caregiver. The evidence clearly shows that the Husband travelled much more frequently than the Wife, including many trips made over weekends and public holidays which he could otherwise have spent with his children. He consistently said that his mother was the primary caregiver of the children since 2001 (see, *eg*, Husband's second affidavit filed on 28 July 2006 at [41]; Husband's third affidavit filed on 30 October 2006 at [16] and [38]). It was apparent to me, therefore, that the Husband could not have been as involved with the children's welfare and household matters as he claimed to have been. On the other hand, I do not agree that the Wife made sacrifices in her career development to the extent she suggested. She herself admitted that apart from the extra month of leave taken after each birth, she maintained her job in order to continue earning sufficient income for the family expenses (see her fourth affidavit filed on 26 October 2006 at [54]). Her travels, although far less frequent than the Husband's, were by no means insignificant. For example, she travelled at least once a month for most months in 2002, the year after her son was born. Neither did the evidence that her Husband's salary overtook hers from 2001 onwards prove that her career had been compromised, since her income continued to increase fairly steadily even after 2001 and only decreased slightly in 2006, long after the birth of her second child in 2003. There could have been many other reasons why her salary did not increase as much as the Husband's. Nevertheless, I accept that as between the parties, she would have spent more of her available time caring for the children and the household than the Husband. For all these reasons, I find that the Wife's indirect non-financial contribution was more than the Husband's, *ie*, her indirect non-financial contribution was 65% while his was 35%.

59 In summary, I find that the parties' contributions were as follows:

Nature of contribution	Husband	Wife
Direct financial	46%	54%

Indirect financial	75%	25%
Indirect non-financial	35%	65%

60 Thus, taking the broad brush approach, I find that the appropriate division of the pool of matrimonial assets is 55% for the Wife and 45% for the Husband.

Apportionment

61 Currently, the Husband holds assets representing about \$521,900 in value of the pool of matrimonial assets. He is entitled to \$537,840 (45% x \$1,195,200) and thus there is a shortfall of about \$15,900. The Wife holds assets (including the amounts withdrawn from the Hong Leong joint time deposit and the Wife's POSB Savings Account) representing about \$673,300 of the pool. She is entitled to \$657,360 (55% x \$1,195,200) and thus there is an excess of about \$15,900. To give effect to the 55%-45% division, my orders are as follows:

- (a) The Wife is to pay over a sum of \$15,900 to the Husband;
- (b) The Husband is to retain ownership of the current car;
- (c) He is also to retain the Smith Barney Account (value of \$61,100) as well as the cheque of \$10,400 when paid by Smith Barney; and
- (d) The parties are to retain the rest of their assets currently held in their respective names.

For the avoidance of doubt, the DJ's previous orders on the division of matrimonial assets are set aside and my orders on division are to be effected instead.

Maintenance

62 The DJ had ordered the Husband to pay the Wife maintenance at \$1 a month on the first day of every month with effect from 1 November 2007. There is no appeal on this.

63 The DJ had also ordered the Husband to pay the Wife maintenance of \$3,200 per month for the two children on the first day of every month with effect from 1 November 2007. The Husband appealed for this sum to be reduced. The sum Ms Teh proposed before me on his behalf was much less. It is useful to set out how the DJ came to his decision on maintenance.

64 The DJ noted that the parties' own estimates of the children's expenses were not significantly different. According to him, the Husband had estimated their expenses to be about \$5,100 and the Wife had estimated them to be between \$5,300 to \$5,700. The DJ then considered the parties' income based on their latest Notices of Assessment (presumably for Year of Assessment 2006) and concluded that the Husband's income was about 1.5 times that of the Wife's. He then decided that the Husband should pay 63% of \$5,100 amounting to \$3,200 per month, as the base figure of \$5,100 was the Husband's own estimate of the children's expenses.

65 The figure of \$5,100 per month was derived from the Husband's affidavits and the submission for him before the DJ (see his third affidavit filed on 30 October 2006 at pp 1586 to 1589, and submissions filed for him on 19 April 2007 at [64] to [65]). It was submitted for him that the children's personal expenses were as follows:

(a) The daughter's personal expenses : \$1,684.50

(b) The son's personal expenses : \$1,813.00

\$3,497.50

66 In addition, the Husband had claimed that household expenses were \$4,789.31 per month. As the Husband's mother was residing with him, the Husband had taken the position that if he were to have care and control of both the children, then one-third of the household expenses should be attributed to the children. One-third of \$4,789.31 equals \$1,596.44 per month. When this sum of \$1,596.44 per month was added to the \$3,497.50 per month, being the children's personal expenses, the total was about \$5,100 per month.

67 It is important to remember that when the Husband's figures were presented before the DJ, it was on the basis that the Husband would be given care and control of both children. Consequently, he was asking that the Wife pay a portion of their expenses. In that scenario, it would be in his interest if the children's expenses (including household expenses) were inflated.

68 In my view, he did inflate their expenses. I need only mention briefly one or two examples as to how their expenses were inflated.

69 For example, the Husband had included \$1,500 per month for rent as household expenses since the matrimonial property was to be sold (it has since been sold as I stated above at [34]). Then, he attributed 20% of \$1,500, ie, \$300 per month, to each of the two children being his/her share of the rental expenses (see his third affidavit filed on 30 October 2006 at pp 1586 to 1589). When he then suggested that the children's expenses should include one-third of the household expenses (which included the rent of \$1,500 per month), there was double-counting. The same point applies to utilities.

70 Secondly, a large part of the Husband's household expenses was for car maintenance, car insurance, road tax, petrol, season parking at home and other parking. However, such expenses were really primarily for himself. He would have used a car whether he had care and control of the children or not.

71 Significantly, in the course of arguments before me, Ms Teh no longer included any household expense as part of the children's expenses and her submissions focussed instead on their personal expenses. Consequently, even for the period before 1 January 2008, the sum Ms Teh proposed before me was much less than what had been submitted to the DJ as I shall elaborate later below.

72 How was it then that the Wife's own estimate of the children's expenses before the DJ was close to that of the Husband's? The DJ said the Wife had estimated such expenses to be \$5,300 to \$5,700 per month. The approximate figure of \$5,300 per month is derived from her affidavit of assets and means filed on 14 June 2006 and her second affidavit filed on 19 July 2006 when she included additional expenses. It appears that, subsequently, in the Wife's table of the children's personal expenses, the sum for one item in respect of the son, ie, for childcare, was increased. This sum was increased from \$330 to \$650 per month because the Husband had provided the higher figure in anticipation of future higher expense for this item (see the Wife's Supplemental Core Bundle at p 53). Consequently, the total for the son's personal expenses was also increased. This may be the reason as to why the DJ took \$5,700 per month as the higher end of the Wife's estimate.

73 In any event, it seems to me that even based on \$5,300 per month, the Wife had also inflated the children's expenses. It must be remembered that she in turn was claiming that the Husband should bear part of their expenses on the basis that she would have care and control of both children. The approximate figure of \$5,300 was comprised as follows (see Wife's second affidavit filed on 19 July 2006 at [15]):

(a)	The daughter's share of household expenses (being 1/3 of the household expenses of \$4,445)	\$1,481.70
(b)	The daughter's personal expenses	\$1,372.00
(c)	The son's share of household expenses (being 1/3 of the household expenses of \$4,445)	\$1,481.70
(d)	The son's personal expenses	<u>\$ 959.00</u>
		<u>\$5,294.40</u>

74 As can be seen, the Wife had attributed to each of the children a one-third share of household expenses whereas the Husband had attributed one-third of such expenses to both of them together. In addition, the Wife had included rent as part of household expenses, when she was actually staying with her parents, on the argument that she could not live indefinitely with her parents. The Wife had also included expenses for a car as part of household expenses, even though she did not own or drive a car, on the argument that she intended to buy a car as it would be more convenient for her to fetch them around. The rent for premises and the car expenses were the main reasons why her estimate of household expenses rocketed from an original estimate of \$1,229.90 (in her affidavit of assets and means filed on 14 June 2006 at [12]) to \$4,445 per month.

75 I am of the view that prospective expenses for premises (rent) and for a car should not be taken into account yet. I am also of the view that it is not right to attribute to each child one-third of the household expenses as some would be incurred by the Wife's parents as well.

76 In the circumstances, the DJ should not have used either party's total estimate of the children's expenses.

77 Nevertheless, as a starting point, I will use the personal (not the total) expenses of each of the children as estimated by the parties and hope that I do not get dragged into error as a result of the parties' own computations. I should also mention that in the course of initial arguments before me, Ms Teh submitted that the personal expenses for each of the children should be reduced because of developments since 1 January 2008 in that their routine expenses had been reduced due primarily to two main reasons. First, the son was no longer attending kindergarten as he is now attending primary school. As for the daughter, she is no longer attending a childcare centre but a kindergarten. Secondly, according to the Husband, the children were walking to school and kindergarten respectively and so the amount he had allowed for transport should be deleted. In turn, Mr Lim submitted that there were additional expenses incurred since 1 January 2008. I will come to these arguments later.

78 I should say here that although the Husband's allegations about a reduction in children's expenses from 1 January 2008 should, strictly speaking, be dealt with in a separate application as

they occurred after the DJ's decision, I saw no useful purpose in making him file a separate application or for the matter to be dealt with afresh by a DJ. Accordingly, I allowed the Husband to file an affidavit on the reduction and the Wife to respond. Nevertheless, I indicated some perimeters so that the exercise would not be unduly complicated and to discourage the Wife from incurring new expenses just to meet the Husband's claim of a reduction in the children's expenses. I therefore indicated to counsel that the expenses which each party was relying on should be routine or regular expenses and not one-off expenses and should be incurred in the period January 2008 to June 2008.

79 The Husband used his estimate of the children's personal expenses before the DJ to begin his appeal on the maintenance he should bear. He had estimated \$1,813 per month for the son and \$1,684.50 per month for the daughter. Each of these estimates included \$300 per month for a child's share of rent and \$36 per month for each child's share of utilities. Ms Teh's submissions before me did not attribute any other household expense to any of the children.

80 The Wife's estimate of the children's personal expenses before the DJ was lower than the Husband's. It was \$959 per month for the son (including additional personal expenses stated in the Wife's second affidavit filed on 19 July 2006) and \$1,372 per month for the daughter (including additional personal expenses stated in the Wife's second affidavit filed on 19 July 2006).

81 Coming to the household expenses, the Wife's original estimate, *ie*, before she added additional household expenses for rent and for a car, was \$1,229.90 per month. Bearing in mind that the household expenses were incurred also for the parents, I think it is fair to attribute 20% (instead of one-third) of the household expenses to each of the children, *ie*, 20% of \$1,229.90 = \$245.98, say \$246 per month. I set out below a table of the children's personal expenses as estimated by the Wife, including their share of household expenses, and their personal expenses as estimated by the Husband.

Estimates

	<u>By the Wife</u>				<u>By the Husband</u>	
Son	\$959 (personal expenses)	+	\$246 (household expenses)	= \$1,205 per month	\$1,813.00 per month	
Daughter	\$1,372 (personal expenses)	+	\$246 (household expenses)	= \$1,618 per month	\$1,684.50 per month	
				\$2,823 per month	\$3,497.50 per month	

82 As can be seen, even though the Wife's estimates as set out above include a share of all household expenses, they were still less than the Husband's estimates. This was mainly because the Husband had included \$300 per month for rent in each child's personal expenses.

83 Although the Husband was prepared to use his estimates of the children's personal expenses as the basis of his arguments for the appeal, I think it is better that I use the Wife's estimates so that the Wife is not precluded from applying for a variation if she should in the future rent or buy a property (or a car). However, I hope she will not rent or buy a property (or a car) just to claim more maintenance.

84 For the period from 1 November 2007 to 31 December 2007, how much of the \$2,823 per month should the Husband bear? The DJ thought it should be 63% but Ms Teh submitted that even if I were to use the Husband's income for the Year of Assessment 2006, as the DJ apparently did, it should be 60%. I find that it would be closer to 61%. 61% of \$2,823 per month is \$1,722 per month. I round this figure up to \$1,900 per month to allow for miscellaneous and one-off items. This is the sum that the Husband is to pay the Wife for the maintenance of the two children for the period 1 November 2007 to 31 December 2007. However, there is one qualification. I recall that the Wife did not in fact obtain care and control of the son until late January 2008. No submission was made on this but I hope common sense will prevail and the parties will be able to make the appropriate adjustment to the sum to be paid by the Husband for the period up to the time when care and control of the son was handed over to the Wife. Otherwise, they will have to seek further arguments on this minor issue.

85 I come now to the period from 1 January 2008. I will deal first with Ms Teh's submissions on the various reductions in expenses and then with Mr Lim's submissions on the various increases in expenses.

86 Ms Teh submitted that the son is no longer attending kindergarten but a primary school. The Husband's previous estimate was \$630 per month for kindergarten although the son's expenses then for this item were \$330 per month. The Husband had allowed a higher figure of \$630 per month in anticipation of an increase in fees (but this might have been inflated as he was then making a claim against the Wife for contribution). The primary school fees for the son are \$11 per month. The Husband sought a reduction of \$619 per month (being the difference between \$630 and \$11). However, as I have used the Wife's estimates instead, the reduction will be \$319 per month (being the difference between \$330 and \$11). It will also be remembered that I did not adopt the last increase in the estimate by the Wife (before the DJ) from \$330 to \$650 per month for the son, see [72] to [73] above.

87 Ms Teh submitted that the daughter is no longer attending a childcare centre but a kindergarten. Previously, the Husband had estimated the daughter's fees to be \$620 per month for the childcare centre. The Wife had also allocated \$620 per month for fees alone and her final estimate of \$650 per month for the daughter's education expenses included uniforms, excursion and registration fees (see her affidavit of assets and means filed on 14 June 2006 at [14]). The daughter now incurs \$140 per month for the kindergarten. I agree that there should be a reduction of \$480 (being the difference between \$620 and \$140) per month for the daughter for this item.

88 The next main item in respect of which the Husband sought a reduction of the maintenance sum was the children's transport charges (which he estimated at \$100 each per month). He alleged that they now walk to school and kindergarten respectively. The Wife did not dispute this allegation in her reply affidavit. Mr Lim submitted that the children take a combination of taxi, MRT and bus and that the Wife was prepared to affirm an affidavit to this effect, if required. I found the second part of the submission, which was repeated for some of the Wife's other allegations, disconcerting. The Wife has had her chance to respond to the Husband's affidavit on changes in circumstances. If she chose not to do so, her counsel should not then submit that she is prepared to do so, if required.

89 Nevertheless, I note that the Husband's allegation is based on the assumption that part of the maintenance originally awarded by the DJ went to cover the cost of \$100 per month for each child's transport to and from kindergarten or a childcare centre. However, while the Wife had claimed \$66 per month for each child's transport expenses, these expenses were claimed for "cab fares when I bring my son out" or for "taxi rides during weekends" (see her affidavit of assets and means filed on 14 June 2006 at [14]). In other words, the Wife had not been claiming transport to and from

kindergarten or a childcare centre and I have adopted her estimates (and reasons) as the base from which to consider the Husband's position about changed circumstances.

90 In any event, I accept that \$66 per month for each child for the occasional taxi ride is too high. In the skeletal arguments made for the Wife, it was stated that at times, they take public transport. Therefore, I will reduce the amount for the transport item for each child from \$66 to \$30 per month, ie, a reduction of \$36 for each and \$72 for both each month.

91 I come now to Mr Lim's submissions on the additional expenses incurred for the period January 2008 to June 2008. Unfortunately, the Wife had included expenses of a one-off nature, contrary to my indication to counsel. Such expenses will not be taken into account as separate items.

92 For the son, his school fees are \$11 a month. This has already been taken into account by the Husband and by me.

93 The Wife further sought the expenses for items misplaced by the son during the first six months of the year. I am not minded to allow additional provision for these misplaced items as they are ad hoc expenses.

94 Mr Lim also submitted that the Wife allowed the son \$2 to \$3 a day as pocket money. Ms Teh countered that the Husband had learned that the son was given pocket money of \$1.50 per day for only the first month after he moved to live with his mother (around end January 2008). The son was not given any pocket money for the subsequent four months. It was only after the Wife had filed her affidavit on the additional expenses (on 28 July 2008) that she told the son that he would be given \$2 per day from July onwards. As I had stipulated that the expenses incurred after June 2008 were not to be taken into consideration in the parties' submissions on further expenses, I accept Ms Teh's version and submission.

95 Mr Lim submitted that the Wife intended to let the son attend a "Creative Baking Workshop for Children" (\$38) and other enrichment programmes during holidays. As this is in the future, I am of the view that it should be disregarded for now.

96 Mr Lim submitted that the son attends individual piano classes. The fees are \$100 for four lessons. The Wife had also paid \$60 for piano books but was unable to obtain a receipt. Ms Teh suggested that the piano books were probably covered by the fees as there was no reason not to be able to obtain a receipt from the piano teacher for such books when receipts for the tuition piano fees had been obtained. She also argued that the Husband had made provision for music class and books. I agree that there is no receipt for the music books and they appear to be a one-off expense. I will not allow any claim for music books. However, the Wife had previously allowed only \$80 per month for the son's music lessons and I am using her estimate. So I will increase the maintenance for this item by \$20 per month.

97 The Wife claimed \$155 per month for art classes for the son since March 2008. Ms Teh submitted that these were isolated incidents. Receipts were produced for March and April 2008 only (excluding July 2008 which is after the period in question). The evidence indicated that these were classes which the children would attend when they were free and the charge was for every four classes they attended. They appear to be more in the nature of ad hoc expenses and I will not take them into account. As an aside, I would mention that the Wife's previous estimates already included \$100 per month for the son for extra courses like speech and drama and abacus classes.

98 The Wife claimed she started the son on swimming lessons during the second half of the June

holidays and spent some additional sum on transport for an adult to accompany him. Even if this were true, such lessons were started late in the period between January 2008 to June 2008 and there was no evidence that they would be regular expenses. I will disregard them.

99 For the daughter, the Wife had mentioned basic school fees of \$420 per term (presumably of three months). This works out to \$140 per month but has already been taken into account by the Husband and by me.

100 The Wife claimed \$50 per term for miscellaneous fees for the daughter's kindergarten. Divided by three months, this works out to \$16.67 per month. Ms Teh asserted that this was probably for stationery which the Husband had provided for. However, the Wife had not provided for stationery in her estimate of the daughter's expenses before the DJ. I will allow \$16.67, say, \$17 per month for this item.

101 The Wife claimed \$120 per term or \$40 per month for a computer course for the daughter but I accept Ms Teh's submission that the daughter had not been enrolled in a computer course before and she had had her first computer lesson on 16 July 2008 only. This is outside the perimeters I set and will be disregarded.

102 The Wife claimed \$180 per term or \$60 per month for Kindermusic classes for the daughter. Ms Teh challenged this item as only one receipt was produced for Terms 1 and 2 and apparently, the Wife had used money from a Child Development Account ("CDA") (see the Wife's affidavit of assets and means filed on 14 June 2006 at [8]) to pay for Terms 3 and 4. The money in the CDA was contributed by the Husband (see the Husband's second affidavit filed on 28 July 2006 at [7]). Also, the daughter is having piano lessons and should not be having Kindermusic classes. I agree that the Husband should not be required to contribute to both private piano lessons and Kindermusic classes. The Wife had already claimed \$80 per month for music in her previous estimates. The Kindermusic item will not be allowed.

103 The Wife claimed registration and insurance costs for the daughter amounting to \$8.25 per month. This item appeared to be in relation to the kindergarten. I note that she has already included \$30 per month for uniforms, excursion and registration fees in her previous estimate for the daughter. The \$8.25 item will not be allowed.

104 The Wife claimed \$25 per month for various ad hoc items including misplaced items. As stated above, I will not allow this item as a separate claim.

105 The Wife claimed \$90 per month for piano lessons and a one-off expense of \$45 on piano books and materials for the daughter although there was again no receipt for the latter. She had already claimed \$80 per month for music in her previous estimate for the daughter. I will allow an additional \$10 per month but nothing for the one-off \$45.

106 The Wife claimed \$155 per month for art classes for the daughter just as she claimed for the son. As mentioned above, they are ad hoc in nature and will be disregarded. I will also not allow the \$20 per month for alleged transport costs for these classes.

107 The Wife claimed that the daughter had started swimming lessons (as the son had). Such lessons, if any, were outside the period I set and will be disregarded.

108 For the children's expenses commencing 1 January 2008, I summarise below the sums to be deducted or added to the base figure of \$2,823 per month (before any general top-up for

miscellaneous and one-off items):

Base figure	\$2,823 per month
(a) Deduct for reduction in son's school fees (as compared to kindergarten)	- \$ 319
(b) Deduct for reduction in daughter's kindergarten (as compared to childcare)	- \$ 480
(c) Deduct transport expenses for each child (\$36 x 2)	- \$ 72
(d) Increase for son's piano lessons	+ \$ 20
(e) Increase for daughter's miscellaneous fees/stationery for kindergarten	+ \$ 17
(f) Increase for daughter's piano lessons	+ \$ 10
	<u>\$1,999 per month</u>

109 I am aware that the figure of \$1,999 per month is less than that submitted by Ms Teh before me but that is because she was using the Husband's previous estimates which included, for example, the children's share of rent. As mentioned above, I have used the Wife's estimates for the children but excluded rent as well as car expenses.

110 The Husband's 61% share of \$1,999 per month is about \$1,220 per month. I will round it up to \$1,400 per month to allow generally for miscellaneous and one-off items as well. Therefore, from 1 January 2008, the Husband is to pay the Wife \$1,400 per month maintenance for the children. This is subject to the qualification above that some adjustment should be made to take into account the fact that the Wife had care and control of the son from late January 2008.

111 Ms Teh had suggested that I order the Wife to use the CDA account to make some payments because the parties are financially in a tight situation. I do not think the situation is as bad as she suggested. Besides, the \$1,400 per month is much less than what the Husband was supposed to pay under the DJ's order. I will not make any specific order for the CDA but I suggest that the Wife keeps a proper record of its use.

112 In summary, the Husband is to make the following payments for maintenance of the two children, subject to the qualification above that some adjustment should be made to take into account the fact that the Wife had care and control of the son from late January 2008:

Period	Amount per month
1 Nov 2007 to 31 Dec 2007	\$1,900

From 1 Jan 2008	\$1,400
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113 I hope that with the passage of time, the parties will not quibble over every item of expense and take a more sensible broad-brush approach.

Conclusion

114 The 17 October 2007 order of the DJ is varied to the extent stated above. The Husband is to hold \$50,001 in the POSB trust accounts on trust for the sole benefit of the son and daughter respectively until each reaches 21 years of age whereupon the money is to be given to that child. I will hear the parties on costs if they are unable to agree on the same.

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