LAB's Case Digest (October – December 2024)

This digest features various High Court cases on family law and procedure, published since the July – September 2024 Case Digest, which LAB found to be of interest. Each case write-up only focuses on points which LAB has found to be of interest and does not cover every issue that was considered in the case. Kindly note that the case of *XFD v XFE* [2024] SGHCF 43 has not been included in this case digest even though it falls within the publishing period, as the Director of Legal Aid will be publishing an article on this case shortly in the SAL Practitioner.

1. Division of matrimonial assets; maintenance

1.1 XEB v XEC [2024] SGHCF 37

Division of matrimonial assets – wife maintenance – de minimis gifts not matrimonial assets

Forum: General Division of the High Court (Family Division)

Brief facts: The parties married in 1996, but lived separate lives, including sleeping in separate rooms of the matrimonial home since 2006. They had 3 children, aged 27, 25 and 23 at the time of the divorce proceedings. The parties were granted an Interim Judgment in 2022. This was a single income marriage, with the wife as the homemaker. The husband had moved out of the matrimonial home in 2021, while the children continued to live in the said home with the wife.

Key points:

(a) The court noted that the husband did not provide valuations for some of the matrimonial assets, and his position on many of the wife's expenses, in the Joint Summary. The court said that where no valuations were given by a party, it would accept that of the other's, where they were supported by evidence, since the Joint Summary is binding on parties. The court also took the parties' positions as stated in the Join Summary for the wife's expenses.

(b) There were certain payments the husband had made to a "friend", whom the wife alleged was his girlfriend, but the husband said this was someone he had hired to help develop a trading business in Hong Kong. The payments amounted to $12,000+, which the wife wanted to be returned to the matrimonial pool. The court declined to do so, as this was only roughly 0.2% of the matrimonial asset pool, which was negligible compared to the value of the entire matrimonial asset pool. The court said at [12], in respect of this: "*Spouses in divorce proceedings ought to treat each other with respect, and observe a measure of give-and-take: UZN v UZM* [2021] 1 SLR 426 at [21]".

(c) The wife was given jewellery and wedding gifts from the husband's family and relatives – these were not included in the matrimonial asset pool. The court said that even if they came from the husband, they were *de minimis* ($5,000) compared to the value of the entire matrimonial asset pool. Such *de minimis* gifts are not matrimonial assets. On the other hand, the wife had been given a car (worth $76,226.67) by the husband – that was considered part of the matrimonial asset pool, as a pure inter-spousal gift, with no clear indication from the husband that he intended to divest himself of all interest in the car. This is especially since it was bought in the husband's own name, even though the wife was the only one who drove it.

(d) The parties had agreed to split the matrimonial asset pool (amounting to almost $6 million) 50:50, which the judge thought was fair.

(e) The husband earned about $11,000 a month. He proposed to give the wife no maintenance. The wife earned a little from making pottery – just a few hundred dollars a year. At 53 years old, being a Singapore PR (originally from Japan), and only ever having worked part-time during the marriage, and with a high school education as her qualification, the court accepted that she would find it hard to find a stable job which generated a substantial income. On the other hand, she would get slightly less than $3 million from the matrimonial asset pool, which was a substantial sum.

(f) The court went through the wife's monthly expenses. A few points of interest are as follows:

i. $0 was given for "supplements, tonics, prescription drinks", "skin care/cosmetics/supplements", outings, birthday gifts for parents/friends, Christmas presents for family and friends, Microsoft subscription, iCloud and Amazon Prime as they were "luxuries",

ii. $0 was given for the replacement of curtains and reupholstering of the sofa and kitchenware, on the basis that they did not have to be done/replaced so often,

iii. $0 was given for the mobile phone, computer, furniture and bedding (as the husband was not required to sponsor the wife's new assets),

iv. The Singtel contract plan was cut down from $103 to $20 on the basis that there were many cheaper mobile plans available, and

v. Other items were cut down, such as eating out and food delivery ($750 was given for this for the wife and 3 children – the wife wanted $1000), "clothes/shoes/underwear" ($100 was given for this as the court found the wife's proposal for $175 was excessive), and Chinese New Year red packets ($50 was given for this as the court said the wife's proposal for $166.67 was excessive).

(g) The wife's personal expenses were held by the court to be about $2,900, and her share of the household expenses was about $250.

(h) Considering the wife's expenses and her share of the matrimonial assets, using the broad-brush approach, the court fixed the quantum of spousal maintenance at $2,000 per month.

(i) The court gave a lump sum maintenance award, to give parties a clean break, and noted that it would not cripple the husband financially. To calculate lump sum maintenance, the court used the formula in the case of *Ong Chen Leng v Tan Sau Poo* [1993] 2 SLR(R) 545 to determine the number of years to pay maintenance, and ordered the lump sum maintenance award to be $528,000.

1.2 WTP v WTQ [2024] SGHCF 38

Wife maintenance – variation of maintenance orders due to material change in circumstances – adequacy of evidence required to support a material change in circumstances in respect of variation of maintenance orders

Forum: General Division of the High Court (Family Division)

Brief facts: The husband divorced the wife and parties entered into a consent order in respect of the ancillary matters sometime in late 2010 / early 2011. The consent order provided for the husband to pay the wife S$1,000 per month in maintenance for the wife and their child. At the time the consent order was made, the husband's design business which he ran as an architect (the "**Company**") was doing well. The husband remarried thereafter and claimed that his business started to decline after 2016. The husband then defaulted on the maintenance payments and the wife took up enforcement proceedings against him. Accordingly, the husband filed an application to rescind or in the alternative, vary the maintenance amount of S$1,000 as per the consent order downwards. This was dismissed by the lower court and the husband appealed.

Key points:

(a) On appeal, the husband adduced as supporting evidence financial statements of the Company showing the Company was in poor health, which were purportedly submitted to the Chinese tax authorities. There was no other evidence of the husband's financial situation – no detailed bank records were provided, nor were any credit card statements produced.

(b) The court held that the husband's reliance on the financial statements of the Company showing it to be in poor health was not sufficient to show a material change in his circumstances. A fuller and more detailed picture of his finances was required, since he might remain asset rich, notwithstanding the Company's poor performance, or he might have an unreasonably high expenditure every month which rendered any claim of inability to pay to the wife her monthly entitlement moot.

The appeal was therefore dismissed.

1.3 WZN v WZM [2024] SGHCF 41

Division of matrimonial assets – no issue estoppel arises out of enforcement orders made in maintenance summonses – court would be more circumspect in granting variations to maintenance orders made by consent – whether and how far to backdate a variation of maintenance order, to consider payor's financial impecuniosity

Forum: General Division of the High Court (Family Division)

Brief facts: In this case, the parties had entered into a consent order dated 29 August 2018 for the father to pay $300 monthly wife maintenance and $1200 monthly child maintenance ("**the 2018 consent order**").

In June 2020 and December 2021, the mother had filed maintenance enforcement applications against the father. For the first application, the father acknowledged an arrears amount and agreed to pay them off in instalments. This was recorded in a consent order in October 2020. For the second application, the court found that the father was in arrears for a certain amount and ordered him to pay them off in instalments, in April 2022. Both orders ("**the maintenance enforcement orders**") clarified that the payments in the 2018 consent order would continue.

In August 2023, the father applied to rescind the wife maintenance order and to vary the child maintenance order downwards, for the 2018 consent order ("**the father's application**"). The district judge rescinded the wife maintenance order, but did not vary the child maintenance order. The district judge was also of the view that the maintenance enforcement orders created an issue estoppel between the parties, which confined the court to considering circumstances after the maintenance enforcement orders were made in deciding whether a material change in circumstances had arisen.

The father appealed. He also wanted the rescission of the wife maintenance order and the variation of the child maintenance order to be backdated.

Key points:

(a) The High Court held that there was no issue estoppel in this case, since the question of the variation of the child's maintenance was not considered in the proceedings for the maintenance enforcement orders. Also, section 73 of the Women's Charter 1961 provided that the court might at any time vary any child maintenance agreement, where it was reasonable and for the child's welfare to do so. The relevant timeframe for considering if there was a material change in circumstances was hence between the 2018 consent order and the date of the father's application for the variation of the child maintenance order.

(b) The father's circumstances had not significantly changed after April 2022. However, they had changed from the time of the 2018 consent order – he was earning about $1,800 less a month. Conversely, the mother's monthly income had increased. Under the terms of the 2018 consent order, the father was currently contributing about 81% to the child's expenses (of $1,475.52), representing about 40% of his monthly income, compared to the mother who was contributing about 19% to the child's expenses, representing about 5% of her monthly income.

(c) The High Court was of the view that this was a material change in circumstances which justified a revision of the parties' relatives shares of the child's maintenance. The ratio of

their incomes was about 36.3 (father): 63.7 (mother). However, the court did not just split the maintenance amounts using this ratio. It considered that the court should be slower to grant variations where maintenance orders had been entered into by consent. At the time of the 2018 consent order, the father had agreed to contribute about 25% of his monthly income to the child's expenses. The court wanted to hold him to this, and hence ordered him to pay $750 a month towards the child's maintenance. This was more than the $535.61 he would have paid, had the court used the ratio of the parties' incomes to determine the child maintenance amounts each parent would pay.

(d) On the backdating issue – the issue of whether and how far back to backdate a variation of a maintenance order would involve considering the payor's financial impecuniosity. The High Court held that the proposed start date for the backdating should be as at the date of the father's application. The court found that this was reasonable, considering his reduced salary.

1.4 WTL v WTM [2024] SGHCF 40

Division of matrimonial assets – Dual-income marriage of 19 years with two children

Forum: General Division of the High Court (Family Division)

Brief facts: The parties were married for about 19 years, with 2 sons aged 20 and 12 years at the time of the divorce proceedings. The wife had worked full-time for about 12 years, and then became a homemaker for about 6 years when she also started work as a part-time baker, running a home-baking business. The ancillary matters were heard on 5 December 2023, and the orders were made on 18 December 2023. There were appeals against the district judge's orders on the division of matrimonial assets and child maintenance by both parties, an appeal by the husband on care and control, and an appeal by the wife on spousal maintenance.

Key points:

Admission of fresh evidence

(a) The court allowed admission of fresh evidence by the husband where:
   i. it could not have been admitted earlier (e.g. certain medical reports which were not available yet), or
   ii. it already existed at the time of the ancillary matters hearing, but there was no reason to raise it earlier (e.g. a medical report dated before the said hearing explaining that a potentially cancerous cyst was discovered on the husband's pancreas – there was no reason to refer to this at the ancillary matters hearing, as the husband was being treated for a cancer condition at the time, and his condition was in a state of flux), and
   iii. it would have a "perceptible impact" on the appeal outcome, and
   iv. the evidence appeared to be credible (e.g. certified medical reports and verifiable hospital bills).

(b) In this regard, the court allowed fresh evidence relating to the husband's medical condition (relating to his cancer treatment), the younger child's changing expenses and the wife's employment status and working hours after the ancillary matters orders were made. However, evidence to demonstrate the husband's care for and involvement in the children's lives was not allowed, since there was already evidence for this at the ancillary matters hearing (e.g. the husband coaching the younger child on his homework and bringing him for swimming lessons), and the fresh evidence he wanted to adduce was of the same nature (e.g. bringing the second child for school open houses and helping to buy his school supplies).

Care and control of the children

(c) The court's primary consideration in determining care and control was the welfare of the younger child who was 12 years old and remained dependent on the care of his parents. The older child was 20 years and would attain the age of majority next year, rendering his care arrangements secondary.

(d) Care and control of the younger child was granted to the mother, who had spent more time at home with the children during the marriage. The mother had taken a more prominent role in attending to the children's daily needs and wellbeing (preparing their meals, managing the household, giving emotional support, liaising with their teachers etc), though

the husband had contributed by planning the children's schedules, arranging for classes and activities for them, chauffeuring them around, coaching the younger child in his schoolwork, and organising birthday parties and vacations for them. The younger child had a gaming addiction, which the mother had helped him manage. The mother appeared to be better placed to care for the younger child, since she had more time (versus the father who had a demanding job with a lot of commitments, including overseas travel). Care and control of the older child was also granted to the mother, as it was desirable to keep siblings together and maintain sibling unity.

(e) The father had produced CCTV time logs showing the mother being absent from the home for many hours, but these were selective – he did not submit logs for the weekends where he was absent, but only for the weekdays, when the wife had been working at a hotel on a short-term assignment. Hence, the court assigned limited weight to these logs.

Others

(f) The father had spent about $88,000 on 6 months' worth of renovations to the matrimonial home in 2018, after its purchase. The district judge did not add this cost when determining the parties' direct contributions as he did not think the renovations amounted to a substantial improvement to the property. The High Court on the evidence was satisfied that the renovations would have improved the matrimonial property, given their extent, and the time and effort involved in planning and carrying them out. This adjusted the husband's direct financial contributions by 0.4% upwards. The overall direct contributions ratio was eventually 72.9:27.1 in the husband's favour. The matrimonial asset pool was worth about $3.45 million. The indirect contribution ratio was found to be 55:45 by the district judge, in the wife's favour, which was not disturbed on appeal.

(g) The husband failed to provide court ordered discovery of bank statements for 19 bank accounts and 7 securities accounts, for no valid reasons (he said providing discovery would have encouraged the mother to ask for even more discovery, and due to his health, he wanted to expedite the ancillary matters). His failure to disclose made it difficult to determine the true extent of the assets in the matrimonial pool. There was a real possibility of concealment or dissipation of assets around the time of the breakdown of the marriage. There was insufficient evidence to ascertain the cash outflows that could be attributed to actual family expenses or the real value of the matrimonial assets in cash. Hence the High Court adopted the Uplift Approach to neutralise the effects of the husband's failure to disclose and give a higher proportion of the known assets to the wife – a 7.5% uplift was given to the wife's share. The final ratio was 51.45:48.55 in the husband's favour ("**the final ratio**").

(h) The parties were still living in the matrimonial home at the time of the appeal. The issue arose of who should pay for the expenses of the property, pending its sale. The court noted that the net proceeds of sale of the matrimonial property would be divided in accordance with the final ratio, and hence, pending the sale, the father and mother should be taken to own, respectively, 51.45% and 48.55% of the property. Accordingly, the payments for property tax, and condominium sinking fund and management fees, should be paid by the father and mother based on that final ratio pending the sale of the property. The father was to refund the mother for any excess payments for property tax, and condominium sinking

fund and management fees made by her. As for the payments for utilities, which are payments for things consumed by the occupiers of the property and do not depend on the ownership of the property, it would be fair for the party or parties who continue to reside in the matrimonial property and benefit from the use of utilities to bear such expenses. The court therefore ordered the parties to each bear half of the utility charges up to the date that either party moved out of the matrimonial home. The court also ordered the father to refund the mother for any excess payments for utilities.

(i) The father had asked for the younger child's tuition and enrichment expenses to be paid on a reimbursement basis that was subject to a pre-determined cap. However, the court decided to include these expenses in the monthly maintenance for the children, to be managed as part of a budget for the children's expenses. Some of the expenses that the younger child was incurring now might no longer be necessary, but he would likely incur new expenses, as he progressed to secondary school with more subjects of study, developed his existing or new interests, and participated in new activities. There would be no refunds to the father if the entire provision for maintenance was not utilised under this arrangement. However, the mother would also have to bear expenses that exceeded the amount of maintenance ordered. Further, as the party with significantly more income, the father was in a better position to provide for the younger child's expenses upfront, as compared to the mother.

(j) The court dismissed the mother's appeal against the district judge's order that no wife maintenance was payable to the mother, considering the mother's share of the matrimonial assets and the mother's financial independence.

1.5 WVS v WVT [2024] SGHC(A) 35

Division of matrimonial assets – Dual-income marriage of 18 years with three teenage children

Forum: Appellate Division of the High Court

Brief facts: This case featured an 18-year marriage, with 3 children aged 15, 13 and 11 years respectively at the time of the ancillary matters hearing in January 2024, with the ancillary matters orders made in March 2024. Interim judgment had been granted in December 2019. The High Court had ordered joint custody, with care and control to the husband and access to the wife (with detailed access terms). Orders were also made on wife and child maintenance, and the division of the matrimonial assets. The matrimonial asset pool was about $7.5 million (there had been a typographical error in the amount in the High Court decision, which was corrected by the Appellate division). The wife appealed against various aspects of the decision.

Key points:

(a) The wife alleged that the husband had misappropriated rental proceeds from one of the properties in the matrimonial pool, for a 7-year period before the divorce, and that this amount should be added to the matrimonial pool. The Appellate division disagreed as:

i. Most of the years where the misappropriation allegedly occurred was while the marriage was intact, when divorce was not imminent. If the misappropriation had occurred when divorce was imminent, then they would be considered matrimonial assets which ought to be added back into the matrimonial pool.
ii. There was no evidence that the husband had spirited away or concealed these assets to deprive the wife of them for all those years (in which case they would be added back into the matrimonial pool).
iii. There was also no evidence that the husband had spent the rental proceeds irresponsibly (in which case it would be taken into account when considering his direct and indirect contributions).

(b) There was another property which had been inherited by the husband, and partially paid for during the marriage. However, it had been paid for by rental proceeds of the property itself, i.e. the property was self-financing. Hence the property was not a matrimonial asset, since it was financed by its own rental monies.

(c) The High Court judge had adopted a rough and ready approximation of 65:35 (in the wife's favour) as the ratio of the parties' financial contributions to their various properties derived from the profits of their joint business. After considering other direct financial contributions made by the parties, the eventual direct financial contribution ratio was 67: 33 (in the wife's favour). The wife argued that this approach was wrong, and that the judge should instead have traced the proceeds of properties bought and sold over the years to calculate the sums of each party's contributions to the present-day properties. The Appellate division rejected this approach: *"In situations where properties purchased during the marriage are sold and the proceeds are used to acquire more properties, the parties should refrain from engaging in a mathematical exercise of tracing the funds through successive property acquisitions."* (para 27, per Debbie Ong JAD). Doing such a mathematical exercise would be impractical, especially for a long marriage. Parties were not expected to track and record their financial contribution or expenditure in detail during their married life. Also, allowing them to be so calculative did not gel with the philosophy of marriage or trying to get them to part

amicably in a divorce. The eventual ratio was 59:41 in the wife's favour (with the indirect contributions being 50:50).

(d) The wife had been ordered to pay $2,475 a month in child maintenance. This represented 55% of the children's reasonable expenses. This greater proportion was because the wife had substantial financial resources, and also a significant share of the matrimonial pool. This award was upheld by the Appellate division. The High Court had also ordered the wife to pay backdated maintenance of $100,000, since she had stopped supporting the children regularly since she left the matrimonial home in 2018. $2,475 x 68 (no. of months from the month the wife left the matrimonial home to the date of the ancillary matters hearing) would have meant the child maintenance payable was $168,300, but the High Court had ordered a lesser amount of $100,000. The judge did not explain his decision, but the Appellate division opined that he might have taken into account the possibility that the wife had made some contributions towards the children's expenses after leaving the matrimonial home, or had given a discount to the sum because it was to be paid as a large lump sum. In any case, the Appellate division declined to interfere with the judge's discretion, and upheld the $100,000 backdated maintenance award.

(e) As the wife had lost on all of the substantive issues she appealed on, she was ordered to pay $45,000 in costs (including disbursements) to the husband.

1.6 XGA v XGB [2024] SGHCF 47

Division of matrimonial assets – Dual-income marriage of 16 years with two children

Forum: General Division of the High Court (Family Division)

Brief facts: In this case, the parties were married for about 16 years. They had 2 sons, aged 16 and 14 respectively at the time of the divorce proceedings. This was a dual income marriage. At the time of the ancillary matters hearing, the wife earned $8,297 a month. The husband earned at least $23,913.33 a month.

Key points:

Matrimonial assets

(a) The pool of matrimonial assets was about $3.27 million. This included an Australian property purchased by the husband before the marriage, but which had been transformed into a matrimonial asset, because the payments for the housing loan came from the parties' joint bank accounts, into which both parties had credited their salaries. The ratio of the husband's and wife's earning capacities before 2023 (which was when the interim judgment was granted) was around 70:30. The court took this to mean that the wife contributed roughly 30% to the joint accounts, and hence to the Australian property too. Therefore, the full value of the Australian property was added into the matrimonial pool.

(b) There were issues concerning the valuation of 2 properties (D and M) in addition to the Australian property which were owned by the husband and wife respectively (i.e. the sufficiency of the documentary evidence for the valuation), and also the parties' respective contributions to the properties, which were largely factual. The court calculated the parties' direct financial contributions to the properties based on their earning capacities, since the monies for these properties were drawn from the parties' joint accounts. Taking this into account as well as various other specific payments, the overall ratio of direct contributions was 55:45 in the husband's favour.

(c) The husband had failed to provide documents in relation to a company of which he was a director and shareholder, C, such as balance sheets, notice of assessment for 2022 and others. He had also withdrawn $149,000 from the company in 2022 to pay for his property D, and used company funds to lease a Mercedes car. There was evidence that he had also received an annual salary in 2020 and 2022, amounting to $60,000 and $69,000 respectively. These suggested that C had a value, and the husband was hiding the true value of C. The husband had also failed to disclose financial documents relating to another company, O, of which he was a director and shareholder, as well as two fixed deposit accounts in his name. He did not provide any explanation for the non-compliance, except to say that O had been closed. However, this should not have prevented him from providing the financial documents for O. The court therefore decided to draw an adverse inference against him, as he was "clearly intent on hiding his assets, short-changing the Wife and disobeying the court." The wife was given an uplift of 7.5% to the overall ratio (though the judgement did not explain why the precise figure of 7.5%.)

(d) The indirect contributions were 55:45 in the wife's favour. The husband's counsel had submitted that less weight should be accorded to indirect contributions due to the moderate length of the marriage, citing *BOR v BOS* [2018] SGCA 78, but the court did not agree, saying that *BOR v BOS* related to single-income marriages.

(e) With the 7.5% uplift, the final ratio for division was 57.5:42.5 in the wife's favour.

Wife and child maintenance

(f) The court noted that the wife could support herself. However, it still ordered the husband to pay the wife a monthly maintenance of $2,000 for the next 2 years to help the wife transition to a life of singlehood. The court considered the husband's much higher income, the rental income of about $5,200 he got each month from his own property, and the fact that the wife's liquid assets were low in value. The wife was also granted backdated maintenance for 19 months, from when the husband stopped paying her maintenance. Overall, the husband was ordered to pay a lump sum maintenance of $86,000.

(g) The judgment has 2 tables setting out reasonable expenses for the 2 sons. These were (a) the sons' own expenses; and (b) their share of the household expenses. On the latter, the court disallowed Netflix ($19.98 a month) and Apple music ($9.08 a month) as they were "luxuries". The court also disallowed the wife's mortgage payments for her own property (which she intended for her and the sons to live in when construction on it was completed), since this was an appreciating asset and the wife would reap the profits if she chose to sell it. On the former, the items which were significantly cut down were:

i. "School bag, water bottle, School uniforms, long pants, school T-shirts and shorts, school shoes, socks, sportswear for rugby, casual clothing, and casual shoes", cut down from $250 to $100,
ii. $0 for "Health supplements/Grooming products", for which the mother had claimed $45
iii. "Online Games/Entertainment/Outings/Concerts", cut down from $200 to $25, and
iv. "Holidays", cut down from $425 to $200.

(h) Adding everything up, the children's reasonable expenses were about $8,000 a month. The husband was ordered to pay 80% of this amount, since the court found the ratio of their earning capacities to be around 80:20.

2. Custody, Care and Control

2.1 XFF v XFG [2024] SGHCF 45

Shared care and control of children – Parties living under the same roof as divorce proceedings are ongoing

Forum: General Division of the High Court (Family Division)

Brief facts: This appeal case featured a 10 year marriage with twins, a boy and a girl, aged about 5.5 years at the time of the divorce proceedings. The father had filed an interim application relating to interim care arrangements for the children while the divorce proceedings were underway. The mother had also filed a cross-application in the matter. The district judge hearing the applications had granted joint custody with sole care and control to the mother and access to the father. The father appealed.

Key points:

(a) The parties were all still staying together in an HDB flat with 3 bedrooms, with the mother and children sleeping in one room and the father in another. Both parents were involved in taking the children to kindergarten, church and enrichment classes. Both parents were working, but made time for the children. The court was of the view that these facts justified a shared care and control order. The only obstacle to this was the level of acrimony between the parties, with allegations of alienation and reluctance to work with the other party. However, such acrimony would not automatically rule out shared care and control – otherwise parties might have a perverse incentive to increase the acrimony to gain a tactical advantage in the care of the children.

(b) The court made a shared care and control order, on the basis that it would be harsh to restrict the father's access to the children when they were in such close proximity, and it was in the children's best interests that the father could take on a more active and substantial role in their care, together with the mother.

(c) The court maintained the district judge's orders, *inter alia*, that no audio or video recordings of the children should be used in the divorce proceedings, unless they were evidence of abuse; and that neither party would be permitted to take the children overseas pending the resolution of the ancillary matters (including appeals) unless the other party agreed in writing. The court also put in place a whole series of rules to minimise acrimony between the parties, i.e.:

i. The father is to have care and control of the children from 10am on Thursday to 10pm on Saturday.
ii. The mother is to have care and control of the children from 10pm on Saturday to 10am on Thursday.
iii. The father and mother will fetch the children to their kindergarten on weekday mornings.
iv. The father will be entitled to attend Church on Sunday with the children and the mother (if they go).

v. On all occasions while the children are at home, the father and mother may have access to them until they go to bed, regardless of whoever has care and control at that time.

vi. If one party is unavailable to personally care for the children during his or her allotted period of care and control, the other party must be given the choice to fill in for the relevant period. Only then can the parties approach other people for help in caring for the children.

vii. Neither party is to enter into the other party's bedroom without permission.

2.2 XBF v XBE [2024] SGHCF 42

Custody — Care and control — Relocation

Forum: General Division of the High Court (Family Division)

Brief facts: This is the father's appeal against a district judge's decision to grant care and control to the mother of 3 children aged 8, 6 and 4 years respectively under the Guardianship of Infants Act, and allowing her to relocate to Indonesia with them. There were no divorce proceedings in Singapore. The mother planned to recommence divorce proceedings in Indonesia after her first set of divorce proceedings there were dismissed for failure of service.

The parties were married in November 2015, and had lived firstly with the husband's parents, and then sometime later, the husband had rented a flat for the family, and they moved there. The husband's parents moved in there also, but later purchased a flat in the same estate. Parties flew to Bali for the wife's brother's wedding in September 2022. There, the parties quarrelled. The day after the quarrel, the wife went to Jakarta with the children, where the wife's parents stayed. For the next year, the husband flew back and forth from Singapore to Jakarta to visit the children. On 31 October 2023, he brought the children back to Singapore. The wife filed an application in Singapore for the children's return and relocation to Indonesia. The husband applied for sole custody, care and control of the children. The wife had access to the children at her hotel when she came to Singapore for visits.

Key points:

(a) A relocation order usually follows care and control because it is in the best interests of the children to be with the primary caregiver, but this is not always the case. The primary issue is the relocation, not which parent should be given care and control. Relocation does not automatically follow the care and control order.

(b) In this case, the 3 children were born and raised in Singapore and the father was a Singapore citizen. The mother used to be a Singapore Permanent Resident (PR), but did not apply for a re-entry permit when she went to Bali, and thus her PR was cancelled. The children had Indonesian passports – though the passport had expired for one of them.

(c) It was the wife who took the children from Bali to Jakarta without telling the husband, and was now asking for the court to legitimise her conduct. They were only supposed to be in Bali for a wedding.

(d) The wife should have returned the children to Singapore and obtained a court order for relocation to Indonesia instead of unilaterally bringing them to Jakarta and keeping them in Indonesia.

(e) There was a dispute as to whether the wife was the primary caregiver, which should be left to the divorce court to decide. The wife also alleged the husband was abusive – but this was once again something for the divorce court to decide.

(f) The court asked to see the children together. The court observed that the children were "some of the brightest, chirpiest, and happy children that I have seen in the course of family dispute proceedings". They seemed to have been brought up well and had been happy throughout their lives. There were no police or medical reports regarding the husband's alleged violence. On the contrary, there were many photographs of family gatherings (with the parents, children and paternal grandparents), which showed a normal family life.

(g) Based on the above, the court held that it was in the best interests of the children to remain in Singapore.

(h) The husband's appeals were allowed, and liberal access was granted to the wife. The court stated that it expected that the children be given reasonable face time with the wife daily over the phone or computer and overnight access at least once a month. Costs of $4000 were ordered for the husband.

3. Procedure

3.1 WXO v WXP [2024] SGHCF 44

Civil procedure – Extension of Time to file Record of Appeal – No extension of time will be granted if the appeal would be a pyrrhic victory

Forum: General Division of the High Court (Family Division)

Brief facts: In this case, the wife applied for an extension of time to file her Record of Appeal ("**ROA**"). She had appealed on a child maintenance order, and her appeal had lapsed because of her failure to file the ROA – she claimed to have paid for the filing fee and to have filed it, but the High Court had no record of it. Both parties were in person.

The couple had one 14-year-old daughter, and a 21-year-old son currently in national service. The district judge had held that the daughter's reasonable expenses were $1,000 a month, and that the mother and father should bear these expenses in the proportion 60:40, based on their financial ability. The father earned about $2,500 a month. The mother earned about $3000-$4000 a month, take-home. The father was thus ordered to pay the mother $400 a month in child maintenance from January 2024 onwards.

The mother wanted to appeal for $600 a month instead of $400 a month for child maintenance. She also wanted maintenance for the May to December 2023 period of 8 months. (The father had paid very little child maintenance during this period, only $750 in total.)

Key points:

(a) The court considered the merits of the intended appeal as the most important factor in deciding whether to grant an application for an extension of time. If the intended appeal is clearly without merit, then the court will dismiss the application. If the appeal has merit but would result in a pyrrhic victory for the applicant, that should also point away from granting an extension of time.

(b) The court upheld the district judge's findings on the daughter's reasonable expenses and the proportions the parties should pay. It also said it would not order the father to pay for year-end or birthday expenses, as these would be luxuries, considering the parties' income levels. The court noted that if the father had paid maintenance from May to December 2023 at $400 a month, he would have paid $3,200 for that period rather than $750, which is a difference of $2,450. However, the court decided not to make the father pay $2,450 since he only earned $2,500 a month, had to pay rent, and was already paying $400 a month in child maintenance. At best, the father might have been ordered to pay an additional $1,225 to the mother as maintenance for May – Dec 2023 (this is half the $2,450 figure).

(c) In any event, the court dismissed the application, as it would be a pyrrhic victory. The mother had already paid $664 in court fees to file documents for her appeal, and her appellant's case which cost another $600. The present application for the extension of time also cost at least $100. All these costs already exceeded the $1,225 that might have been ordered in her favour. Even if she had an extension of time to file her ROA, she might make more mistakes and incur still more costs, and even if she won the case, she would not have gained anything from it. No order was made as to costs.

3.2 TTZ v TTY [2024] SGHCF 46

Contempt of Court – Civil contempt – Breach of access orders – Lifting of suspension of committal order

Forum: General Division of the High Court (Family Division)

Brief facts: This is an appeal case involving access to a teenage boy who did not want to see his father. The parents divorced, and interim judgment was granted in 2012. The marriage lasted about 15 years, and there was one child to the marriage, a boy, aged 14 years old at the time of the appeal hearing. The mother had been granted care and control of the boy, and there was an order giving access to the father ("**the access order**").

The father had applied to lift the suspension of a committal order made on 9 February 2023 against the mother for failing to take reasonable steps to facilitate the father's access on 38 occasions between 2 October 2017 and 4 November 2021 ("**the committal order**"). The committal order required the mother to comply with the terms of the access order, to exercise all reasonable efforts to compel the child to go for the access, and to ensure that the child would be present at the lift lobby of the second floor of her residence ("**the lobby**") when handing over the child for access ("**the further access orders**"). The district judge hearing the father's application dismissed it, and the father appealed. The issue was whether the mother had breached the further access orders since 4 November 2021 (the father claimed that she did so on 25 occasions – but the district judge found she had not), and whether the district judge erred in refusing to lift the suspension of the committal order.

Key points:

(a) As the father was alleging that the mother was in breach of the conditions for the suspension of the committal order and in further contempt of the court, the criminal standard of proof was applicable, and the burden was on the father to prove beyond reasonable doubt that the relevant conduct of the mother was intentional and that she knew of all the facts which would make such conduct a breach of the relevant order of court.

(b) To determine whether the alleged contemnor's conduct amounts to contempt of court, the court will adopt a 2-step approach. First, it would decide what exactly the order of court required the contemnor to do. Secondly, it would determine whether the requirements of the order of court had been fulfilled.

(c) The test on whether a parent is in breach of a court order to exercise all reasonable efforts to facilitate access is an objective one. The court will take into account all the facts and circumstances of the case, such as whether the parent against whom the order was made had acted in the child's best interests, including the need of every child for love and care from both parents, in order to grow up and achieve their fullest potential as balanced individuals. Such a court order is not a guarantee that the court ordered outcome would materialise.

(d) The court decided that the father had failed to prove that the mother had failed to comply with the further access terms, or that she did not exercise all reasonable efforts to compel

the child to comply with the access terms on the 25 occasions that the father cited. Of the 25 occasions:

i. The child attended on 7 occasions, but refused to leave with the father. The mother had ensured the child was at the lobby, as per the further access orders – but the father wanted the mother to also pack the child's bag for overnight access and escort him to the father's car. The court said that this was beyond the scope of her obligations under the further access orders. In addition, there were transcripts of a series of CCTV recordings of the father's interactions with the child at the lobby. The father bad-mouthed the mother and her home, insinuated that the child had lied in a police report he had made concerning the father, and generally spoke to him in a hostile, confrontational and hurtful way. The court advised the father to focus on positive topics such as shared interests and hobbies in his conversations with the child and to get professional help on how he could foster a loving relationship with the child.

ii. On 10 occasions, access did not take place because the father was not on time. Once, he was 23 minutes early, and 9 times, he was late by between 15 minutes to 6 hours. Each time, he messaged to say he would leave if the boy was not ready within 5 minutes (on 9 occasions) and within 10 minutes (on one occasion). The court was of the view that this was unreasonable, and had caused or contributed to the unsuccessful access on these occasions.

iii. On 8 occasions, either the father or child was not present for access. On 2 of these occasions, the father assumed that the mother was denying him access, and did not turn up. On one occasion the child was attending a school event, which the mother assumed the father was aware of as he could access the school's electronic platform to inform parents of school activities. The court was of the view that these were genuine miscommunications. There were another 4 occasions where the child did not turn up for access and the mother was unable to compel him to go. On one occasion, the child was still upset at the father's insistence at the last access session that the mother's residence was not his home and was a "sh—hole". On the other 3 occasions, the father had demanded that the child turn up for access in 5 minutes even though he was late, which upset the child. The court took into account the father's behaviour in deciding whether the mother had made all reasonable attempts to facilitate access. On the last occasion, the mother had, that very morning, contacted the father to ask him to establish a "respectful polite conversation" with the child, and asked him to make direct arrangements with him for access. She had also asked the child to unblock the father's messages from his phone when the child told her that he had done this. However, the father did not contact the child to make access arrangements, even after the mother told him about the unblocking. The child did not turn up at the access venue (which was supposed to be an MRT station) though the father did. The mother said it was because the child felt unsafe around the father. The court noted that the mother had tried to facilitate access, even suggesting that the parties have lunch together with the child to make him feel safe. The father had rudely refused the offer.

(e) The mother had made repeated attempts to communicate with the father on improving his relationship with the child between the date of the committal order and the application taken out by the father to lift the suspension of the committal order. This showed that she was not intentionally trying to alienate the child from the father.

(f) The child himself had his own views on whether he wanted to see his father – he had communicated this to the district judge in an interview assisted by a specialist counsellor. The child's willingness to attend access is a factor which needs to be taken into account (and also the strain it would put on the child's relationship with the care and control parent if the latter were forced to do more to facilitate access).

(g) The father could have coaxed the child to meet him, after each failed access, but did not message him to do so. As such, it appeared that the father was responsible in large part for the failed access. Hence, the father could not prove beyond a reasonable doubt that the mother did not take all reasonable steps that a caring and determined parent, acting with a view to facilitating the other parent's access and anxious to procure the court ordered outcome, would have taken.

(h) The court noted that the one silver lining in this case was that both parents were supportive of the child going for professional counselling with a psychologist from the Panel of Therapeutic Specialists, and seemed to be benefiting from it. The court suggested the father seek help from this psychologist or others to see how he could improve in communications and parenting, and for both parties to individually seek professional help on how to communicate with each other. The court urged the father to stop badmouthing the mother to the child, and the mother to stop allowing the child to read the messages between her and the father.

4. Probate and Administration

WZK & another v WZJ & another appeal [2024] SGHCF 39

Succession and Wills — Revocation — later instrument

Forum: General Division of the High Court (Family Division)

Brief facts: This case concerns a cross appeal to the High Court on the validity of the will(s) made by the deceased who passed away on 20 October 2019. One key area of contention was whether the wills executed by the deceased on 30 May 2017 ("**May Will**") and 28 December 2017 ("**December Will**") were valid and which one should apply.

In the May Will, the deceased appointed his elder daughter ("**First Defendant**") as the executrix and trustee while his son (the "**Plaintiff**") was the back-up executor and trustee. Under the May Will, the deceased made all his 3 children the beneficiaries to his estate, namely, the First Defendant, the Plaintiff and his younger daughter (who was not a party to the proceedings). The deceased also made a CPF nomination for all his 3 children to receive his CPF monies (i.e. to mirror the May Will).

Subsequently, in the December Will, the deceased made only the First Defendant's 2 children (i.e. the deceased's grandchildren), the beneficiaries of his estate. In short, the deceased's children were no longer beneficiaries to the deceased's estate under the December Will. However, the deceased's CPF nomination for all his 3 children to receive his CPF monies still remained until the deceased passed on.

Among other reasons, the First Defendant was of the view that the December Will should apply on the basis that it had superseded the May Will. The Plaintiff disputed the validity of the December Will, claiming that the circumstances leading to the December Will were controversial and that the First Defendant should be removed as executrix. The matter was heard over 8 days of trial in the lower court. The lower court found that the May Will was valid and should be adhered to but did not replace the First Defendant with the Plaintiff as the executor for the deceased's estate. Both the Plaintiff and the First Defendant were dissatisfied with the lower court judgment and filed a cross-appeal to the High Court. In the appeal, the Plaintiff wanted the First Defendant to be removed as the executor and for the Plaintiff to take over. As for the First Defendant, she wanted the December Will to be adhered to on appeal.

Both appeals were dismissed.

Key points:

(a) The Appellate Court did not find the First Defendant's arguments persuasive for some of the following reasons:-

i. A will is not valid by virtue of it only being the last in line. The Court must be satisfied that (a) the will was properly attested and executed, (b) the will belongs to the testator and that (c) the testator was of sound mind when the will was executed. In the present case, there was a dispute on the validity of the execution of the December Will (i.e. that the signature and thumbprint on the December Will did not belong to the deceased and the May Will executed by the deceased did not contain any thumbprint). (See paragraphs 4 and 12 to 15 of the Judgment)

ii. The First Defendant did not provide sufficient reasons why the deceased would change his attestation in the May Will to the December Will apart from the fact that the Plaintiff had blocked the deceased on Whatsapp. This was not a sufficient reason to find that the deceased was annoyed enough to change his will. (See paragraph 6 of the Judgment)

iii. If the First Defendant claimed that the deceased was not happy with the Plaintiff and wanted to disinherit him, there was no reason for the deceased to keep the Plaintiff as a beneficiary under the deceased's CPF nomination. (See paragraph 7 of the Judgment)

iv. The First Defendant could not credibly explain why she previously applied for a grant of probate pursuant to the May Will but did not proceed to extract it. The First Defendant also could not explain why she did not inform the Plaintiff or any other family member that the deceased had executed another will (i.e. the December Will). (See paragraph 11 of the Judgment)

(b) The Appellate Court also did not find the Plaintiff's argument to remove the First Defendant as the executrix of the deceased's estate persuasive since she was on notice that she had to discharge her duties faithfully and that she would be watched at every step. (See paragraph 16 of the Judgment).