

## **ACU v ACR [2010] SGHC 322 HIGH COURT**

**Suit No:** Divorce No 4940 of 2007 (RAS No 139 of 2009 and Summons 9958 of 2010)

**Decision Date:** 29 October 2010

**Court:** High Court

**Coram:** Woo Bih Li J

**Counsel:** Grace Malathy d/o Ponnusamy (Grace M & Associates) for the appellant/defendant;  
Mahendra S Segeram (Segeram & Co) for the respondent/plaintiff.

### **Subject Area / Catchwords**

Civil Procedure – Appeals

Family Law – Custody – Care and Control

Family Law – Matrimonial Assets – Matrimonial Home

### **Judgment**

29 October 2010

### **Woo Bih Li J:**

#### **Introduction**

1. The appellant (“the Wife”) and the respondent (“the Husband”) were married on 15 May 2001. An interim judgment was granted on 20 August 2008 in divorce proceedings initiated by the Husband. At the conclusion of the ancillary hearings in Chambers on 30 October 2009, District Judge Sowaran Singh (“the District Judge”) ordered, among other things, that (i) the two children of the family should be held in joint custody, (ii) the Husband should have care and control of the children with access to the Wife on certain terms, and (iii) the Wife should transfer her rights, title and interest in the parties’ matrimonial flat to the Husband with the Wife to be paid \$14,000 with money from the Husband’s Central Provident Fund (“CPF”) account. The Wife appealed to this court under Order 55C (“O 55C”) of the Rules of Court (Cap 322, R5, 2006 Rev Ed) (“Rules of Court”) in respect of these aspects of the District Judge’s decision. A stay of execution was ordered in respect of the District Judge’s judgment by Deputy Registrar Regina Ow-Chang Yee Lin on 13 January 2010. From the initiation of the divorce up to these proceedings, the parties continued to live together with their two children at the matrimonial flat. At the time of the hearing of this appeal, the parties’ daughter is seven years old, while their son is four years old.
2. Under Notice of Appeal (Amendment No. 1), the Wife sought (i) care and control of the two children, (ii) sole discretion in determining issues relating to the education and choice of schools of the two children, and (iii) an order of sale of the matrimonial flat with her being entitled to 40% of the net proceeds of sale.
3. At the first hearing of the appeal on 14 April 2010, the Wife was represented by a new counsel, Ms Grace Malathy (“Ms Malathy”). Ms Malathy sought an adjournment as she had not obtained all the documents she needed and had not prepared or served the Record of Appeal and her written submissions. I granted an adjournment.

4. By the second hearing of the appeal on 28 June 2010, the Wife had filed an application on 15 June 2010 under Summons 9958 of 2010 for leave to adduce fresh affidavit evidence. I allowed the application partially. I will say more later about this application.
5. The hearing of the main appeal then proceeded but in the course of Ms Malathy's submission, she asked for leave to file an affidavit to state the Wife's parenting plan if she was given care and control of the two children. This was in response to an inquiry from me on the same. I granted an adjournment for the Wife to file a further affidavit on:
  - o her parenting plan;
  - o any maintenance she might be seeking for the children if she was granted care and control; and
  - o whether the study courses she had attended were on a part-time or full-time basis as this was disputed
6. The appeal was next fixed for hearing on 30 July 2010. After perusing the affidavits filed I required information about the daily routine of the children to be provided by the parties. I also decided to interview the parents and the children.
7. The interview was conducted on 2 August 2010. By then some information on the daily routine of the children was provided. Thereafter, the appeal was adjourned to a special date to be fixed for counsel to complete their submissions, including submissions on an alternative basis i.e. if the respective party did not achieve his or her primary objective.
8. At the final hearing of the appeal on 17 September 2010, Ms Malathy applied to amend the Notice of Appeal to include prayers for (i) monthly maintenance for the children in the event the Wife was granted care and control of the children, and (ii) increased access to the children in the event she was not granted such care and control. The Husband's counsel, Mr Mahendra S Segeram ("Mr Segeram") objected on the basis that this was a late stage of the proceedings.
9. On the facts, it was clear that the Wife wished to seek maintenance for the children if she was granted care and control. I had also indicated to parties at the hearing on 2 August 2010 that I would like to hear their submissions on an alternative basis. For these reasons, I allowed the Wife to amend her Notice of Appeal to reflect these new prayers.
10. I now come back to summons 9958 of 2010 which was an application for leave to introduce fresh affidavit evidence. I add that at the hearing on 17 September 2010, Ms Malathy also made an oral application seeking leave to file yet another further affidavit to exhibit a new letter of employment and to state when the Wife was able to return home each day after work. I will address the issue of new evidence before addressing the substantive issues.

### **Leave to adduce fresh evidence**

### **Summons 9958 of 2010**

11. In Summons 9958 of 2010, the Wife prayed for leave to adduce the following pieces of additional evidence:

- A medical report for the Wife prepared by one Dr Lim Yun Chin ("Dr Lim") (a psychiatrist from Raffles Hospital) dated 24 January 2010
- Photographs of the parties' son with bruising/redness on his body.
- Photographs of a diaper with staples stapled into it.
- A printout of the "Frequently Asked Questions" ("FAQ") section of the Singapore Institute of Management website indicating general information on course schedules.
- A photocopy of part of the Wife's cheque book.

12. The Court's power to admit fresh evidence at an appeal is generally controlled by the rule in *Ladd v Marshall* (1954) 1 WLR 1489 ("*Ladd v Marshall*") as applied by the Singapore courts. In *Ladd v Marshall*, Denning LJ (as he then was) stated the three-part rule at 1491:

...To justify the reception of fresh evidence... three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

Hodson LJ (as he then was) agreed, and at 1492 referred to what was then O 58 r 4 of the English Rules of the Supreme Court, which stated:

The Court of Appeal shall have... full discretionary power to receive further evidence upon questions of fact... Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent...) shall be admitted on special grounds only, and not without special leave of the Court. ...

13. However, the Singapore Court of Appeal qualified the operation of *Ladd v Marshall* in the context of registrar's appeals in the case of *Lian Soon Construction Pte Ltd v Guan Qian*

*Realty Pte Ltd* [1999] 1 SLR(R) 1053 ("*Lian Soon Construction*"). There M Karthigesu JA, delivering the grounds of judgment of the Court of Appeal, said at [37]-[38]:

37 The position on evidence on appeals from summary judgment is found in *The Supreme Court Practice* 1999 at para 14/4/45:

The evidence on an appeal to the Judge in Chambers should ordinarily be the same as it was before the Master or District Judge; but since such an appeal is dealt with by way of an actual rehearing of the application which led to the order under appeal, and the Judge treats the matter afresh as though it came before him for the first time, save that the party appealing has the right as well as the obligation to open the appeal, it would seem that the judge in his discretion is free to admit fresh evidence, and he frequently does so in the absence of special reasons (see *Evans v Bartlam* [1937] AC 473 at 480; *Krakauer v Katz* [1954] 1 WLR 278; [1954] 1 All ER 244, CA).

On the other hand, the Court of Appeal does not have an unfettered discretion to receive further evidence on hearing an appeal against a summary judgment in favour of a plaintiff in proceedings under O 14 or O 86 and it might do so only on 'special grounds' as provided by O 59 r 10(2) within the limits laid down, per Denning LJ in *Ladd v Marshall*...

Pinsler, in *Singapore Court Practice 1999*, agrees that this distinction should be drawn.

The rationale behind the different thresholds employed in allowing evidence before a judge in chambers as compared to the Court of Appeal may be understood from an extract from *The Supreme Court Practice 1999*, at para 58/1/3:

An appeal from the Master or District Judge to the Judge in Chambers is dealt with by way of an actual rehearing of the application which led to the order under appeal, and the Judge treats the matter as though it came before him for the first time, save that the party appealing, even though the original application was not by him but against him, has the right as well as the obligation to open the appeal. The Judge "will of course give the weight it deserves to the previous decision of the Master; but he is in no way bound by it" (per Lord Atkin in *Evans v Bartlam* [1937] AC 473 at 478). The Judge in Chambers is in no way fettered by the previous exercise of the Master's discretion, and on appeal from the Judge in Chambers, the Court of Appeal will treat the substantial discretion as that of the Judge, and not of the Master (*Evans v Bartlam*, above; *Cooper v Cooper* [1936] WN 205; and *Cremin v Barjack Properties Ltd* (1985) 273 Est Gaz 299, CA).

An appeal to the Court of Appeal also operates by way of a rehearing. Although it does not mean that witnesses are heard afresh, the court considers the whole of the evidence given below and the whole course of the trial. It is, as a rule, a rehearing on the documents of the evidence. The powers of the Court of Appeal are principally statutory, but supplemented where necessary by its inherent jurisdiction as a superior court of record. With regard to the adduction of fresh evidence before the Court of Appeal, O 57 r 13(2) specifically states that "in the case of an appeal from judgment after trial or hearing of any cause or matter on the merits" further evidence is not to be admitted "except on special grounds". ...

38 ... A judge in chambers who hears an appeal from the Registrar is entitled to treat the matter as though it came before him for the first time. The judge in chambers in effect exercises confirmatory jurisdiction. The judge's discretion is in no way fettered by the decision below, and he is free to allow the admission of fresh evidence in the absence of contrary reasons. On appeal to the Court of Appeal, case law has established that the Court of Appeal will not interfere with the discretion of the judge unless satisfied that the judge's discretion has been wrongly exercised. ...

The court in *Lian Soon Construction* then distinguished *Lian Soon Construction* from the case of *Hua Khian Ceramics Tiles Supplies Pte Ltd v Torie Construction Pte Ltd* [1991] 2 SLR(R) 901, in which the *Ladd v Marshall* criteria were applied.

14. To answer the question of whether an appeal from a District Judge in Chambers to a Judge in Chambers should fall into the rule governing Registrar's Appeals in *Lian Soon*

Construction, I took guidance from Karthigesu JA's reasoning. He noted that Registrar's Appeals (today governed by O 56 of the Rules of Court) were not governed by an equivalent of O 57 r 13(2) of the Rules of Court. This rule prescribes "special grounds" for the admission of further evidence before the Court of Appeal where the procedure below was a trial or hearing on the merits. I similarly observed that O 55C of the Rules of Court, which governs appeals from District Judges in Chambers to a Judge of the High Court in Chambers, does not contain an equivalent of O 55D r 11(1) of the Rules of Court which prescribes "special grounds" for the admission of further evidence in an appeal from the State Courts to the High Court after a trial or hearing on the merits. O 55D r 1 specifically provides that O 55D does not apply to appeals from District Judges in Chambers to a High Court Judge in Chambers. In addition to reasoning from the Rules of Court, I also noted the English Court of Appeal case of *G (formerly P) v P (Ancillary Relief: Appeal)* [1977] 1 WLR 1376. That case involved an appeal from an order of a registrar in ancillary matters proceedings for a husband to pay his former wife maintenance and for a division of property. The Court of Appeal found (at 1379-1380) that in appeals to a judge in chambers under both r 124 of the English Matrimonial Causes Rules 1977 and O 58 r 1 of the English Rules of Supreme Court 1965 (both of which are similar to our O 55C), the practice was for the judge to treat the appeal as a first instance hearing which included the freedom to admit fresh evidence. This finding was cited with approval by the House of Lords in *Barder v Caluori* [1988] AC 20 at 39. For these reasons I found that for this case, an appeal from a District Court in Chambers to a High Court Judge in Chambers, I was not required to find special grounds (as described in *Ladd v Marshall*) to allow fresh evidence to be adduced.

15. The Husband objected to the admission of all the proposed pieces of evidence based on the case of *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 ("*Lassiter*"). This was a case concerning an appeal to a Judge in Chambers from a Registrar's assessment of damages. Chao Hick Tin JA, delivering the judgment of the Court of Appeal, specifically distinguished that case from *Lian Soon Construction* at [18]:

Of course *Lian Soon Construction* did not concern an appeal from an assessment of damages by the Registrar to the judge in chambers and thus the case is not strictly determinative of the present issue.

Ultimately, in the specific context of an appeal from a Registrar's assessment of damages, the court in *Lassiter* decided that the second and third criteria from *Ladd v Marshall* would apply, but not the first (see [12] above). This decision sought to strike a balance between (i) the expediency of empowering Registrars to conduct assessments of damages, including the examination of witnesses, and (ii) the recognition, made in *Lian Soon Construction* and other cases, that an appeal from a Registrar to a Judge in Chambers is treated as a fresh hearing at first instance.

16. It was in this context that Chao JA made a qualifying statement at [24] of *Lassiter*:

... [W]e are far from suggesting that a party should be free to bring in fresh evidence as he pleases. ... Reasonable conditions must be set. ... Sufficiently strong reasons must be shown why

the new evidence was not adduced as the assessment before the Registrar. Mr Segeram relied on this statement in the context of the present case. However, as I have discussed, Chao JA's statement was made in the context of an appeal from a Registrar's assessment of damages, which falls under the control of the second and third Ladd v Marshall requirements. Fresh evidence in appeals from such procedures is treated more strictly because parties would normally have had sufficient opportunity to adduce evidence before the Registrar. In contrast, the present facts fall under the less restrictive regime described in Lian Soon Construction. Mr Segeram's citation of Lassiter was therefore not on point.

17. In the case of WBG Network (S) Pte Ltd v Sunny Daisy Ltd [2007] 1 SLR(R) 1133 ("WBG Network") the Court of Appeal elaborated on its position in Lassiter. Choo Han Teck J gave the Court's reasoning at [13]-[14]:

13 Lassiter thus recognised a distinction between the standard to be applied in appeals where there had been the characteristics of a full trial or where oral evidence had been recorded (for example, in proceedings of inquiries or, as in Lassiter, in an assessment of damages) and those that were interlocutory in nature. As a result, one might not unreasonably conclude that there is a distinction between the standard to be applied for the adducing of fresh evidence in cases which are similar on the facts with Lassiter (for example, in assessments of damages or inquiries), in which the second and third conditions of Ladd v Marshall should strictly apply and those which are similar to Lian Soon Construction (for example, interlocutory matters), in which the court would be allowed to exercise its discretion more liberally. The existence of a wider discretion in the latter situation however, does not mean that Ladd v Marshall cannot apply in such circumstances. Instead, the existence of such wider discretion would mean that it would be left to the court hearing any particular matter to decide whether the facts justified the application of Ladd v Marshall (and if so, to what extent).

14 A party wishing to adduce further evidence before the judge in chambers in cases where the hearing at first instance did not possess the characteristics of a trial might still have to persuade the judge hearing the matter that he had overcome all three requirements of Ladd v Marshall if he were to entertain any hope of admitting the further evidence because the judge was entitled, though not obliged, to employ the conditions of Ladd v Marshall to help her decide whether or not to exercise her discretion to admit or reject the further evidence. In such a case, if the appellant could not persuade the judge that the conditions, if applied, would result in his favour, then it would be unlikely that the judge would allow his application to adduce the fresh evidence. [emphasis in original]

18. On the facts, I was of the opinion that the medical report prepared by Dr Lim could reasonably have been obtained and adduced at an earlier stage of the proceedings, referring to the first condition of the Ladd v Marshall test. However, applying Lian Soon Construction, this did not prevent me from admitting the report. Following the case of WBG Network, although the second and third Ladd v Marshall criteria were not strictly applicable, I took reference from them as follows: the Wife's mental health was in issue from an early stage in the ancillary matters hearings below; the report was therefore potentially of great importance in this case, meeting the second criterion. Dr Lim's credentials as a psychiatrist from Raffles Hospital were also not in dispute, meeting the

third criterion of credibility. For these reasons, I permitted the medical report to be adduced in evidence. I add that Mr Segeram did not then apply to have the Wife's mental condition assessed by a psychiatrist of the Husband's choice.

19. However, concerning the other pieces of evidence I came to a different ruling. The two sets of photographs (see [11](b) and (c) above) lacked sufficient context and thus did not prove anything of significant relevance to the appeal. Similarly, the FAQ from the Singapore Institute of Management did not address the Wife's specific degree, but rather covered courses at the university in a very general way. This did not have enough probative value. Finally, the Wife submitted that the photocopy of her chequebook would prove a certain payment for the matrimonial flat was made by her rather than the Husband. However, this evidence and submission gave an incomplete and misleading picture of the payment situation in the light of contrary evidence provided in the Husband's affidavits. As such I found that the photocopy of the Wife's chequebook lacked credibility. For the reasons stated I did not permit the Wife to adduce any piece of fresh evidence under Summons 9958/2010 other than Dr Lim's medical report.

#### ***Oral application on 17 September 2010***

20. As intimated above at [10], Ms Malathy made an oral application on 17 September 2010 for leave to adduce in evidence a letter of employment dated 29 July 2010 from the Wife's new employer and the time when she would be able to return home each day after work.
21. This evidence could certainly have been adduced earlier rather than only on 17 September 2010. However, as stated above at [14], this did not preclude me from admitting it. The Wife's present working hours were a relevant factor in this case. In addition, no issue was raised as to the authenticity of this evidence. However, Mr Segeram objected that this evidence was only the latest of the Wife's many changes of position, some of which were in response to the Husband's assertions. This presented him with a moving target, making it difficult for him to submit effectively. Although I had some sympathy with the objections, in light of the relevance of the additional information I permitted the same to be adduced in evidence by way of a fresh affidavit to be filed and served by 5.00pm on 20 September 2010.

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

##### **Factual background**

22. The Husband is a Singapore citizen and the Wife is a citizen of the People's Republic of China ("PRC") and a Singapore Permanent Resident ("PR"). From before their marriage to the present, the Husband has been a full-time self-employed businessman. The Wife's engineering degree from Gan Su Industrial University, PRC was not recognised by immigration authorities. Partly for the purpose of obtaining PR status, she pursued education in Singapore actively from early 2002 to July 2005. The full list of the Wife's educational attainments is as follows:

<b>Qualification</b>	<b>Period of Study</b>
Engineering Degree from Gan Su Industrial University, PRC	Sometime before 1997
International English Language Testing System Certificate from the British Council	Early 2002
Diploma in Economics from the London School of Economics	June 2002 to 2003
Degree in Banking and Finance from the Singapore Institute of Management	2003 to July 2005
Elementary Japanese (Stage 1) Certificate	23 August 2008 to 8 November 2008

The parties' daughter was born on 4 February 2003, while their son was born on 25 December 2005. After the birth of the younger child the Wife was a homemaker until late 2007, when she obtained employment as a secretary. From that time to the present day she has been in full-time employment with intermittent breaks in between employers as well as holding additional part-time work.

23. The Husband's evidence was that he served as the family's sole breadwinner throughout the period when the Wife was not in employment. The Wife showed evidence that she had sought an order of maintenance under s 69 of the Women's Charter (Cap 353, 1997 Rev Ed) against the Husband, with an order by consent signed by District Judge Edgar Foo on 27 December 2007. Under that order, the Husband agreed to pay monthly maintenance of of \$450 to the Wife plus "all other reasonable outgoings and expenses, including children, maid and household" (MO 1219/2007). The Wife's evidence was that before this order she was single-handedly paying the expenses of the children's upkeep for almost a year. In his Reply and Defence to Counterclaim, the Husband averred that the application for maintenance was unfounded and that he had been all along doing everything stated in the order.
  
24. In an affidavit filed in support of a Summons for variation of the District Judge's order (Summons 5590 of 2010), the Wife's evidence was that she served as the primary caregiver for the children even as she attended courses from 2003 to 2005. She went on to perform this role full-time between 2005 and 2007 including making herself available to breastfeed her son until he was 1½ years old in mid-2007. She described herself as a "stay-home mum" who cared for the children day and night, taking care of them during illness, tutoring them and transporting them to and from school or nursery. The Wife's affidavit further stated that she had continued as the children's primary caregiver up to the date of deposition (31 March 2010), feeding them, supervising their education and giving piano lessons to her daughter. The Wife provided evidence at the hearing below that the children slept with her nightly. Qualification Period of Study Engineering Degree from Gan Su Industrial University, PRC Sometime before 1997 International English Language Testing System Certificate from the British Council Early 2002 Diploma in Economics from the London School of Economics June 2002 to 2003 Degree in Banking and Finance from the Singapore Institute of Management 2003 to July 2005 Elementary

Japanese (Stage 1) Certificate 23 August 2008 to 8 November 2008 Ms Malathy's submission stated that this was still the case at the time of the appeal, though there was no recent evidence given.

25. The Husband's evidence contended that the Wife was a full-time student between 2003 and 2005. Mr Segeram submitted that based on this fact, the Wife was not in a position to be the primary caregiver during that period. Concerning the present childcare arrangements, Mr Segeram submitted that the children were in school or childcare for most of the day, and at other times either the Husband or his employed domestic helper would care for them. The Husband did not deny that the children continued to sleep with the Wife. The Husband contended that as of July 2010 the Wife was at work from 8.30am to around 9.00pm, including her commitments in part time work. From her latest letter of employment dated 29 July 2010, the Wife stated that her new job allows her to accompany her younger child to kindergarten at about 7.50am each day before going to work at about 8.15am. After work she takes the company transport to reach home by 6.00pm. In an earlier affidavit filed on 12 July 2010, she indicated that she was working as a part-time financial consultant on a commission basis. In submissions filed for the Wife on 7 May 2010, she described herself as a "property agent".
26. The parties also raised evidence on a few more general matters relating to care and control. Regarding the parents' respective discipline methods, the Husband pointed to the Social Welfare Report dated 25 August 2009 submitted at the trial below. The Child Welfare Officer preparing the report regarded the Wife's disciplinary methods as "harsh", including the use of objects like a belt, a bamboo tube and toys to discipline them. Red marks were also reportedly visible on the children for a few days after she punished them. The report recommended that the Wife attend counselling to learn more appropriate disciplinary methods. The District Judge relied heavily on the report, which included other matters. Ms Malathy submitted that there were extenuating circumstances to explain the Wife's harsher disciplinary actions, such as an incident where her daughter shook free of her grip and dashed across a road. In any event, in the Wife's evidence under Summons 5590 of 2010 she denied having struck the children except with her bare palms. The Wife indicated that she was willing to attend workshops and receive counselling on parenting issues. The Husband's evidence stated that he would occasionally discipline the children by spanking them with his hands.
27. The Husband mentioned that he was able to call upon his sisters-in-law and a domestic helper to assist with childcare. The Wife initially stated that her mother would be able to come to Singapore and care for the children while she was at work. However, it later emerged in the Wife's affidavit filed on 12 July 2010 that her mother was not presently in Singapore and had no right to remain here, although the Wife was in the process of applying for a 5-year dependent pass to allow her to live in Singapore temporarily. If her mother is not available to help long-term, the Wife stated that her alternative was to have the children put in professional childcare or be cared for by a domestic helper while she was at work.

28. The parties gave conflicting evidence concerning the Wife's mental health, which was a major issue. The Husband stated that on 28 February 2007 the Wife threatened to commit suicide with their two children. The context of this threat was not provided in his affidavits; however, in the Husband's Statement of Particulars it was stated that the incident happened after the family was returning from a cruise holiday. After a long wait for a taxi, there was an argument between him and the Wife. Upon returning home, the Wife made the alleged threat. The Wife's Defence added that the parties slapped each other in the taxi during the argument and stated that the Wife stated a wish to commit suicide, but did not mention the children.

The Husband's position was that the Wife's mental health should count against her on the issue of care and control. Singapore Police Force records show that the Wife was arrested on 28 February 2007 and given a stern warning on 30 April 2007 for attempting suicide. A report by one Dr Goh Yen-Li of the Institute of Mental Health ("IMH") dated 3 November 2008 indicates that the Wife was referred to their care on 1 March 2007 and diagnosed with reactive depression, stating that "the main stressor was marital conflict with her husband. She felt entrapped in an unhappy marriage." According to this report, she was not given medication or admitted as a stay-in patient but she defaulted from follow-up appointments from that time until 2 November 2007. She was seen at IMH as an outpatient until 9 January 2008.

29. As mentioned above at [18] the Wife successfully applied to adduce a medical report by Dr Lim dated 24 January 2010. Dr Lim elaborated on Dr Goh Yen-Li's diagnosis of reactive depression, saying:

The term "Reactive" qualifying the diagnosis of Depression is critical in that it has unequivocally related the cause of Depression to external stressful events which the report did mention as "marital conflict with her husband and felt entrapped in an unhappy marriage."

What seem [sic] certain from the IMH report was that the patients [sic] did not suffer a major psychiatric disorder such as "PSYCHOSIS". It is also implied that Reactive Depression is usually temporary in its manifestation and with the resolution of the etiology which in this case is the "unhappy marriage," the mental impairment would resolve.

[emphasis in original]

Dr Lim had conducted a mental state examination on the Wife on 1 December 2009 and stated his opinion as follows:

Based on my evaluation of her mental condition, I am of the opinion that she does not suffer from any psychiatric impairment that would be contra-indicated in her responsibility to care for her children. All the psychological tests administered did not suggest any evidence of mental disability or disorder.

This medical report also mentioned that at some point during her IMH follow-up appointments the Wife was prescribed antidepressants but she did not comply with her prescription due to the

side-effects of the medication. Nevertheless, Dr Lim concluded that the Wife did not need any form of psychiatric follow-up as of the time of the report.

30. The Husband also relied on the fact that the Wife has a previous criminal conviction. In his submission, his evidence was used in connection with the Wife's mental stability generally rather than with any issue about her moral character. On 9 December 2007 the Wife left a department store with unpurchased items. She was convicted of theft in dwelling under s 380 of the Penal Code (Cap 225, 1985 Rev Ed) and sentenced to a fine of \$400. The Wife's explanation was that the day before the incident she had received news that her brother in China was critically ill. While she was at the department store, she received a call and, fearing bad news, rushed out without realising she had unpurchased items with her. She said she later pleaded guilty without realising the consequences of doing so. Mr Segeram's submission pointed to inconsistencies in the Wife's various explanations of this incident and suggested that her account was untruthful.
31. The Husband alleged that the Wife had threatened to remove the children from Singapore and bring them with her to China. On her part the Wife stated her belief that the children would be better brought up in Singapore and that their citizenship would be for them to decide later.
32. The Husband also mentioned that as a Singapore PR, the Wife was not eligible to apply for public housing without a family unit. He suggested that the Wife was seeking care and control of the children only for the purpose of facilitating her obtaining of public housing.
33. The Wife's evidence was that if granted care and control she intended to buy or rent a 3-room flat in the Jurong West area for herself and her children. She gave evidence that her sister was willing to give her about \$45,000 in financial assistance to help pay for the down payment for a flat if necessary, or for any other similar need.
34. The Wife asserted that the Husband was indifferent to their children's education and, unlike her, did not take pains to ensure that they entered good schools. As an illustration, the Wife indicated that she had wanted to use an alternative address near the primary school of her preference to increase their daughter's chance of being admitted into that school. Their daughter is now studying in primary school while their son is about to enter primary school. This was among the reasons the Wife sought sole custody at the hearing below, although in this appeal she limited herself to seeking an order for her to have sole discretion in the children's education and choice of school (see [2] above).

#### **Effect of decision of a District Judge in Chambers on appeal to a Judge in Chambers**

35. Mr Segeram cited the Court of Appeal case of *CX v CY* (minor: custody and access) [2005] 3 SLR(R) 690 ("*CX v CY*") as authority suggesting that in child welfare cases as in all others, an appellate court should be slow to overturn an exercise of discretion by the judge below. In that case Lai Siu Chiu J said at [17]:

...We must stress that an appeal should not automatically succeed simply because the appellate court preferred a solution which the judge had not chosen. In other words, similar to the principles that apply to general appellate intervention, the appellate court should only reverse or vary a decision made by the judge below if it was exercised on wrong principles, or if the decision was plainly wrong, as would be the case if the judge has exercised his discretion wrongly. ...

36. At [13] above, I noted the Court of Appeal's finding in *Lian Soon Construction* that a Judge in Chambers hearing a Registrar's Appeal is free to admit fresh evidence without special grounds. *Karthigesu JA* stated the rationale for this at [37] of that case which I have set out above.

37. *CX v CY* was an appeal to the Court of Appeal from a decision of a Judge in Chambers. From my reading, I find that *CX v CY* as cited by Mr Segeram is part of a line of authority stating that the Court of Appeal will not readily interfere with the exercise of discretion of a judge. Based on *Lian Soon Construction*, this is not applicable to Registrar's Appeals as such appeals are treated as hearings at first instance before a Judge in Chambers unfettered by the decision below. As I have found above at [14], an application of *Lian Soon Construction* and interpretation of the Rules of Court show that appeals from a District Judge in Chambers to a High Court Judge in Chambers are not subject to special rules for the adducing of fresh evidence. From the material cited above at [13], the reason for this is that such appeals are treated as first instance hearings in the same manner as Registrar's Appeals. Following from this, the rule cited by Mr Segeram in *CX v CY* is similarly inapplicable to such appeals and to the present facts.

38. The High Court decision of *Louis Pius Gilbert v Louis Anne Lise* [1999] 3 SLR(R) 402 ("*Louis Pius Gilbert*") states a contrary view. In that case the High Court Judge in Chambers hearing an appeal from a District Judge in Chambers took the view (at [15]) that sitting as an appeal court, he "should not not interfere with the decision of a court of first instance unless it is so far out of line as to be perverse, or unless the lower court has clearly gone wrong on principle." This statement was in turn taken verbatim from *Soh Chan Soon v Tan Choon Yock* [1998] SGHC 204 ("*Soh Chan Soon*") at [4] per Warren Khoo L H J. However, unlike *Louis Pius Gilbert*, that appeal was from a District Judge to a High Court Judge (not a Judge in Chambers) under Order 55D of the Rules of Court and not O 55C. Such appeals are not treated as fresh first instance hearings. I therefore distinguish the present case from *Soh Chan Soon* and I decline to apply *Louis Pius Gilbert* on this issue.

39. In any event, I find that there are sufficient grounds for me to depart from the District Judge's decision. This is partly based on the evidence before this court that was not available at proceedings below, which I will elaborate on in my findings.

### **Findings on custody**

40. In *CX v CY*, the Court of Appeal firmly endorsed the view that joint custody should be the norm in custody orders. Quoting *Lai Siu Chiu J* at [38]:

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.

41. In light of this principle, I do not think the Wife should be granted sole discretion on the children's educational matters and choice of schools. I see no reason to exclude the Husband from participating in those decisions. The Wife strikes me as a stubborn and determined individual, willing to go to great lengths to pursue what is best in her own opinion. Her willingness to rely on a false address to register her daughter for primary school ([34] above) and her flexibility with the truth before this court (noted below at [51]) gives me the impression that she is accustomed to doing as she pleases without much sense of restraint. The Husband's views should apply to act as a balance. In any event the Husband, as the father, should have his say.
42. For the reasons stated I find the children should be held in joint custody by both parties without qualification.

### **Findings on care and control**

43. The District Judge granted care and control to the Husband based on two factors: (i) the harshness of the Wife's disciplinary methods and (ii) concerns that the Wife's mental health made her an unsuitable caregiver. He recommended that both parties attend the Parenting Workshop organised by the Family Courts to improve their parenting skills. The District Judge also allowed the issue of care and control to be reviewed after six months, but this was unnecessary as there was a stay on his order.
44. Generally speaking, a mother's bond with young children is stronger than that of a father's. This was described by the Court of Appeal in *Soon Peck Wah v Woon Che Chye* [1998] 3 SLR(R) 430 ("*Soon Peck Wah*") at [45] per Yong Pung How CJ:

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. ...It is only a natural conclusion that, by reason of his very tender, young age, the infant would be most dependent on his mother for his physical and psychological needs. In the best interest of the child's welfare, we should not deprive him of his mother's love and care.

In *Soon Peck Wah*, the child in question was four years old. The parties' son in this case is also four years old, with the daughter being seven years old.

45. I understand from the parties that the current childcare arrangement involves some division of responsibility between both parents. However, I accept the Wife's evidence that she had been the primary caregiver for the children from the start of the marriage to the time of these proceedings even though I accept the Husband's assertion that when the Wife was attending study courses she did so as a full-time student. I find that the Wife prepares many of the children's meals, helps them with schoolwork and takes them out for leisure and enrichment activities. As for the evidence that her latest full-time job allows her to return home to her children at around 6.00pm, I am not unaware that her part-time work (such as financial consultancy or property agency work) may cause her to return later on occasion. I note that the children continue to sleep with the Wife even after the divorce proceedings had been initiated. This suggests that separating the children from the Wife would be more traumatic and disruptive for them than separating them from the Husband. I also note that the Wife has carried out her primary caregiving role since the District Judge's decision on 30 October 2009 without repeating any threat of suicide, which is significant as her mental health was a major issue in this appeal.

46. I now address the issue of mental health, which was the main issue at the hearing below. It was not in dispute that the Wife did threaten to commit suicide at least once. The District Judge below made the finding that she had done so at least three times. In coming to this conclusion the District Judge relied on the confidential Social Welfare Report. In light of this reliance, I will say that in the report the Welfare Officer received information that the Wife had threatened suicide on three separate occasions from the Husband himself. In my view, even if the Wife had threatened only once to commit suicide alone, that would already be a factor against the granting of care and control to her. It follows that if she had threatened to commit suicide more than once and/or threatened the children as well that would be even more troubling. I accept that it is likely that she did threaten to commit suicide more than once, and at one time, her threat included the children.

47. However, having regard to the report by Dr Lim, I do not think her mental health is so precarious as to swing the issue of care and control in favour of the Husband. As quoted above (at [29]), Dr Lim's report stated that even at the time of her initial diagnosis at IMH it was implied that the Wife's reactive depression was temporary and would be resolved by the resolution of her marriage. Very importantly, Dr Lim examined the Wife on 1 December 2009 and stated that in his opinion she did not suffer from any psychiatric impairment that would inhibit her from caring for her children. He also said she did not require any psychiatric follow-up at the moment.

48. I was guided by the Court of Appeal's decision in *Soon Peck Wah* (cited above at [44]). In that case, the judge at the first inter partes hearing did not grant the mother interim custody, care and control of the child in part because she was suffering from post-natal depression coupled with thyrotoxicosis, conditions which caused her to be emotionally unstable; she had frequent outbursts, initiated arguments and on one occasion

threatened to use a knife against the father's family if he failed to return the child to her (Soon Peck Wah at [13](a)). About a year and a half later, the mother applied to the same judge for variation on the basis of a change of circumstances, namely that her medical reports showed that her depression and thyrotoxicosis had been successfully treated, with the symptoms of the latter reduced to "mild hand fine tremors and mild tachycardia" (at [14]). The judge refused to grant variation partly on the basis that the mother's thyrotoxicosis was controlled by medication rather than being cured altogether (at [17]). The Court of Appeal disagreed with this finding, and found that the favourable reports of both her doctors showed that her conditions had been successfully treated notwithstanding that she was still on follow-up medication (at [38] and [40]). Partly on this basis (at [42]), the Court was willing to grant her interim custody, care and control. On the present facts, the Wife has also produced a medical report by Dr Lim declaring that she has no mental disorder. In fact, Dr Lim opined that the Wife does not require medication or follow-up in relation to her condition unlike the mother in Soon Peck Wah.

49. I also found the case of *Cheok Wah Jin v Guo Xiao Ying* (m.w.) [2003] SGDC 72 ("Cheok Wah Jin") persuasive. In that case, the mother was diagnosed with acute psychosis and was treated at IMH between 16 August 1997 and 31 October 1997. Subsequently, she was examined by a doctor on 7 and 11 March 2002 and pronounced to be free of psychotic features, having made a satisfactory recovery. District Judge Koh Juat Jong "saw no reason to doubt the assessment of the doctor" (at [40]) and on the basis of the doctor's report found the mother capable of taking care of the children. I note that in *Cheok Wah Jin*, despite the father's allegation, District Judge Koh did not find that the mother had actually attempted suicide. In contrast, the Wife's attempted suicide in this case is on the public record. Another difference is that the mother in the *Cheok Wah Jin* case had a history of psychosis, while the Wife in this case was diagnosed by IMH as having reactive depression. However, like the mother in *Cheok Wah Jin*, the Wife was medically examined by a doctor and was not assessed to have any mental disorder. In both *Cheok Wah Jin* and on the present facts, the patients were assessed not to require further treatment.
50. I accept Dr Lim's psychiatric assessment of the Wife. Based on all the evidence I am of the view that the Wife's present mental health does not prevent her from caring for the children well. This is supported by her conduct in childcare from 2007 to the present proceedings, during which time she did not threaten suicide or threaten to harm the children.
51. Concerning the Wife's theft conviction, I find it hard to believe the Wife's explanation that the circumstances she mentioned caused her to take unpurchased items and then to plead guilty to committing theft. I think that she was not being forthcoming with the court, a fact that does not reflect well on her at this appeal notwithstanding that her offence was a onetime incident. The Husband also argued against her explanation that the incident was triggered by stressful circumstances. However, as I do not find that the Wife's acts were triggered by the particular incident she mentioned, I do not find the episode indicative of any instability on her part, though her character is called into question.

52. On the other general childcare issues, I find based on the Social Welfare Report that the Wife's methods of discipline are somewhat harsher than the Husband's. In fairness, the Husband also disciplines the children by spanking them with his hands; but I am of the view that the Wife is more ready to resort to harsher methods. Nevertheless, this difference did not weigh heavily in my decision even when considered together with allegations about her mental condition. I note from his Grounds of Decision that the District Judge ordered both parents to attend a Parenting Workshop to improve their parenting skills. It will be in the interest of the children that the parties build up their parenting abilities regardless of whether they have care and control or not.
53. In terms of care-giving arrangements, the Wife holds both full-time and part-time work (whether in one or two part-time occupations is not clear). In her submissions, she stated that her job afforded her more flexibility to care for the children compared to the Husband, who is self-employed. However, I note that as of 12 July 2010, her proposal is to rely on childcare and/or a domestic helper to care for the children for most of the hours of the day. As such I find that her suggested care arrangements are basically similar to the Husband's, who also proposes to engage a domestic helper to care for the children. Both parties also propose to rely on extended family for help: the Husband on his sisters-in-law and the Wife on her mother. However, the Wife indicated that her mother currently has no right of permanent residence in Singapore.
54. The Husband asserted that the Wife had threatened to permanently remove the children from Singapore to China. I presume he was also suggesting that granting care and control to the Wife would somehow facilitate the children's removal. Parties are reminded that if either of them attempts to subvert any order granted by the court it will result in adverse consequences for that party. I do not think that the risk that the Wife might remove the children from the jurisdiction is a weighty factor against granting care and control to her.
55. The Husband also argued that the Wife was seeking care and control only to facilitate an application for public housing. This point was based on the Wife's evidence in affidavits filed for the ancillary matters hearing below, wherein she sought the transfer of the whole of the matrimonial flat into her sole name. The Wife did not pursue title to the matrimonial flat in this appeal. While a grant of care and control to the Wife might allow her access to certain housing arrangements that she might not otherwise have had, I find that this does not of itself suggest that she is seeking care and control for a collateral purpose at the expense of the children's welfare.
56. On the whole, I find the Husband to be a person of better character and more integrity than the Wife. As noted in this judgment, the Wife proved herself dishonest in the course of these proceedings in some ways. However, in spite of all this the children seem closer to their mother than to their father (although this is not to say that they are not also close to their father).
57. It seems the present childcare arrangement involves some role for both parents and frequent contact between the children and parents. I attempted to persuade the parties

to continue the current living arrangements with joint care and control granted to both, but the Husband found the idea of continuing to live under the same roof as the Wife intolerable. This being the case, for the reasons noted above and in consideration of all the evidence I find it in the best interest of the parties' two children that the Wife be granted care and control. However, the Husband should be granted liberal access, the details of which I will discuss below. Regarding the Wife's intended childcare arrangements, in my opinion childcare may not suffice for the children's needs in light of the Wife's possibly long working hours (in both full-time and part-time work). A domestic helper would seem to provide a more sustainable solution; but ultimately the Wife is to make the decision as the person with care and control.

### **Findings on access**

58. Mr Segeram submitted that in the event that the Husband did not get care and control, he seeks the following access:
1. weekday access on Monday, Wednesday and Friday from 6.00pm to 8.00pm;
  2. in the event that he cannot accommodate the children overnight, weekend access every Sunday from 9.00am to 8.00pm;
  3. in the event that he can accommodate the children overnight, weekend access in a two-week cycle from 6.00pm on Friday to 8.00pm on Saturday on one week and from 9.00am on Saturday to 9.00am on Sunday for the other week;
  4. access for half of every school holiday; and
  5. access on every public holiday from 9.00am to 2.00pm, except for every first day of the Chinese New Year, during which access should be from 9.00am to 8.00pm.

Based on the fact that the children are close to the Husband and that they are used to him playing an active part in caring for them, I grant the Husband liberal access on the following terms:

6. weekday access on Monday, Wednesday and Friday from 6.00pm to 8.00pm;
7. weekend access on Saturday from 9.00am to 8.00pm if the Husband cannot accommodate the children overnight or from 6.00pm on Friday to 8.00pm on Saturday if he can. This is simpler than alternating weekend access and will allow the Wife to take the children to church on Sundays;
8. access on alternate public holidays, except Chinese New Year, from 9.00am to 2.00pm;
9. access on Chinese New Year on an alternate basis i.e. on the first day of Chinese New Year from 9.00am to 8.00pm in one year and in the next year on the second day of Chinese New Year from 9.00am to 8.00pm; and
10. access for half of every school holiday

### **Division of matrimonial flat**

### **Factual background**

59. The parties' matrimonial flat is a 5-room Housing and Development Board ("HDB") flat in Jurong. It was purchased in their joint names for \$186,900 with ownership passing to them on 1 October 2003. This was about two and a half years into their marriage. The estimated gross value of the flat as of 20 October 2008 was about \$370,000 and the outstanding mortgage loan was \$135,591.51, giving an estimated net value of \$238,955 (although these figures will have changed since that time). It was undisputed that by the time of this appeal the Husband had paid approximately \$115,000 in direct financial contributions to the acquisition of the flat, including payments towards the mortgage by cash or from his Central Provident Fund ("CPF") account as well as the price of renovation and fittings. However, the Wife added that she had paid the sum of \$8,000 towards renovations, a fact the Husband disputed.
60. The parties' evidence diverged more in the area of indirect contributions to the household. The Wife stated that she was a "full-time housewife and mum and undertook studies on a part-time basis" from the beginning of the marriage to around September 2007, when the family engaged a domestic helper. She indicated that during this period the Husband was engaged in full-time employment and only assisted with household tasks when she was attending classes or studying for exams. As part of her role she claimed to have done marketing, cooking and cleaning in the household. As part of her argument on indirect contribution, the Wife also claimed to have put her career on hold to take care of the household. Contrary to the Wife's account, the Husband stated that it was he who did all household marketing, cleaning and cooking. He denied that the Wife could have made a large indirect contribution to the household as she was engaged in full-time education for four or five years of the marriage and was also twice pregnant. He also contested the Wife's claim to have sacrificed her career for the family.
61. The Husband stated in evidence that he had paid substantial amounts of money to finance the Wife's education. Furthermore, he said that he transferred about \$51,000 to the Wife to be remitted to her family in China in August 2005 to purchase a house there. Regarding this particular payment, the Husband provided in evidence two completed contracts for the sale of the Husband's shares dated 1 and 2 August 2005 respectively, two bank books showing withdrawals from two of his accounts on 10 August 2005 and finally two statements from a remittance agency, Hanshan Money Express, showing the Husband's remittances to one [A] in Heilongjiang, PRC and [ACU] in Tianjin, PRC dated 25 July and 10 August 2005 respectively. The Husband stated that in total, including the abovementioned education fees and remittances, he had paid about \$104,000 to the Wife or for her expenses during the marriage.
62. The Wife's evidence contradicted this, stating that she paid \$20,000 for her own studies with the Husband contributing only about a third of her expenses. The Wife did not address the issue of the remittance in her submissions for this appeal, but in the hearing below she said that the remittance to her family in China was funded entirely with her own money.
63. Generally, the Husband claimed that the Wife had withheld a true account of her means and assets from the court, for instance only providing bank account statements for

selected time periods. In addition the Husband pointed to a large unexplained withdrawal of \$27,000 from her POSB savings accounts on 12 September 2007, which was the day after her application for a maintenance order (see [23] above).

## Findings

64. Under s 112(2) of the Women's Charter (Cap 353, 2009 Rev Ed), many issues can be considered by the court in exercising its discretion to divide matrimonial assets. Among the statutory factors that I considered were the parties' direct financial contributions, their indirect contributions to the welfare of the household, any (material or non-material) support given by one party to the other and the needs of children of the marriage. Based on an estimated gross value of \$370,000, the net value of the matrimonial flat as at 20 October 2008 was roughly \$238,955. Assuming the same monthly mortgage payment rate and accounting for interest, the net value as of October 2010 is roughly \$243,000.
65. Concerning direct financial contribution towards the matrimonial flat, the Wife's claim to have paid \$8,000 towards home renovations was not supported by evidence. As such I do not find that she had made this contribution. In contrast, the Husband was able to provide receipts from the renovation contractors substantiating his payment of various sums. The parties did not dispute that all mortgage payments were paid by the Husband either by way of cash or by CPF contributions.
66. On the question of indirect contribution, I find that the Wife was not a full-time homemaker for the whole of the marriage before September 2007. Although I did not accept the Husband's submission that the Wife was continually studying for four or five years of their seven-year marriage, I believe that at least from 2003-2005 she was substantially engaged in studying. During that time she was not making a full-time contribution to the welfare of the household. I also find that the Wife had not sacrificed her career for the sake of the household, contrary to Ms Malathy's submission.
67. I agree with the District Judge below in his finding that the Wife had received substantial monetary benefit from the marriage, including the financing of her education and the remittance of a sum of money to her family in China to purchase a house. I regard the Wife's evidence that she had financed this remittance herself as convincingly disproven by the Husband's documentary evidence (as stated at [61] above). Although the Husband estimated his total transfers of money to the Wife as being in the realm of \$104,000, the District Judge below appeared to accept that his evidence established only that \$60,000 had been transferred to the Wife's family in China of which she had repaid him \$9,000. From the evidence provided by the Husband, I also find there is no sufficient basis for making a finding that there were substantial transfers to the Wife other than those for her education and the \$60,000 of remittances he made to China.
68. I took note of the Husband's evidence that the Wife had withdrawn the sum of \$27,000 from her POSB savings account on 12 September 2007, which was the day after she made an application for a maintenance order against the Husband. This was raised as an

issue at the hearing below but appears not to have been considered by the District Judge. The Wife has had sufficient opportunity to address this evidence, but she did not do so.

69. Ms Malathy cited the case of *Lee Nyuk Lian v Lim Nia Yong* (2007) SGHC 44 (“*Lee Nyuk Lian*”) as relevant to the facts of this appeal. In that case Sundaresh Menon JC granted the wife 40% of the value of the matrimonial properties on the basis of her indirect contributions. However, that case involved facts very different from the present case. In *Lee Nyuk Lian*, the parties were married for 15 years, during which time the wife was the primary caregiver to the children and the home. She also assisted the husband in his business for four years by doing administrative work. In contrast, in the present case the Wife and the Husband were married for about seven years, out of which the Wife was studying for some years. This means that her indirect contribution was less than that of the wife in *Lee Nyuk Lian*. It is also true that unlike that wife, who supported her husband’s business, the Wife was the one who received substantial financial support and money from the Husband during their marriage. She has also taken the sum of \$27,000 as mentioned above at [68].
70. For the reasons stated above, I find that the Wife’s claim for 40% of the value of the matrimonial flat should not be granted. I find that that the Wife’s share of the matrimonial flat should not be more than the \$14,000 granted by the District Judge below. I asked the Husband if he would nevertheless consider allowing the Wife to continue living in the matrimonial flat with the children, but he said that his financial situation dictated that he sell the same and move to a smaller flat. In light of the circumstances, I find it appropriate to order the sale of the matrimonial flat, with the Wife being paid the sum of \$14,000 out of the net proceeds of sale and the remainder being paid to the Husband.

## **Maintenance**

### **Factual background**

71. As mentioned above at [8], the Wife sought a monthly maintenance payment from the Husband for the children in the event she got care and control. In her earlier affidavit filed on 12 July 2010, the Wife stated that her gross salary from her full-time job was \$2,400. She earned an additional sum of about \$300 a month from her part time work. She estimated that the children’s expenses would be about \$1,350 a month, while her own expenses were \$800 per month. Finally, her estimated monthly mortgage payments came up to \$1,000, which could be paid for through a combination of CPF moneys and cash. This gave a total income of \$2,700 and a total expenditure of \$3,150 per month. In her latest letter of employment dated 29 July 2010 (see [20]above), her current gross salary as a full-time Operations Executive was given as \$2,275 but she did not ask for a higher maintenance from the Husband for the children even though her full-time income fell from \$2,400 to \$2,275.

72. In his affidavit of assets and means filed on 2 December 2008 the Husband estimated his income from his own business to be \$2,229.17 monthly as of 2008. He assessed his monthly personal and household expenses at that time to be \$2,984.01. However, it was undisputed that at present he is paying the salary, levy and medical expenses for a maid which amount to \$510 a month.

## Findings

73. I find it fair for the Husband to pay the Wife \$800 monthly in maintenance for the children. This roughly corresponds to the Wife's estimated fees for childcare or a domestic helper, which is an expense that the Husband would save since he does not have care and control, a point which his counsel did not dispute.

74. At [23] above I mentioned that an order for maintenance (MO 1219/2007) had been made against the Husband on 27 December 2007. I do not know if that order still applies in the light of the orders made by the District Judge below in the ancillary matters. If so, that order will be superseded by the order on maintenance I have made.

75. I note that the Wife did not ask for the usual \$1 per month nominal maintenance for herself to keep alive the option of claiming maintenance for herself in the future, should circumstances warrant it.

## Orders

76. For all the reasons stated above, I allow the appeal in part. I summarise and elaborate on my decision as follows:

1. For the two children of the parties' marriage, both parties to have joint custody with care and control to the Wife and liberal access to the Husband as follows:
  - weekday access on Monday, Wednesday and Friday from 6.00pm to 8.00pm;
  - in the event that he cannot accommodate the children overnight, weekend access every Saturday from 9.00am to 8.00pm; but in the event that he can accommodate the children overnight, weekend access every week from 6.00pm on Friday to 8.00pm on Saturday;
  - access on alternate public holidays, except Chinese New Year, from 9.00am to 2.00pm;
  - access on Chinese New Year on an alternate basis i.e. on the first day of Chinese New Year from 9.00am to 8.00pm in one year and in the next year on the second day of Chinese New Year from 9.00am to 8.00pm; and
  - access for half of every school holiday with the details to be agreed between the parties, failing which they are to make an appointment to address me on this issue before the extraction of the order;
2. The parties are to agree on arrangements for taking the children on holidays overseas or to make an appointment to address me on this issue before the extraction of the order.

3. The Husband is to pay the Wife \$800 monthly as maintenance for their children with effect from the first day of the month after she moves out from the matrimonial flat with the children and thereafter on the first day of every month.
4. For the avoidance of doubt, no maintenance is to be payable to the Wife for herself.
5. The matrimonial flat is to be sold in the open market within six months from the date of the order with the cost and expense of the sale being paid by the Husband and the proceeds of sale divided between the parties with \$14,000 to the Wife and the remainder to the Husband after the outstanding loan is paid. The Husband is to have an option to purchase the Wife's interest in the matrimonial flat for \$14,000.
6. I also allow both parties liberty to apply.
7. Both parties to bear their own costs.

77. As decided by the District Judge below:

1. Both parties are to attend the Parenting Workshop arranged by the Family Court.
2. Both parties are to keep all other assets in their own names.