

ALJ v ALK  
[2010] SGHC 255

**Case Number** : Divorce Transfer No 3435 of 2008  
**Decision Date** : 26 August 2010  
**Tribunal/Court** : High Court  
**Coram** : Woo Bih Li J  
**Counsel Name(s)** : The plaintiff in person; Helen Chia and Rebecca Kool (Helen Chia LLC) for the defendant.  
**Parties** : ALJ — ALK

*Conflict of Laws*

*Family Law*

26 August 2010

**Woo Bih Li J:**

**Introduction**

1 The plaintiff, ALJ (“the Husband”) married the defendant, ALK (“the Wife”) on 21 April 2005. They have two children: a son born in 2006 and a daughter born in 2007. The Wife gave birth to a third child in 2008, while the parties were still married. Both parties have proceeded on the basis that the Husband is not the father of the third child. The present proceedings relate only to the first two children of the marriage.

2 The Husband commenced divorce proceedings and ancillaries in Singapore in July 2008 claiming, *inter alia*, that the marriage had broken down irretrievably because the Wife had committed adultery and the Husband found it intolerable to live with her. The Wife counterclaimed against the Husband, alleging unreasonable behaviour on his part. The District Court found that the claim and counterclaim were sufficiently proven and granted interim judgment on 1 July 2009.

3 The ancillary matters were transferred to the High Court and came before me for hearing. The Husband represented himself and the Wife was represented by counsel. The issues arising in the ancillaries were:

- (a) custody, care and control of the parties’ two children;
- (b) access to the two children by the party not awarded care and control;
- (c) division of matrimonial assets and maintenance for the Wife; and

(d) maintenance for the two children.

## **Background facts**

4 Both parties are United States citizens and permanent residents of Singapore. The Wife obtained her permanent residency as a dependent of the Husband. The parties met in California in 2004 and came to Singapore in February 2005 when the Husband was posted here for work by his company. They were married here two months later. The matrimonial home was a rented house. Their son and daughter were born in Singapore but are also United States citizens. The Husband travelled overseas frequently due to work commitments while the Wife worked as a property agent in Singapore.

5 The marriage started to deteriorate sometime in 2007 shortly after the daughter was born. According to the Wife, the Husband had problems with alcohol and frequently used violence on her. On 24 October 2007, while the Husband was away on a business trip in Shanghai, the Wife applied for and obtained an expedited Personal Protection Order ("PPO") against him. When the Husband returned to the matrimonial home two days later, he discovered that the Wife had taken the children to stay in a hotel. The Husband left for California on 29 October 2007 to spend time with his family. When he telephoned the Wife from California just a few days later, she informed him that she had fallen in love with another man, [TP], whom she had known since 2005, and that he had moved into the matrimonial home. [TP] was the co-defendant in the main divorce proceedings and I shall refer to him as "the Third Party". The Husband was traumatised when he heard the Wife's news and checked into a hospital for treatment.

6 The Wife remained in Singapore with the children and the Third Party during this period, while the Husband was undergoing therapy. The Husband made many attempts to contact the Wife from overseas but she told him to stop harassing her and not to return to the matrimonial home. She also informed him that she wanted a divorce, that she would get sole custody of the two children and that the children were very happy living with the Third Party. The Wife also became pregnant around this time and later gave birth to the third child in September 2008. She admitted that the Third Party is the father of this child.

7 The Husband returned to Singapore in January 2008 and removed the two children from the matrimonial home without the Wife's knowledge or consent. It is unclear when the children were returned to her. In any event, she subsequently applied to court by Originating Summons (Family Matters) 14 of 2008 ("OSF 14/2008") for an order of interim custody, care and control under the Guardianship of Infants Act (Cap 122, 1985 Rev Ed). The District Judge granted the order on 5 February 2008. The court order also granted half-day access to the Husband on Thursdays and Saturdays.

8 Around this time, the Wife also commenced divorce proceedings in California in late January 2008. She alleged that she has since withdrawn those proceedings.

9 The Husband removed the children from the matrimonial home without the Wife's knowledge or consent on two more occasions in April and August 2008. Again, it is not clear when the children were returned to the Wife's care and control each time but she had to apply for and obtain further court orders against the Husband for their return. In fairness to the Husband, it appears that the Wife herself had also been in breach of the 5 February 2008 court order granting him access to the children. The Husband explained that he resorted to removing the children from the matrimonial home because the Wife had refused to let him see them.

10 During this stormy period, the Husband also committed acts of harassment against the Wife and the Third Party. In January 2008, he forged the signatures of the Wife and the Third Party in a SingPost application to redirect their mail to his own mailing address. He then opened the Wife's and the Third Party's letters sent to his address and used the information in these letters to contact their family members, acquaintances and friends without their permission. Later in April 2008, the Husband also sent several death threats to the Third Party in the form of text messages. For these acts, the Husband was charged on 7 October 2008 with forgery and criminal intimidation under ss 465 and 506 of the Penal Code (Cap 224, 2008 Rev Ed) respectively. He pleaded guilty to both charges and was fined a total of \$8,000 and in default eight weeks' imprisonment. Apparently, three other charges were taken into consideration.

11 As mentioned above, the Husband commenced divorce proceedings in Singapore in July 2008 alleging adultery on the part of the Wife. The Wife counterclaimed on grounds of the Husband's unreasonable behaviour. In his affidavit of evidence-in-chief, the Husband alleged that the Wife had been in an adulterous relationship with the Third Party long before she applied for the expedited PPO against him on 24 October 2007. He produced as evidence a photograph of the Third Party's diary indicating that the Wife and the Third Party had an "anniversary" on 9 October 2007. The Husband also alleged that after the marriage broke down, he discovered that the Wife had previously been married to three other men and had committed adultery in the last two marriages.

12 The Wife claimed in her defence that she only got involved with the Third Party after the marriage had irretrievably broken down. She did not address the Husband's allegations about her previous marriages. The Wife also claimed that the Husband had behaved violently towards her during the marriage due to his history of alcoholism and depression. For example, he pulled her hair on one occasion when she was driving along the road with one of the children in the back seat, which nearly resulted in an accident. On another occasion, he ripped her spectacles from her face and slapped her, breaking the spectacles in the process. After the marriage broke down, he started to harass her family and friends. He also breached court orders several times by removing their two children from her care and control and refusing to return them until she applied for committal proceedings against him.

13 On 1 July 2009, the District Judge found that the claim and counterclaim were proven and granted interim judgment.

14 The parties' two children are presently living with the third child and the Wife, who continues to work as a property agent here. The Husband has half-day access on two weekdays from 2.00pm to 7.00pm and full-day access on Saturdays from 9.00am to 7.00pm, with the handover being made at Tanglin Police Station. He has no overnight or overseas access. The Wife also continues to be in her relationship with the Third Party. The Husband is currently unemployed, having lost his job with his company in May 2008. He is living on his savings but stated that he had a job offer waiting for him back in California. He is also paying \$800 and \$1 per month towards the maintenance of the children and the Wife respectively. Although both children are United States citizens, they are allegedly unable to leave Singapore as their passports have expired. The Immigration and Checkpoints Authority ("ICA") has in fact granted the children special passes allowing them to remain in Singapore pending the outcome of these proceedings. It was not made clear to me whether these special passes could be used as temporary passports for the children.

15 The Husband's wish was to bring the two children back with him to California. He stated that he only came to Singapore for work and did not intend to remain here permanently. The Wife originally intended to bring the children with her to Dubai, where the Third Party is currently working. However, she changed her mind and now wished to remain in Singapore for the foreseeable future. She also

mentioned that the Third Party was posted to Dubai by his company as a temporary safety measure because of the threats made against him by the Husband. Finally, she stated that although her permanent residency is due to expire next year, she was confident of obtaining a fresh permanent residency based on her own merits.

### **Preliminary issue – Stay of proceedings**

16 Before dealing with the substantive issues, I had to address a point brought up by the Husband which caused some confusion. His main argument was that the children should return with him to California so that the ancillary matters could be resolved in the Californian courts. This was in fact his primary objective throughout the various proceedings here and he had taken out applications to stay both the proceedings in OSF 14/2008 and the current divorce proceedings (after interim judgment was granted) in favour of the Californian courts. His stay application in OSF 14/2008 was dismissed while it is not clear what became of his stay applications in the divorce proceedings. Although the Husband did not make a formal application before me to stay the ancillary proceedings here, this was essentially the gist of his submission and I accordingly treated it as such.

17 The Husband explained in his submissions and affidavits that he had no choice but to commence divorce proceedings in Singapore in the first place because the Wife had refused to return to California with the children. He continued to maintain the position before me that his only purpose in the Singapore proceedings was to gain custody of the children so he could apply to renew their passports and bring them back to California. The parties would presumably then have to resolve the ancillary matters in the Californian courts. Indeed, the Husband, throughout the hearing, seemed to be far more interested in getting the children back to California first rather than resolving the substantive issues in the ancillaries themselves.

18 I declined to stay the proceedings here and proceeded with the hearing on the ancillaries. It was in the first place arguable that the Husband was precluded from applying for a stay after his stay application in OSF 14/2008 was dismissed. In any event, even if he was not so precluded, it was for the Husband to persuade me that California was not only an appropriate forum but that it was clearly a more appropriate forum than Singapore to hear the ancillary matters including issues pertaining to the children. This was the established test for stay applications as laid down in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 which was affirmed many times by the Court of Appeal, most recently in *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [33]. In this regard, I was of the view that California was not clearly the more appropriate forum to resolve the ancillary matters. In doing so, there were several connecting factors with Singapore which I took into account. First, the Husband had already progressed very far in the present divorce proceedings. He said that he was forced to file for divorce in Singapore only because the Wife had refused to return to California with the children. He thus started divorce proceedings here so he could obtain a temporary order of custody to bring the children back to California and have the divorce resolved there. That being the case, the Husband should have made his position clear from the start and not proceed all the way to obtain interim judgment.

19 Since interim judgment had already been granted, I considered it more appropriate for the ancillaries to be resolved here also. The authorities make it clear that it is more important for the same court to consider both the main divorce and the ancillary matters than to divide the issues to be decided in separate jurisdictions (see, eg, *Low Wing Hong Alvin v Kelso Sharon Leigh* [1999] 3 SLR(R) 993 at [21]; *Mala Shukla v Jayant Amritanand Shukla* [2002] 1 SLR(R) 920 at [57]–[58]). This is because the reasons for the breakdown of the marriage might be relevant when the court is considering the ancillary issues such as custody, care and control and division of matrimonial assets.

20 The other connecting factors were that the parties were married in Singapore, and that the children were born and raised here. However, the former was not a significant factor as it was probably fortuitous on the facts before me. I accepted that the reason why the children were born and raised in Singapore was because the Husband was working in Singapore but that reason did not detract from the fact that they had been raised here. There was also a Social Welfare Report prepared in February 2010 giving details on the children's current situation in Singapore. The Wife also stated, although only recently, that she intended to stay in Singapore for the foreseeable future but I did not give too much weight to this factor because her plans could always change.

21 As for the connecting factors with California, the Husband pointed out that the parties and the children were all United States citizens. Furthermore, the Wife had commenced divorce proceedings in California in January 2008 even before she had commenced OSF 14/2008 in Singapore. I also noted that the Wife was claiming a share in several properties in California and claiming various accounts in a portfolio apparently maintained in California. However, I did not think that these factors were enough to warrant a stay of proceedings. The Wife had already testified that there were no ongoing proceedings in California and produced a declaration from her United States attorney to this effect. Furthermore, although the assets she was claiming from the Husband were in California, the main focus of both parties in these ancillary matters was clearly the children, who were residing in Singapore.

22 As such, while there were connecting factors with California, I was nevertheless of the view that California was not clearly the more appropriate forum than Singapore.

23 The Husband argued that the two children had to return to California immediately in any event because their passports had expired, making them illegal immigrants here. I did not find much force in this argument as the problem with their passports arose out of the Husband's own making. Since the issue of custody had yet to be resolved, the United States embassy would only renew the children's passports upon an application signed by both the Husband and the Wife. The Husband had not agreed to sign such an application (except for the limited purpose of bringing the two children with him back to California) for fear that the Wife might remove the children out of Singapore.

### **Custody, care and control**

24 As regards the ancillaries, both parties claimed sole custody, care and control of the two children. The Husband contended that the Wife should not have custody, care or control because she was an immoral person and incompetent parent. He was also of the view that she was not mentally stable in view of her numerous allegations (especially those of violence) against him, which he categorically denied. I should mention that she took out an application for a PPO against him but the application was dismissed by the Family Court on 27 May 2010 with costs awarded against her.

25 The Husband wanted to raise the children back in California in a wholesome environment with good family support. He expressed fears that if sole custody, care and control were granted to the Wife, she would remove the children from Singapore and relocate them somewhere where he would never see them again. He sought an order for sole custody, care and control, so that he could apply on his own to have their passports renewed and bring them back to California. However, when I asked him for his position if I were minded to grant sole custody to the Wife instead of to him, he appeared to prefer to have joint custody rather than no custody at all. He also stated that if the children were not allowed to return to the United States, he would find some way to remain in Singapore for their sake.

26 On her part, the Wife claimed sole custody, care and control because she felt that the Husband

had a violent disposition and was psychologically unstable. She further alleged that the Husband engaged in careless or reckless conduct which compromised the children's safety or well-being. On this latter point, she produced a private investigator's report on the Husband's activities during his access time with the children. The report noted, among other things, that the Husband brought the children for a car ride with his friend and that the friend was driving at speeds of around 135–140km/h. The Husband and his friend were also seen bringing the children close to wild monkeys. As such, the Wife was worried for the safety of the children if they were entrusted to the Husband. She also stated that the Husband was currently unemployed and would not be able to care for the children whereas she had always been the children's primary caregiver since the Husband left the matrimonial home after the breakdown of the marriage in late 2007. She maintained a household with maids to care for the children while she was attending to clients. At all other times, she stayed with the children while she was working from home.

27 On the issue of custody, the Wife submitted that a joint custody order would be totally unworkable. The relationship between her and the Husband was so bitter and hostile that any co-operation between them was impossible. The acrimony between the parties was further aggravated by the Wife's fear of the Husband due to his instability and violent disposition. The Wife also argued that a joint custody order was impracticable because the Husband was planning to return to the United States while she remained in Singapore; hence the Husband would be too distant to make effective joint decisions with the Wife.

28 Although there were some reasons to make an order for sole custody, I eventually decided to make a joint custody order. While it was clear that there was tremendous bitterness and hatred between the Husband and the Wife, both parties seemed to genuinely love the two children and the circumstances here were not exceptional enough to warrant a sole custody order. As the Court of Appeal held in *CX v CY* [2005] 3 SLR(R) 690 at [38] ("*CX v CY*"):

We would emphasise that recent decisions have been inclined towards making joint or no custody orders due to the need to ensure that the child becomes attached to both parents. The idea behind joint or no custody orders is to ensure that neither parent has a better right over the child and that both have a responsibility to bring the child up in the best way possible. Similarly, the child has a right to the guidance of both his parents. Parenthood is a lifelong responsibility and does not end at a particular age of the child, but continues until the child reaches adulthood. The question we have to answer will always be what is best for the child in the future. We agree with Assoc Prof Debbie Ong that the exceptional circumstances where sole custody orders are made may be where one parent physically, sexually, or emotionally abuses the child (see Debbie Ong, "Making No Custody Order" ([19] *supra*) at p 586), or where the relationship of the parties is such that co-operation is impossible even after the avenues of mediation and counselling have been explored, and the lack of co-operation is harmful to the child (see Debbie Ong, "Parents and Custody Orders" ([27] *supra*) at p 222-223).

29 The circumstances in *CX v CY* were similar to the present case. The mother in *CX v CY* was living in Singapore while the father was based in Bangkok. The mother alleged that the father was abusive, neglected to pay maintenance and that his lifestyle would have a negative influence on the child (due to his adultery) if he were to be part of the decision-making process. She also argued that there was a communication breakdown between the parties that was further exacerbated by the geographical distance between the parties. The father, on the other hand, complained that the mother had attempted to prevent him from contacting the child and that his failure to pay maintenance was due to the fact that he did not know the whereabouts of the mother and child. The Court of Appeal, after considering the facts, stated at [41]–[42]:

We had reviewed the affidavit evidence of the parties as exhibited in their respective cases. An examination of the various allegations would reveal that most of them arose from the parties' unhappiness with one another rather than from the fact that they did not care for the child and would be unable to co-operate for the child's welfare. The mother's concerns that the father was irresponsible and had compromised the child's welfare, have not been borne out. Instead, the allegations and cross-allegations were likely due to differences in the parties' parenting expectations and lack of trust in one another. It must be kept in mind that in hotly contested custody cases such as the present one, where both parents love their child dearly, there is often a tendency to exaggerate the wrongdoings of the other party.

In this situation where both parents clearly love the child, we agreed with the judge that we could not rule out the possibility that the parties could eventually co-operate for the benefit of the child. We appreciate the mother's concerns that communication will be difficult as the father is based in Bangkok. However, with modern-day technology, we do not think that it will be an insurmountable task for both parties to keep in contact and for the mother to consult the father on longer-term decisions concerning the child's upbringing. We therefore concluded that the judge, having had the opportunity to assess the parties in person, was not plainly wrong in coming to a decision that a joint custody order would be in the welfare of the child.

30 Similarly in this case, I found that most of the allegations flung by both parties at each other stemmed from their mutual anger and distrust rather than their lack of concern for their children. They have fought tooth and nail in these proceedings for custody, care and control of the children because they were clearly bent on going their separate ways, never to speak to one another again and their primary goal here was to ensure that the children came with them. While there was a kernel of truth in some of the various allegations made by the Husband and by the Wife, I found that they were also largely exaggerated because of each party's desire to keep the children for themselves. I should nevertheless clarify that the Wife's adultery was clear and undisputed.

31 Since both the Husband and Wife clearly loved the children and were prepared to care for them, I was of the view that a joint custody order was in the best interests of the children. I was fortified in my decision by the findings in the Social Welfare Report which stated that both children enjoyed a good relationship with their parents. The daughter seemed to be unaware of the parties' separation but stated that she was happy staying with either the Husband or the Wife. The son, on the other hand, said that he was not happy with the current care arrangement but could not explain further. He seemed to understand that the parties were separating but could not verbalise his thoughts. The Social Welfare Report mentioned that there were frequent conflicts between the Husband and Wife during the interim access period and this had already caused great stress and tension to the children, especially the son who was showing signs of behavioural problems. It concluded that both children needed the continued love, care and support of both parents to develop into healthy adults. This could only be achieved if both parents co-operated in raising the children.

32 A joint custody order was also, in my view, an appropriate reminder to both parties that parenting is a shared responsibility. I noted that both the Husband and Wife had previously attempted to exclude the children from the other; the Husband by removing them from the matrimonial home without the Wife's knowledge and the Wife by denying access to the Husband in breach of a court order (for which she was found in contempt of court on 16 April 2010 and fined \$800). A joint custody order would send a signal that neither party had the right to exclude the other from major decisions affecting the children's upbringing.

33 For these reasons, I hope that the Husband and Wife will be able to put the interests of their children over their personal animosity. Although they were unable to get the clean break each of them

wanted, I believe and hope that they will eventually be able to co-operate in raising the children. Since custody only involves the important, long-term aspects in the children's upbringing, the parties will not be subjected to the unpleasantness of communicating regularly with each other. For the same reason, any geographical separation between the parties would also not be a great barrier to co-operation.

34 As for care and control, I was of the view that the Wife should continue to have care and control of the children as she had been their primary caregiver before and since the breakdown of the marriage, and not so much because of her allegations of the Husband's violent and careless conduct. In *Tay Eng Hwa v Kwok Wai Ming* [1996] SGHC 113, the child had become accustomed to living with the mother ever since the parties separated and there was no compelling reason to change the status quo. Although the father argued that she would not be able to look after the child as she was working, the court found that he would not be in a better position as he was working himself. Similarly in this case, the children had already been accustomed to living with the Wife, who usually worked from home unless she was meeting clients. They would not be in a better position if care and control of them was given to the Husband.

35 Furthermore, the Husband has also made clear his intention to return to his own family in California with the children if care and control was given to him. I did not think such a change was in the children's best interests, especially since they have already become unsettled due to the ongoing conflicts between the Husband and Wife (see [\[31\]](#) above). In this regard, I would gratefully adopt the following passage from Khoo Oon Soo *et al*, *Family and Juvenile Court Practice* (LexisNexis, 2008) at p 169:

The general view is that there should be stability in the lives of the children. Too many changes within a short span of time would be detrimental to their well-being. If a child has been residing with one parent for the greater part of his life, the onus lies on the parent seeking to evoke a change to show that a new environment has advantages that far outweigh the security and stability of preserving the status quo.

36 Thus in *Wong Phila Mae v Shaw Harold* [1991] 1 SLR(R) 680, the court decided not to transfer the custody of the children from the father to the mother who was based overseas since the children were already placed in schools here and were in the course of settling down in their studies. Also, in *Lim Chin Huat Francis v Lim Kok Chye Ivan* [1999] 2 SLR(R) 392, the court decided not to order an infant to be removed from her present guardians as she had been well cared for and should continue living with them in order to minimise any emotional upheavals. In the present case, since the children were already settled in Singapore and the Wife had expressed her intention to remain here for now, I thought it best to preserve the status quo.

37 Finally, the Court of Appeal in *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 held that where all the factors are equal between the parties, care and control of a child of tender years should be with the mother. As Yong Pung How CJ said at [45]:

All other things being equal, a very important factor to bear in mind was that we were dealing with an extremely young infant. We felt that the maternal bond between the appellant and the infant was a pivotal consideration here. The bond between the natural mother and her child is one of the most unexplainable wonders of human nature. It should never be taken for granted or slighted. We have all heard of the story of the mother who fought a tiger with her bare hands to save her child from the ferocious beast. Such is the love and sacrifice of the maternal instinct. Since the beginning of civilisation to this age of consumer materialism, the mother's love for her child remains just as strong and unchanging. This court would be doing a disservice to justice and



humanity if it turned a blind eye to the most fundamental bond of mankind - between a mother and her child, by taking the child away from the mother.

38 I had taken into account the findings of the Social Welfare Report that the Wife seemed to have difficulties controlling the children despite the help of two domestic maids, in contrast to the Husband being able to command the attention of the children. In my judgment, this factor alone was not enough to warrant a change from the children's current situation. Neither was the additional fact that the mother had committed adultery sufficient to give care and control to the Husband. The countervailing factors, such as the need for stability in the children's lives and the preservation of the maternal bond, were more important considerations here.

39 Therefore, I ordered that both the Husband and Wife were to have joint custody of the two children. The Wife was also to have care and control.

### **Access**

40 As mentioned above at [\[14\]](#), the Husband currently has half-day access for two weekdays and full-day access on Saturdays, with no overnight or overseas access. The handover was to be made at Tanglin Police Station. I saw no reason to disturb the present arrangements and accordingly made an order for his access on the same terms.

### **Division of matrimonial assets and maintenance for the Wife**

41 The Wife made a claim for all the accounts in a portfolio apparently maintained in California that were valued at US\$261,659.12 as of June 2007. The Wife also had claimed a share in several properties said to be owned by the Husband in the United States of America but all these properties were acquired long before the marriage and the Wife had not shown any evidence to suggest that she had substantially improved any of them. That was probably why her counsel claimed a share for her in the properties in lieu of lump sum maintenance for the Wife, instead of as a division of matrimonial assets. Likewise, her counsel did not claim all the accounts in the portfolio as part of matrimonial assets but rather as lump sum maintenance. Counsel accepted that if I were not minded to grant the Wife any substantial maintenance, her claim to the properties and all the accounts in the portfolio would fail.

42 The Husband denied that he owned the above properties. As for the portfolio of accounts, he mentioned that in the past he had saved about US\$15,000 each year during the marriage until it broke down two and a half years later because of the Wife's adultery. The balance of the money in the portfolio was presumably acquired by the Husband before the marriage. In any event, he said that he had spent all the money in the portfolio on legal fees. He also said that he still owned one or two joint accounts with the Wife in the United States. These joint accounts allegedly had very small credit balances and neither party was claiming them in the present proceedings.

43 Since the Husband's savings was the only matrimonial asset in issue in these proceedings, I gave the Wife an eight percent share of what the Husband had saved for three years during the marriage. If he had incurred legal fees on the divorce and ancillary proceedings, he should have used his own assets to pay for them first and not matrimonial assets. Also, in the absence of independent evidence, I did not accept that he had used all his assets to pay for legal fees. Since the Husband had saved about US\$45,000 over three years, I ordered him to pay US\$3,600 to the Wife. I was of the view that an eight percent share was just and equitable bearing in mind her role as primary caregiver of the children.

44 As for her maintenance, I ordered the Husband to pay \$1 per month maintenance to the Wife as she was capable of supporting herself in the future. I declined to order any lump sum maintenance or division of matrimonial assets in lieu of lump sum maintenance. In addition, on the facts before me, the Wife might re-marry whereupon the Husband's duty to maintain her would cease.

### **Maintenance for the children**

45 On 2 June 2009, the District Court ordered the Husband to pay maintenance for the two children in a maintenance summons as follows:

- (a) \$3,800 per month from November 2007 to April 2008;
- (b) \$1,000 per month from May 2008 to September 2009; and
- (c) \$3,800 per month from October 2009 onwards.

As noted above at [\[14\]](#), the Husband lost his job with his company on May 2008 and remains unemployed. On 30 December 2009, the Husband successfully applied to vary the maintenance order to \$800 per month from the last day of October 2009 onwards. He claimed at the hearing before me that his loss of employment was not the sole reason for the reduction and that another reason was that the Wife could not substantiate the alleged expenses for the children.

46 The Wife set out her current expenses for the two children in her latest affidavit of 23 July 2010 as follows:

<b>Item</b>	<b>Expense</b>
Apartment rental (to accommodate her, the two children, and the third child)	\$7,800
Car rental (also used to transport her and the third child)	\$3,014
Petrol cost	\$200
Taxi fare	\$200
School fees for the two children	\$1,750
Domestic helper's wages	\$770
Clothing, story books and entertainment/outings for the two children	\$900
Food expenses (eating out and groceries)	\$1,300
<b>Total</b>	<b>\$15,934</b>

47 In my view, the Wife's monthly household expenses for the two children were plainly excessive and I revised them as follows:

- (a) The sum of \$7,800 was obviously too high. Although the Wife did not disclose details of where she was currently staying, it appeared to me that she had rented a serviced apartment for herself, the two children and the third child. In any event, I found that a monthly rental of \$7,800 hinted at an unnecessary level of luxury for the children. A reasonable figure for rental for

a non-serviced apartment would be \$4,000. Since the apartment would be used to accommodate the two children, the Wife and her third child, the two children's accommodation expense should actually be \$2,000 ( $\$4,000 \div 4 \text{ people} \times 2 \text{ children}$ ).

(b) The car rental of \$3,014 was also excessive. The Wife had rented a Volvo S80 luxury sedan which was, in my view, an expensive means of transporting the children and thus I decided that a more reasonable figure would be \$1,000. At \$1,000 per month, she would spend \$12,000 per year or \$120,000 over ten years for the use of a car. That sum (not even taking into account the scrap value) was more than enough to purchase a decent family car. Since the car was also used to transport the Wife and her third child, the two children's transport expenses should be half the rental, *ie*, \$500. For the same reason, the petrol expenses should also be \$100 instead of \$200. Since the children already had the use of a car, there was no reason to incur additional expenses on transport and thus I disallowed the claim for taxi fare.

(c) The Husband submitted that the sum of \$1,750 for the children's school fees was excessive because he had previously enrolled his son in playschool for about \$350 a month. The Wife did not disclose the name of the school where the children were currently enrolled but I accepted the Husband's submission that \$1,750 for both children was too high an expense in any event. I therefore reduced it to \$800.

(d) I also halved the expenses incurred on the domestic worker's wages to \$385 since the Wife and the third child would also have the benefit of her services.

(e) Finally, the alleged amounts spent on the two children's clothing, story books and outings were also too excessive and I reduced those expenses to \$300 per month. I also reduced the amounts spent on food to \$800.

48 Adding these figures together, I arrived at a sum of \$4,885 for the children's total monthly expenses. From this sum, I ordered that the Husband bear approximately two-thirds of the maintenance or \$3,250 per month. Although the Husband was currently unemployed in contrast to the Wife, his earning capacity was definitely greater than hers and there was a job waiting for him back in California. He had disclosed in his written submissions that he earned around US\$150,000 per year in his previous job, although he later changed the figure to US\$135,000 in his oral arguments. He even mentioned that he could get a better job if he returned to California. In any event, the Husband's earning capacity was still more than the Wife's and he should rightly bear a greater portion of the children's maintenance. Since he is currently unemployed, I ordered maintenance to commence from 1 November 2010. Whether he returns to California or stays in Singapore, he is to find a job. I therefore ordered that the Husband pay a monthly maintenance of \$3,250 for the two children with effect from 1 November 2010. From now until then, he will continue to pay the current monthly maintenance of \$800 per month for the children.

## **Conclusion**

49 To summarise, I made the following orders:

(a) Both parties were granted joint custody of the children. The Wife was to have care and control.

(b) The Husband was to have access to the children on terms which were the same as his current access terms.

(c) The Husband was to pay the Wife the sum of US\$3,600 as division of matrimonial assets. He was also to pay the Wife \$1 per month as maintenance for her.

(d) The Husband was to pay the Wife \$3,250 per month from 1 November 2010 for the maintenance of the two children. In the meantime, he was to continue paying his current maintenance of \$800 per month.

50 Since both parties had joint custody of the children, their passports would only be renewed by the United States embassy upon the application of both parents. I declined to make any consequential orders requiring the parties to co-operate to sign any such application because I felt that this was a matter they should sort out themselves without the court's intervention for the time being. Nevertheless, I gave them liberty to apply to any court including the Family Court in the event they still failed to co-operate on this issue or on any other issue. I also ordered each party to bear his/her own costs of the ancillary proceedings.

51 Lastly, the Husband mentioned at the end of the hearing that after he had left the matrimonial home in October 2007, the Wife took away his personal belongings in the home and put them into storage. He seemed to be claiming his belongings back as part of the division of matrimonial assets. Counsel for the Wife informed me that those personal belongings were no longer in existence but did not elaborate. Leaving aside the fact that the Husband raised this point orally only after I had given judgment, it was clear that I could not order division of matrimonial assets that were not even in existence. I left it to the parties to resolve whether these belongings were still in existence and, if so, where they were.

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