

Navigating the Complexities of Matrimonial Asset Division and Child Maintenance: A Landmark High Court Ruling

– *WLE v WLF [2023] SGHCF 14*

Introduction

This is a marriage of 22 years with two children, a son and a daughter, aged 22 years and 19 years respectively. The parties did not dispute joint custody of the daughter with care and control to the Husband. The matter was heard by the General Division of the High Court concerning the division of assets and maintenance. The major contention was the parties' contributions to the matrimonial assets although the difference in their respective claims was marginal.

The Hon Justice accorded equal weight to the direct and indirect contributions by applying the broad-brush approach given that the marriage was lengthy. Finally, the Hon Justice arrived at a ratio of 43.25% and 53.75% in favour of the Husband; the Hon Justice accorded 55:45 for indirect contributions in the Husband's favour. We are of the view that this is not exceptional and is in line with the precedent cases where it was reiterated that the parties' direct contributions alone are far from determinative of the parties to the actual contributions to the economic partnership as a whole. We will go on to the next important issue of maintenance. The Husband claimed that the Wife contributes half of the Children's monthly expenses, \$3,711.66 for the daughter and \$2,240 for the son. The Wife claimed that \$400 per month for each child will be reasonable. The Husband claimed that the household expenses of the matrimonial home where the children resided amounted to \$7,000 plus per month. The Wife claimed roughly half of that as reasonable monthly expenses. The court decided on each itemised list and arrived at a total of \$2,590 per month towards household expenses. The Hon Justice's decision and observations regarding the principles of children's maintenance – determination of quantum of maintenance and apportionment between the parties are noteworthy and becomes a binding precedent.

Decision By The High Court – Maintenance

The Parties positions were far apart regarding the daughter's monthly reasonable maintenance expenses. The Husband claimed a sum of \$ 7,424 per month and the wife claimed \$1,915.70 per month. The court arrived at a sum of \$2,000 per month towards the daughter's reasonable monthly expenses.

The court found that the husband's assessable income according to the past three years' IRAS assessment outstripped the wife's assessable income significantly. As the earning capacity is the determining factor for the quantum and apportionment of maintenance and not the parties' earned income that should be considered, the court after taking into consideration the reasonable expenses for the daughter and the parties' earning capacity, decided that the wife should pay a sum of \$900

towards the daughter's maintenance. No order for maintenance was made for the son who was above 21 years of age in accordance with *Section 69(5) of the Women's Charter*.

The court observed that the starting point in ordering for maintenance of children should not be on an equal basis as this would lead to unfairness and undue burden on either party although the parties are expected to share equal responsibilities in the care of their children.

We find the court's findings and observations on the nature of expenditure that should be considered towards calculation of monthly maintenance are instructive. Legal practitioners are now able to advise their clients of the allowable expenses and the quantum to an extent that is reasonable.

We have set out the guiding factors and principles outlined in the judgment: -

1. Maintenance for the child should not include items of expenditure that the parent with care and control would in any case have to incur even if that parent did not have care and control. For example, standard household expenses, such as MCST Fees, property taxes, Wi-Fi, property insurance and home phone bills, would be incurred regardless of whether the Children live with that parent. The mere fact that the Children have access and enjoy these household items does not mean that they are expenses of the child. These items would have been paid for by the Husband even if he did not have care and control of the Children. The economic effect of including these as reasonable expenses of the Children is to order the Wife to subsidise the Husband's living expenses. This is not the purpose of child maintenance, which focusses on the reasonable expenses of the Children. Conversely, items such as utilities and groceries can reasonably increase proportionately with the number of household members. It is in respect of those household items that the maintenance obligation is reasonably divided among the number of household members.
2. Maintenance is ordered, not to indulge the child with luxuries, but to provide for her reasonable financial needs. Furthermore, maintenance is also not a corporate reimbursement scheme where every item of expenditure is proved and claimed by the parent who has care and control of the children against the other parent.
3. The fact that an item of expenditure has been paid for does not necessarily mean that it is a reasonable expense for which maintenance must be ordered under the Charter: see *WBU v WBT [2023] SGHCF 3* at [9]. Moreover, these payments were made post-divorce and the decision to incur this expenditure is, in my opinion, a unilateral decision of the Husband based on his parenting style. The law does not hold back the Husband from indulging the daughter, but it also cannot compel the Wife to contribute to such indulgence. In the unfortunate breakdown of a family, the question of maintenance is limited to a test of reasonableness. Accordingly, the court will only order divorcing parties to pay what is reasonable for the child, and no more.
4. On the quantum of maintenance, the court relied upon *WBU v WBT [2023] SGHCF 3* and *AUA v ATZ [2016] 4 SLR 674*, against the Husband's contention that the starting point should be the parents bear the financial burden of maintenance equally (*TBC v TBD [2015] 4 SLR 59*). In *WBU v WBT* Justice Debbie Ong observed:

"34 In my respectful view, TBC was decided on its own facts and should not stand for the general proposition that equal apportionment is the starting point. In TBC, the wife's take-home income was \$5,200 and the husband's take-home income was \$14,075. The child's reasonable expenses were determined to be \$1,440. Kan J was satisfied that since there was no evidence suggesting that parties could not afford to bear the child's expenses equally, to order equal apportionment for maintenance would not place unequal burdens on the parties despite the difference in financial means.

35 *I am of the view that there should not be a starting point that parents bear the financial burden of child maintenance equally. While both parents have the equal parental responsibility to care and provide for their children (see s 46(1) and s 68 of the Charter), it does not necessarily follow that every component of this duty must be borne equally in numerical terms, nor is it possible to divide the parenting duties in strictly mathematical ways.”*

5. The court, in deciding the issue of child maintenance, is guided by the principles of the welfare of the child and of reasonableness. The court is not the correct forum to endorse one parenting view over another. Thus, careful consideration must be given when declaring expenses as reasonable in the circumstances, especially where such a declaration would essentially coerce one parent into accepting the other’s parenting approach.

Conclusion

This judgment has given clarity and understanding on the issue of maintenance which cannot be argued only based on legal principles. It reinforces the principle that maintenance is about meeting the child's reasonable financial needs and not subsidizing the other parent's living expenses.

Furthermore, it acknowledges the importance of considering each parent's financial capacity, rather than imposing an equal burden, while prioritizing the welfare of the child. The various itemised expenditure by both parties in the affidavits with supporting documents have always been an exasperating exercise for the legal practitioners at ancillary hearings.

This decision leaves us with more certainty and understanding on the framework in order to better advise clients. It underscores the importance of reasonableness in child maintenance determinations, ultimately seeking to achieve fairness and the best interests of the child in the context of divorce and separation.

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