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17. FAMILY LAW

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17.1 The family justice system is undeniably moving towards the implementation of therapeutic justice in 2020. There is a greater recognition of the need to help families problem-solve and heal instead of engaging in adversarial court proceedings. The cases adjudicated by the Court of Appeal and the Family Division of the High Court on parental conflict provide essential guidelines on how family practice is changing and what is to be expected of the parties with regards to their parental responsibilities. Another developing area of family law is the division of matrimonial assets, with the Court of Appeal releasing three key decisions on the characterisation of matrimonial assets, how the structured approach set out in *ANJ v ANK*[2] ("*ANJ*") should be applied and how adverse inferences should be given effect to when dividing matrimonial assets. This edition of the review will also cover cases involving child welfare, maintenance and procedure.

I. Therapeutic justice

17.2 Therapeutic justice is a means in which the family justice system can assist the parties in achieving positive outcomes following the breakdown of familial relationships. It is an all-encompassing approach where stakeholders adopt a lens of care when applying substantive rules, law, legal procedures, and practices to problem-solve for the parties.[3] This is perhaps the most fundamental takeaway that family practitioners should have from 2020 – that therapeutic justice is here to stay. Everyone in the family justice system will have to contribute in order to make it a reality that benefits those who come into contact with the family justice system.

17.3 In *VDZ v VEA*[4] ("*VDZ*"), the Court of Appeal touched on the importance of therapeutic justice. The Court of Appeal's guidance was given in the context of committal proceedings in a divorce case

1 This chapter was written with input from Shawn Teo and Clement Yap. All errors remain the contributor's.
2 [2015] 4 SLR 1043.
3 Debbie Ong J, Family Justice Courts, "Today Is a New Day", address at Family Justice Courts Workplan 2020 (21 May 2020) at para 43.
4 [2020] 2 SLR 858.

that centred on parental conflict. The wife was found to have breached orders that were made in the children's best interests and alienated the children from the husband, whom they once shared a loving relationship with.[5] The husband obtained leave of the court to commence committal proceedings against the wife. The Family Division of the High Court subsequently sentenced the wife to a one-week imprisonment term for contempt of court.[6] When hearing the wife's appeal against the sentence, the Court of Appeal provided useful guidance on the considerations for committal proceedings and the role that therapeutic justice ought to play in the family justice system.

17.4 The wife in *VDZ* was found to be in breach of court orders that govern the parties' conduct in the presence of the children and the children's contact with the litigation. The first order provided that the parties are not to make disparaging remarks about the other party to the children, and that they are to endeavour to ensure that their family and friends do not do so.[7] The second order provided that the parties, whether by themselves or their agents and/or nominees, are restrained from involving the children in the litigation.[8] The second order listed examples of prohibited conduct such as communicating with the children on the proceedings, showing them copies of legal or court documents and sharing or discussing any documents related to the proceedings with the children.[9]

17.5 The Court of Appeal held that the orders imposed an obligation that the parties were not to involve the children in the litigation through any means.[10] The content of the daughter's social media posts which reflected that of the wife's affidavits, the wife's unconvincing oral testimony on how she prevented the children from accessing the court documents, and the wife's delay in taking preventive measures after discovering the daughter's social media posts led to the finding that the wife had breached at least the second order on involving the children in the litigation by showing them legal or court documents.[11] Even with the criminal standard of proof beyond a reasonable doubt applied, the circumstantial evidence of the wife's conduct and the children's conduct led to the "inevitable and inexorable" conclusion that the wife was liable for contempt of court.[12]

5 *VDZ v VEA* [2020] 2 SLR 858 at [7].
6 *VDZ v VEA* [2020] 2 SLR 858 at [1].
7 *VDZ v VEA* [2020] 2 SLR 858 at [4].
8 *VDZ v VEA* [2020] 2 SLR 858 at [5].
9 *VDZ v VEA* [2020] 2 SLR 858 at [27].
10 *VDZ v VEA* [2020] 2 SLR 858 at [24] and [27].
11 *VDZ v VEA* [2020] 2 SLR 858 at [29]–[34].
12 *VDZ v VEA* [2020] 2 SLR 858 at [40] and [44].

17.6 When considering whether the sentence of one-week imprisonment for the wife's contempt of court was appropriate, the Court of Appeal applied the legal principles on contempt by disobedience of a court order set out in *Mok Kah Hong v Zheng Zhuan Yao*[13] and considered other relevant case precedents. It held that the wife had deliberately prejudiced and harmed the husband's reputation and drove a wedge in the relationship between him and the children. She was previously found in contempt of court for refusing to hand over the children to the husband at the access venue and was fined for that breach.[14] That led to the need to impose a sufficiently punitive sentence to deter the wife from committing further acts of contempt and justified the one-week imprisonment term.[15]

17.7 However, given the wife's medical condition, the Court of Appeal exercised judicial mercy to temper the imprisonment sentence to that of a $5,000 fine to be paid within 14 days of the Court of Appeal's last order.[16] Judicial mercy is based on humanity and exercised in exceptional circumstances which call for the alleviation of punishment that is warranted by the gravity of the offence. Examples of such non-exhaustive circumstances where humanity considerations may come to the fore include where the offender was suffering from a terminal illness or where the offender was so ill that incarceration would carry a high risk of endangering her life.[17] The wife adduced medical evidence on her condition after the sentence was handed down by the Family Division of the High Court. The medical evidence indicated that the wife was susceptible to infection and that sudden changes in the environment would be detrimental to her condition.[18] The wife was also directed to be assessed by the Singapore Prison Service on her medical condition. The Prisons Medical Officer who conducted the assessment opined that the wife was unfit for incarceration at that point in time.[19]

17.8 *VDZ*[20] is an exceptional case where the wife was suffering from metastatic advanced Stage 4 breast cancer. While the Court of Appeal exercised judicial mercy to lighten the wife's sentence, it made certain observations on her undesirable conduct of alienating the children from the husband and how she should reflect on her life and future actions.[21] The wife was found to have engaged in conduct that was extremely

13 [2016] 3 SLR 1.
14 *VDZ v VEA* [2020] 2 SLR 858 at [55].
15 *VDZ v VEA* [2020] 2 SLR 858 at [56].
16 *VDZ v VEA* [2020] 2 SLR 858 at [73].
17 *VDZ v VEA* [2020] 2 SLR 858 at [69].
18 *VDZ v VEA* [2020] 2 SLR 858 at [15] and [66].
19 *VDZ v VEA* [2020] 2 SLR 858 at [67] and [68].
20 See para 17.3 above.
21 *VDZ v VEA* [2020] 2 SLR 858 at [56] and [79].

damaging to the children's relationship with the husband, such as poisoning the children's minds, utilising the children as pawns to attack their father, and allowing a third party to manipulate and exert influence over them. In doing so, the wife's conduct caused the children's previously loving relationship with the husband to deteriorate to the point that any repair of the relationship was no longer practically feasible.[22]

17.9 When commenting on the importance of therapeutic justice, the Court of Appeal noted that:[23]

> … the family justice system is … intended to aid the parties (and their children) to achieve as much healing in all its variegated aspects as is possible in order that they move forward as positively as possible with their lives.

Depending on the precise circumstances of the case, trying to repair the children's bonds with both their parents may result in what may be seen as arrangements that "disrupt" the *status quo*. In cases with high parental conflict and alienation, practitioners ought to be aware of the possibility of the court switching care and control to the non-alienating parent,[24] or even ordering that the children be temporarily placed at a children's home if such outcomes encourage the children to gradually develop bonds with both parents.[25]

17.10 *VDZ* is an illustration of how these different approaches were attempted to maintain the children's bond with both parents. Yet, the exceptional facts of that case eventually called for the alienating wife to have care and control of the children.[26] It was apparent that the animosity the children had towards the husband was so deeply entrenched to the point that forcing them to have contact with the husband could end up doing them more harm than good. In *TEN v TEO*,[27] ("*TEN*") the Family Division of the High Court also ordered that the children remain in the care and control of the father who was found to have engaged in "excessive gatekeeping or polarising conduct", as it would not be in the children's best interests to "'force' them to reconnect with the Mother" at that point in time.[28]

17.11 The outcomes in *VDZ* and *TEN*, while indisputably justified on the facts, suggest that active alienation of the children by one spouse

22 *VDZ v VEA* [2020] 2 SLR 858 at [2].
23 *VDZ v VEA* [2020] 2 SLR 858 at [2].
24 *ABW v ABV* [2014] 2 SLR 769 at [29].
25 *VDZ v VEA* [2020] 2 SLR 858 at [2].
26 *VDZ v VEA* [2020] 2 SLR 858 at [2].
27 [2020] SGHCF 20.
28 *TEN v TEO* [2020] SGHCF 20 at [43].

against the other remains a viable "tactic" for litigants. A desperate litigant who is determined to keep the children away from the other parent need only keep alienating the children past the point of no return. Even when the alienation is exposed by the court, such behaviour may create a situation where a reversal of care and control and/ or other care arrangements would no longer be tenable. The unfortunate unfolding of events in these cases highlights the importance of early therapeutic intervention for divorcing parties and the children.

17.12 Targeted psychological or psychiatric intervention for the parties at the earlier stages of the divorce proceedings may benefit the parties and the overall conduct of the high-conflict litigation. Interventions to combat alienation are also likely to have a greater likelihood of success if they are implemented in a timely manner before the children's animosity towards the non-alienating parent becomes ingrained and the family dynamics deteriorate to an irreparable state.[29] While early intervention may appear intrusive, the use of an appropriate multidisciplinary team would go towards ensuring that such interventions are only utilised in appropriate situations and in a principled manner to prevent any abuse. Using *VDZ* as an example, early intervention could have served to mitigate the wife's alienation of the children until the issue of care and control could be properly ventilated before the court.

17.13 Another change motivated by therapeutic justice is the applicability of committal as a means to enforce child-related orders. Committal is generally recognised as a remedy of very last resort in family proceedings,[30] given its severe nature and potentially harsh penalties. This is exacerbated by the fact that the parties have to maintain a working relationship and continue co-parenting even after the divorce proceedings are concluded. In light of this, committal may not produce the ideal therapeutic consequences when utilised in cases involving child-related orders. Where access orders have been breached, there are cases where the courts facilitate agreements on make-up access[31] and suspend the committal orders subject to conditions that provide for compliance with the access orders.[32]

17.14 The Family Justice Courts appear to be looking into new measures that enhance compliance with child access orders by working on a new mode of enforcement.[33] This is laudable, and it is imperative that there

29 *ABW v ABV* [2014] 2 SLR 769 at [29] and [52].
30 *BMP v BMQ* [2014] 1 SLR 1140 at [56].
31 *UXV v UXW* [2019] SGFC 70 at [7].
32 *TOE v TOF* [2019] SGFC 103 at [15].
33 Debbie Ong J, Family Justice Courts, "Today is a New Day", address at Family Justice Courts Workplan 2020 (21 May 2020) at paras 91 and 97.

be other measures to ensure compliance other than committal. Given the potentially draconian consequences, any application for committal requires a separate leave application, resulting in a significant expenditure of time and legal fees. It is hoped that the upcoming alternative measure will introduce a softer approach that is more time and cost-efficient as compared to committal.

II. Division of matrimonial assets

17.15 In 2019, the Family Division of the High Court adopted varied approaches towards the division of matrimonial assets in dual-income marriages. That grey area has since been addressed in 2020, with the Court of Appeal issuing decisions affirming that the *ANJ*[34] structured approach ought to generally apply in dual-income marriages.[35] The approach in *TNL v TNK*[36] ("*TNL*"), where the court inclines towards equal division to avoid "doubly disadvantaging" the homemaking spouse, appears to be confined to long single-income marriages.[37] The Court of Appeal further clarified when an adjustment of the weightage given to direct and indirect contributions at stage three of the *ANJ* structured approach is justified.[38] It also provided an overview of the identification of matrimonial assets under the Women's Charter.[39] The trends for division in 2020 make clear that the *ANJ* structured approach remains a relevant tool for practitioners to advise clients on the division of matrimonial assets.

A. Applicability of the ANJ structured approach in dual-income marriages

17.16 The Court of Appeal affirmed the continued applicability of the *ANJ* structured approach in *UYQ v UYP*[40] ("*UYQ*"). The wife in that case appealed against the decision of the Family Division of the High Court to exercise its discretion and reduce the wife's division proportion that was derived from applying the *ANJ* structured approach. The discretion was exercised with the view of inclining towards equal division in long dual-income marriages, such that the division range would not exceed 60:40.[41]

34 See para 17.1 above.
35 *UYQ v UYP* [2020] 1 SLR 551 at [5].
36 [2017] 1 SLR 609 at [44] and [46].
37 *USB v USA* [2020] 2 SLR 588 at [36].
38 *USB v USA* [2020] 2 SLR 588 at [41].
39 Cap 353, 2009 Rev Ed. See *USB v USA* [2020] 2 SLR 588 at [19].
40 [2020] 1 SLR 5511.
41 *UYP v UYQ* [2020] 3 SLR 683 at [106].

The Court of Appeal allowed the wife's appeal in *UYQ* and restored her proportion of matrimonial assets from 60% to 67% (rounded down).[42]

17.17 In its judgment, the Court of Appeal expounded on fundamental legal principles relating to the division of matrimonial assets. It underscored that "rules and principles of law in any given field are not – and cannot be – writ in stone".[43] While the *ANJ* structured approach promotes a degree of certainty in the division exercise, it is crucial to bear in mind that it should not be applied in an overly rigid manner. Given that there are natural evidentiary gaps in most marriages, a broad brush is required to fill in those gaps based on major details supported by reasonable accounting rigour. Where a party focuses solely on obfuscating details and wastes the court's resources in a wholly disproportionate manner, the court may make cost orders as a means to penalise that party.[44] This stance is wholly consistent with the goal of therapeutic justice as the court is in effect exercising its powers to discourage overly litigious and unhelpful conduct by the parties.

17.18 The Court of Appeal further reiterated the importance of deciding each case on its precise facts and circumstances, notwithstanding that there may be certain trends and inclinations that apply. In doing so, it held that the Family Division of the High Court had already considered and weighed the relevant factors in the marriage to arrive at a division ratio of 67.5:32.5 in favour of the wife.[45] Notably, the wife in *UYQ* was found to have made considerable direct financial contributions to the matrimonial assets. Relative to the husband, the wife provided more funds for the purchase of the parties' various properties and was responsible for managing and growing those investments.[46] The wife had also consistently taken care of the children and the household when the husband was overseas for business.[47]

17.19 It would appear that it was the combination of the wife's substantial direct financial contributions and indirect contributions that led to the generous award of 67% in a long dual-income marriage, despite case precedents suggesting that there is a trend of equal division in long marriages.[48] It is often the case in marriages that one party takes on more of the breadwinning role and the other party more of the homemaking role. However, there exist cases where a single spouse has more substantial

42 *UYQ v UYP* [2020] 1 SLR 551 at [5].
43 *UYQ v UYP* [2020] 1 SLR 551 at [2].
44 *UYQ v UYP* [2020] 1 SLR 551 at [3] and [4].
45 *UYQ v UYP* [2020] 1 SLR 551 at [5].
46 *UYP v UYQ* [2020] 1 SLR 551 at [94].
47 *UYP v UYQ* [2020] 1 SLR 551 at [102].
48 *UYP v UYQ* [2020] 1 SLR 551 at [50].

contributions relative to the other in both these areas. *UYQ* stands for the proposition that each case has to be determined on its own set of facts, and that the court ought not to place too much weight on principles that are not "writ in legal stone"[49] to achieve just and equitable division.

17.20 The Court of Appeal was yet again faced with a unique set of marriage circumstances in *TQU v TQT*[50] ("*TQU*"). *TQU* involved an appeal on the division of matrimonial assets in a 26-year long dual-income marriage. The factual matrix was relatively unusual in that the Interim Judgment of Divorce was only granted in 2016 even though the marriage broke down much earlier when the wife left the matrimonial home in 2001. The wife had also applied for divorce on two previous occasions, and her divorce actions were dismissed.[51]

17.21 While the wife argued that the marriage was a long single-income one in which the court should incline towards equal division of the matrimonial assets, the Court of Appeal considered the precise circumstances of *TQU* and found that this was not the case. The marriage was not a typical long one given the tumultuous circumstances that arose as early as 2001. Both the parties had also worked at the clinic set up by the husband during the marriage. In light of this, the Court of Appeal held that it was appropriate to apply the *ANJ* structured approach in *TQU*.[52]

17.22 A major hurdle that the courts had to overcome in *TQU* was the lack of evidence relating to the parties' direct financial contributions that spanned across more than two decades. The Family Division of the High Court dealt with that issue by ordering that all the parties' ascertainable assets were to be sold and divided in the ratio of 75:25 in favour of the wife, as the total value of matrimonial assets was unknown.[53] On the other hand, the Court of Appeal directed the parties to obtain valuations for certain properties. This would allow the court to identify and value the matrimonial pool, and make orders that minimise disruption and expense to the parties.[54] Pursuant to these directions, the parties obtained valuations for four properties located in Singapore. They did not produce valuations for properties located in China and Malaysia.[55]

49 *UYQ v UYP* [2020] 1 SLR 551 at [5].
50 [2020] SGCA 8.
51 *TQU v TQT* [2020] SGCA 8 at [4] and [5].
52 *TQU v TQT* [2020] SGCA 8 at [32].
53 *TQU v TQT* [2020] SGCA 8 at [11].
54 *TQU v TQT* [2020] SGCA 8 at [28] and [42].
55 *TQU v TQT* [2020] SGCA 8 at [43].

17.23 The Court of Appeal took the available evidence into account holistically when ascertaining the parties' direct financial contributions. It found that the parties' assets were funded by a combination of gifts, inheritance and income from the clinic which the husband set up. The clinic was operational from 1991 to 2003, with the husband as the resident doctor and the wife handling administrative matters. The Court of Appeal utilised the broad-brush approach and arrived at a direct contributions ratio of 90:10 in favour of the husband.[56] As for the parties' indirect contributions, the Court of Appeal considered the wife's formal complaints against the husband, her acknowledgment that her indirect contributions from March 2010 were zero, and the fact that the husband is the children's primary caregiver in awarding a ratio of 80:20 in favour of the husband.[57] That led to an average ratio of 75:25 in favour of the husband, after a downward adjustment of 10% to give effect to an adverse inference drawn against him for the non-disclosure of matrimonial assets.[58]

17.24 *TQT* demonstrates how the Court of Appeal applied the broad-brush approach in a principled and common-sense manner to division. By using a broad brush to fill the evidentiary gaps and ascertain the pool of matrimonial assets, the Court of Appeal effectively made consequential orders that enabled the parties to retain their homes and assets in their sole names, upon the husband paying a sum to the wife.[59] The eventual division in *TQT* similarly reflected a marriage where a single spouse had more substantial direct and indirect contributions relative to the other. This goes towards showing why a fact-sensitive approach is needed to ensure that spouses are justly awarded for their substantive overall contributions in the division exercise.

B. Characterisation of matrimonial assets

17.25 In *USB v USA*[60] ("*USB*"), the Court of Appeal applied the *ANJ* structured approach in a short dual-income marriage of five and a half years.[61] The facts of *USB* are unique in that while the parties' marriage was short, they had cohabited for a lengthy period of 12 years prior to getting married. Although the parties did not have any children of their own, the wife had two children from a previous marriage that stayed with

56 *TQU v TQT* [2020] SGCA 8 at [124].
57 *TQU v TQT* [2020] SGCA 8 at [134].
58 *TQU v TQT* [2020] SGCA 8 at [136] and [142].
59 *TQU v TQT* [2020] SGCA 8 at [143].
60 [2020] 2 SLR 588.
61 *USB v USA* [2020] 2 SLR 588 at [1].

the parties during their cohabitation and marriage.[62] In the context of a pair of cross appeals on the division of matrimonial assets, the Court of Appeal had the opportunity to clarify that the *ANJ* structured approach is applicable in short marriages.[63] It also provided useful guidance on the identification of matrimonial assets under the Women's Charter.

17.26 The starting point for the division of matrimonial assets exercise is to identify the assets that would constitute "matrimonial assets" under the Women's Charter. Section 112(10) of the Women's Charter provides the statutory parameters to identify the matrimonial assets that will become subject to the court's powers of division under s 112(1). Based on the text and statutory context of s 112, the Court of Appeal held that Parliament's intention is to confine the court's power to divide the parties' assets that are related to the marriage.[64]

17.27 It followed that for the division process, the court must exclude assets that were acquired during premarital cohabitation or during any non-marital relationship.[65] The court must also exclude any period of cohabitation when determining the length of the marriage. A couple choose to subject themselves to specific legal rights and obligations when they commit to the institution of marriage under the Women's Charter. It may therefore seem contrived to subject couples to this legal regime even before they choose to formally marry, regardless of how long the relationship or period of cohabitation is.[66]

17.28 The court's power to divide matrimonial assets is exercised over assets that reflect the net material gains of the marital partnership and assets that have a connection with the partnership.[67] Such an approach encapsulates the ideology that marriage is an "equal co-operative partnership of efforts"[68] where each of the spouses works for the benefit of the marital union and the family. Bearing this important principle in mind, the Court of Appeal in *USB* analysed s 112 and identified four different asset categories that may constitute "matrimonial assets" under the Women's Charter.

62 *USB v USA* [2020] 2 SLR 588 at [2].
63 *USB v USA* [2020] 2 SLR 588 at [37].
64 *USB v USA* [2020] 2 SLR 588 at [18].
65 For cases with cross-jurisdictional elements, it is worthwhile to note that some jurisdictions such as Australia have legal regimes that encompass cohabitation for the division of matrimonial assets. On this point, see James Stewart, *Family Law: Jurisdictional Comparisons* (Thomson Reuters, 2nd Ed, 2013) at pp 39 and 40.
66 *USB v USA* [2020] 2 SLR 588 at [18].
67 *USB v USA* [2020] 2 SLR 588 at [27] and [28].
68 *NK v NL* [2007] 3 SLR(R) 743 at [20].

17.29 First, there are "quintessential matrimonial assets"[69] which are assets that are acquired by either or both spouses with their own money during the marriage and that includes the matrimonial home. These have the clearest connection with the marriage and the entire value of these assets as at the date of the ancillary matters hearing is added into the matrimonial pool.

17.30 Second, there are "transformed matrimonial assets"[70] which are premarital assets that are usually acquired by one spouse, but which have gained a connection to the marriage by the spouses' subsequent conduct during the marriage. The connection to the marriage is established through substantial improvement of the premarital asset by the other spouse or both spouses during the marriage, or ordinary use or enjoyment of the premarital asset by both parties or the children while residing together for purposes such as shelter, transport, household use, *etc*.

17.31 For the "substantial improvement" requirement, the Court of Appeal held that the asset's improvement by the other spouse or both spouses has to have an economic aspect involving the investment of money or money's worth.[71] For the "ordinary use" requirement, the Court of Appeal held that the use must be usual and relatively prolonged, rather than casual, in order to justify the asset's connection to the marriage.[72] Once the asset is transformed into a matrimonial asset, the entire value of the matrimonial asset will be included in the matrimonial pool.[73]

17.32 Third, there are "pre-marriage assets"[74] which are assets whose legal titles passed to a spouse prior to the marriage, but are partially paid for by the spouse during the marriage with funds acquired during the marriage that would otherwise have been "quintessential matrimonial assets". These assets are not transformed into matrimonial assets by virtue of s 112(10)(*a*) like "transformed matrimonial assets", and only the proportion of the value of the asset that was acquired during the marriage is added into the matrimonial pool.

17.33 There are various ways a court may calculate the value of the portion of the asset that is connected to the marriage. The courts have utilised formulas based on the proportion of values paid towards the property from the date of purchase and during the marriage,[75] the

69 *USB v USA* [2020] 2 SLR 588 at [19(a)].
70 *USB v USA* [2020] 2 SLR 588 at [19(b)].
71 *USB v USA* [2020] 2 SLR 588 at [22].
72 *USB v USA* [2020] 2 SLR 588 at [24].
73 *USB v USA* [2020] 2 SLR 588 at [19(b)] and [25].
74 *USB v USA* [2020] 2 SLR 588 at [19(c)].
75 *USB v USA* [2020] 2 SLR 588 at [6].

proportion of the amount of time that passed since the property was purchased and the duration of the marriage,[76] the proportion of the value of payments made towards the asset during the marriage *vis-à-vis* the purchase price,[77] and the difference between the net values of the property as at the date of the marriage and the date of the ancillary matters hearing.[78]

17.34 Fourth, there are "gifts and inherited assets"[79] which are assets with a windfall-like nature that were acquired by either spouse at any time and that do not involve exertion of the recipient spouse's effort. These assets may become connected to the marriage if substantial improvement is made during the marriage by the non-recipient spouse or both the spouses, or if they are utilised as a matrimonial home. In the event of this, the "gifts and inherited assets" are transformed into matrimonial assets and the whole asset is added into the matrimonial pool.

17.35 The appeals in *USB*[80] concerned "pre-marriage assets" and the proportion of their value that should be added into the matrimonial pool. The wife was an astute real estate director who purchased various premarital properties with continuing mortgage repayment obligations during the marriage.[81] Given that the court may encounter evidentiary difficulties when determining the value of the "pre-marriage assets" to include in the pool, the Court of Appeal held that the party who asserts that an asset in his or her name is not a matrimonial asset or that only a part of its value should be included in the pool bears the burden of proving that on the balance of possibilities.[82] Evidentiary difficulties may also call for a court to exercise its discretion in choosing which formula to adopt based on the available evidence.[83] After making the aforementioned observations, the Court of Appeal calculated the proportion of the value of the "pre-marriage assets" in *USB* with reference to the amounts paid during the marriage *vis-à-vis* the purchase price. The husband's appeal in respect of these properties was eventually allowed.[84]

17.36 The Court of Appeal then provided guidance on how the *ANJ* structured approach may be utilised in a short dual-income marriage like *USB*. At the first stage of the *ANJ* approach, the court will ascribe

76 *TXW v TXX* [2017] 4 SLR 799 at [23].
77 *USB v USA* [2020] 2 SLR 588 at [71] and [73].
78 *USB v USA* [2020] 2 SLR 588 at [30].
79 *USB v USA* [2020] 2 SLR 588 at [19(d)].
80 See para 17.25 above.
81 *USB v USA* [2020] 2 SLR 588 at [5].
82 *USB v USA* [2020] 2 SLR 588 at [31].
83 *USB v USA* [2020] 2 SLR 588 at [34].
84 *USB v USA* [2020] 2 SLR 588 at [71], [73] and [81].

a ratio that represents each party's direct financial contributions to the acquisition or improvement of matrimonial assets relative to that of the other party.[85] Parties in a short marriage are likely to still possess evidence of their direct financial contributions, which a court is able to fairly take into account.[86]

17.37 At the second stage of the *ANJ* approach, the court will ascribe a second ratio that represents each party's indirect financial and non-financial contributions to the well-being of the family relative to that of the other party throughout the marriage.[87] It is critical that the court applies the broad-brush approach at this stage to prevent the parties from nit-picking on and downplaying the other party's indirect contributions. The Court of Appeal held that in arriving at the ratio of the parties' indirect contributions, a court should rely on broad factual indicators such as the length of the marriage, the number of children and which party was the children's primary caregiver.[88] Focusing on these objective macro factors is particularly apposite as the ancillary matters proceedings do not usually involve cross-examination and the court is unable to test the veracity of the parties' claims on the witness stand.[89]

17.38 At the third stage of the *ANJ* structured approach, the court will use each party's respective direct and indirect percentage contributions to derive each party's average percentage contribution to the family (that is, the average ratio).[90] The court may then exercise its discretion to impute different weightages to the parties' collective direct contributions as against their indirect contributions depending on the circumstances of the case. The non-exhaustive categories of factors that may be considered by the court when doing so are the length of the marriage, the size of the matrimonial pool and the extent and nature of indirect contributions made.[91] The Court of Appeal emphasised that other than in short marriages, adjusting the weightage of the direct and indirect contributions should be done as an exception. Any adjustment would have to be accompanied by cogent reasons.[92]

17.39 The flexibility accorded at the third stage of the *ANJ* structured approach is useful in short marriages for it allows the court to accord

85 *TQU v TQT* [2020] SGCA 8 at [96].
86 *USB v USA* [2020] 2 SLR 588 at [39].
87 *TQU v TQT* [2020] SGCA 8 at [96].
88 *USB v USA* [2020] 2 SLR 588 at [43].
89 *USB v USA* [2020] 2 SLR 588 at [44].
90 *TQU v TQT* [2020] SGCA 8 at [96].
91 *ANJ v ANK* [2015] 4 SLR 1043 at [27].
92 *USB v USA* [2020] 2 SLR 588 at [41] and [42].

greater weight to the parties' direct contributions.[93] Short marriages have different characteristics from long marriages,[94] as indirect contributions generally feature less prominently in short marriages.[95] Unlike direct contributions, which may be substantial even within a short period of time, indirect contributions generally accumulate over a prolonged period of time, with the spouses enduring in the marriage to fulfil their respective roles for the benefit of the family. In situations where the short marriage features significant indirect contributions such as care of the children and/or elderly relatives, a court may nonetheless choose to retain equal weightage between the parties' direct and indirect contributions.[96]

17.40 When applying the *ANJ* structured approach in *USB*, the Court of Appeal arrived at the ratio of 95:5 in favour of the wife for the parties' direct contributions and 75:25 in favour of the wife for the parties' indirect contributions. For the latter ratio, the parties' contributions made during the cohabitation period such as the care of the children during their earlier years were excluded.[97] Finally, the Court of Appeal upheld the decision of the High Court Family Division to place a weightage of 70% on the parties' direct contributions,[98] to arrive at a final ratio of 89:11 in favour of the wife.[99]

17.41 *USB*[100] is important on many fronts. It demonstrates how the ideology that marriage is an equal partnership of efforts forms the basis of the division of matrimonial assets under the Women's Charter. This ideology permeates the decisions of the court in respect of the characterisation of matrimonial assets and division. A similar line of reasoning was adopted in *VDZ*,[101] where the Family Division of the High Court concluded that insurance payouts resulting from the wife's medical condition were not matrimonial assets. The insurance moneys were neither acquired by either of the parties' efforts nor income acquired during the marriage. The insurance moneys were intended to cover the insured's medical expenses and would only be relevant for the assessment of maintenance and not the division of matrimonial assets.[102]

93 *USB v USA* [2020] 2 SLR 588 at [38].
94 See *Zhou Lijie v Wang Chengxiang* [2015] SGHC 316 for the High Court's in-depth analysis of case precedents for the division of matrimonial assets in short marriages.
95 *ANJ v ANK* [2015] 4 SLR 1043 at [27(a)]; *USB v USA* [2020] 2 SLR 588 at [40].
96 *UJF v UJG* [2019] 3 SLR 178 at [114].
97 *USB v USA* [2020] 2 SLR 588 at [47].
98 *USB v USA* [2020] 2 SLR 588 at [10].
99 *USB v USA* [2020] 2 SLR 588 at [78].
100 See para 17.25 above.
101 See para 17.3 above.
102 *VDZ v VEA* [2020] 4 SLR 921 at [60].

17.42 The Court of Appeal's characterisation of matrimonial assets laid down valuable guiding principles for the treatment of the different categories of assets under s 112 of the Women's Charter. One of the significant aspects would be the Court of Appeal's unambiguous statement that the entire value of a matrimonial home, howsoever acquired, would be a matrimonial asset. This clarification from the apex court is very welcome, as there are litigants who try to contend that the matrimonial home (whether partially or wholly) should be excluded from the pool of assets for division.

17.43 Another aspect is the concept of "discounting" towards "transformed matrimonial assets" and "gifts and inherited assets" that were substantially improved or used for family purposes. In *UJF v UJG*,[103] the High Court considered case precedents and academic commentary in respect of premarital assets that were substantially improved during the marriage. It observed that only the improved value of the transformed asset that is reflective of the parties' efforts during the marriage is subject to division by the court, as opposed to the entire value being added into the matrimonial pool.[104] It would also be possible to recognise the other spouse's substantial improvements to the premarital asset as an indirect financial contribution to the marriage.[105]

17.44 Another alternative approach would be to adopt the classification methodology and place the "transformed matrimonial assets" and transformed "gifts and inherited assets" into separate groups. Thereafter, the court may adjust the percentages assigned to the financial contributions and the weight to be given to the direct financial contributions relative to the indirect contributions across the various groups.[106] This approach seems appropriate in situations where premarital assets are transformed by ordinary use, given that it is naturally more difficult to ascertain a mathematical value equating to the family's ordinary use of the premarital asset. Ultimately, it is crucial to bear in mind the court's exhortations not to be constrained by immutable rules and to adopt a common-sense approach that achieves a just and equitable outcome for the division of matrimonial assets.[107]

103 [2019] 3 SLR 178.
104 *UJF v UJG* [2019] 3 SLR 178 at [59].
105 *USB v USA* [2020] 2 SLR 588 at [23]; *TDT v TDS* [2016] 4 SLR 145 at [61].
106 *TND v TNC* [2017] SGCA 34 at [36].
107 *USB v USA* [2020] 2 SLR 588 at [34].

C. Giving effect to adverse inference in division

17.45 In 2020, the Court of Appeal issued a decision clarifying how an adverse inference against a non-disclosing spouse may be given effect to when dividing matrimonial assets. The decision also set out legal principles on different forms of dissipation and the concealment of matrimonial assets. *UZN v UZM*[108] ("*UZN*") involved a wife's appeal against the decision of the Family Division of the High Court to award her an additional 8% of the matrimonial assets in giving effect to an adverse inference drawn against the husband for non-disclosure of his assets. The wife's contentions on appeal also related to the lower court's findings on the husband's alleged expenditure during the marriage that were identified in a report prepared by an accounting expert.[109]

17.46 The Court of Appeal reiterated that in the division exercise, the court's objective is to achieve the just and equitable division of the material gains of the marital partnership between the spouses. To do so, the court would require a complete picture of the parties' financial circumstances that allows for the matrimonial pool to be identified and fairly assessed.[110] This is consistent with the approach the Court of Appeal adopted in *TQT*, where it directed the parties to provide valuations that would enable the court to identify the value of the matrimonial asset pool.

17.47 When a party conceals his or her assets, the court is unable to accurately identify the extent of the matrimonial asset pool and is therefore unable to divide the parties' economic assets in as just a manner as possible. Due to the nature of ancillary matters proceedings and the general absence of cross-examination as a means to test the veracity of the parties' evidence, the parties' duties of full and frank disclosure are especially important.[111] The parties' complete disclosure is made by way of affidavits and the evidence therein allows the court to arrive at a conclusion as to the size of the matrimonial pool and the value of its constituents.

17.48 If either party does not fulfil their duty of full and frank disclosure, the other party may seek discovery against that party. It is not for the parties to tailor their disclosure based on their own positions on what constitutes matrimonial assets.[112] This decision is ultimately for the court to make, and the parties are expected to co-operate by ensuring

108 [2021] 1 SLR 426.
109 *UZN v UZM* [2021] 1 SLR 426 at [12]–[14].
110 *UZN v UZM* [2021] 1 SLR 426 at [16].
111 *UZN v UZM* [2021] 1 SLR 426 at [17].
112 *UZN v UZM* [2021] 1 SLR 426 at [17].

that all relevant information relating to their assets is disclosed during the ancillary matters proceedings, failing which, the court hearing the ancillary matters may exercise its discretion to draw an adverse inference against the non-disclosing party.

17.49 An adverse inference may be drawn by the court where (a) there is a substratum of evidence that establishes a *prima facie* case against the non-disclosing party; and (b) the non-disclosing party must have had some particular access to the information he or she is said to be hiding.[113] When these two criteria are met, the court may draw an adverse inference against the non-disclosing party that his or her assets exceeds what has been disclosed in the proceedings.[114] The objective of drawing the adverse inference is to ensure that the other spouse is not disadvantaged by the non-disclosing spouse's act of placing certain assets out of reach, and that the eventual share the other spouse receives accurately reflects a just and equitable division of the true extent of matrimonial assets.[115]

17.50 The Court of Appeal in *UZN*[116] held that an adverse inference ought not to be easily drawn against a party unless both of the criteria have been met. It recognised that parties in functioning marriages may not keep thorough records, especially in long marriages, as this would grate against the spouses' legal demands under s 46(1) of the Women's Charter to co-operate and build their joint lives together.[117]

17.51 An adverse inference may generally be given effect to in two ways. The first way is the "quantification approach" where the court may make a finding on the value of the undisclosed assets based on the available evidence (subject to the party dissatisfied with the value attributed showing that the value is unreasonable) and include that value in the matrimonial pool for division.[118] Even in situations where it is difficult to ascertain the value of the undisclosed assets, the "quantification approach" may be applied. In that event, the court may add a sum into the pool of matrimonial assets by calculating a value based on a percentage of the total value of the pool.[119] The second way is the "uplift approach" where the court may order a higher proportion of the known assets to be given to the other party. Even in situations where the value of the undisclosed cash assets is known, the "uplift approach" may be applied.

113 *UZN v UZM* [2021] 1 SLR 426 at [18].
114 *BPC v BPB* [2019] 1 SLR 608 at [63].
115 *UZN v UZM* [2021] 1 SLR 426 at [29] and [35].
116 See para 17.45 above.
117 *UZN v UZM* [2021] 1 SLR 426 at [21].
118 *UZN v UZM* [2021] 1 SLR 426 at [30].
119 *UZN v UZM* [2021] 1 SLR 426 at [31]–[33].

This is because an unknown portion of the cash assets may have been expended on legitimate expenses such as living expenses.[120]

17.52 The court may exercise its discretion to give effect to an adverse inference by utilising either of these approaches. This is a matter of judgment in each individual case and the court should adopt the approach it considers the most appropriate in achieving a just and equitable division of the true matrimonial gains of the marriage.[121] The Court of Appeal held that where there is genuine doubt or dispute as to the true extent of the non-disclosure, the court should prefer the "uplift approach". The discretion applied will not be easily disturbed on appeal, unless the effect of the judge's decision was out of proportion to any reasonable estimate of the value of undisclosed assets and results in an unjust division outcome.[122]

17.53 Given that the husband in *UZN* did not file an appeal against the decision of the Family Division of the High Court, the drawing of an adverse inference against him and the value of the husband's total earnings were not matters challenged on appeal.[123] In determining the most appropriate way to give effect to the adverse inference and arrive at a just and equitable division, the Court of Appeal embarked on an analysis of the husband's expenditure and the extent of his undisclosed assets in *UZN*.

17.54 *UZN* was a case where the husband had earned a substantial income of $4,549,959 over a seven-year period during the marriage, which was not reflected in his bank account balances totalling less than $500 or other assets at the end of the marriage.[124] The husband did not provide any explanation for that discrepancy. The Court of Appeal held that these facts justified a more in-depth review of the husband's cash flow and expenditure, as "there is already a good reason to suspect, upon a preliminary overview, that there is a mismatch between the party's assets and their means".[125]

17.55 The approach taken by the accounting expert in *UZN* involved totalling the income during the period in question, and examining if the use of the income had been accounted for.[126] This would lead to a conclusion on the amount of cash assets that the husband should have at

120 *UZN v UZM* [2021] 1 SLR 426 at [34].
121 *UZN v UZM* [2021] 1 SLR 426 at [29].
122 *UZN v UZM* [2021] 1 SLR 426 at [35].
123 *UZN v UZM* [2021] 1 SLR 426 at [22].
124 *UZN v UZM* [2021] 1 SLR 426 at [22] and [26].
125 *UZN v UZM* [2021] 1 SLR 426 at [25].
126 *UZN v UZM* [2021] 1 SLR 426 at [22]–[24].

the end of the marriage. The Court of Appeal cautioned that the detailed analysis conducted in *UZN* should not be done as a matter of course, and should only be used in cases where "there is already a good reason to suspect, upon a preliminary overview, that there is a mismatch between the party's assets and their means".[127]

17.56 The Court of Appeal affirmed that an adverse inference should be drawn against the husband in *UZN*.[128] In giving effect to the adverse inference, the Court of Appeal adopted the "quantification approach". The amount of income the husband earned was not in dispute and the parties were solely disputing how its depletion may be accounted for.[129] The accounting expert's report also allowed the identification of certain specific items of expenditure and the supporting documentation (or lack thereof) for the expenses. These figures enabled the court to arrive at the appropriate cash amount that should be reflected in the husband's bank balances at the end of the marriage.

17.57 An analysis of the husband's alleged expenditure indicated in the accounting report showed that amounts relating to his living expenses, legal costs, the upkeep of his law firm, jewellery and miscellaneous expenses, should not have been included as part of the husband's expenses.[130] As a result, these sums were removed from the husband's total expenditure and the Court of Appeal held that the husband should have had a bank balance of $1,826,517.64 at the end of the marriage. Compared to the husband's actual disclosed bank balance of $425.44, the difference of $1,826,092.20 was found to be undisclosed.

17.58 The Court of Appeal then added the difference to the initial pool of matrimonial assets and upheld the division ratio that the Family Division of the High Court had arrived at when applying the *ANJ*[131] structured approach. Notably, the husband was not given credit for the additional sum of $1,826,092.20 in the form of direct contributions under the *ANJ* structured approach, as that sum was included by virtue of an adverse inference rather than the husband's disclosure.[132]

17.59 The Court of Appeal's application of the "quantification approach" in *UZN*[133] resulted in more than $400,000 being awarded to the wife, compared to when the Family Division of the High Court applied the

127 *UZN v UZM* [2021] 1 SLR 426 at [25].
128 *UZN v UZM* [2021] 1 SLR 426 at [26].
129 *UZN v UZM* [2021] 1 SLR 426 at [36].
130 *UZN v UZM* [2021] 1 SLR 426 at [56].
131 See para 17.1 above.
132 *UZN v UZM* [2021] 1 SLR 426 at [57].
133 See para 17.45 above.

"uplift approach" to award the wife an additional 8% share of the known matrimonial assets. The fact that the difference could even be calculated may be attributable to *UZN* involving accounting experts that were able to investigate and arrive at specific figures for the court to make findings on.[134]

17.60 The Family Justice Courts set up a panel of financial experts with the Institute of Singapore Chartered Accountants in 2020.[135] This panel could promote the accuracy of valuations of the parties' incomes, expenditure and other matrimonial assets during the division exercise. In any event, practitioners ought to urge their clients to provide full disclosure, especially since any undisclosed matrimonial assets that are subsequently added to the matrimonial pool by virtue of an adverse inference will not be credited to the non-disclosing party when calculating his or her direct financial contributions to the marriage.[136]

17.61 In addition to allowing the wife's appeal and adjusting the amount of matrimonial assets she was entitled to, the Court of Appeal made further observations on the different forms of dissipation and the concealment of matrimonial assets. These acts prevent the court from making a fair assessment of the matrimonial pool, which it is trying to divide in a manner that would justly reflect a spouse's contributions to the marriage. The concealment of matrimonial assets when divorce proceedings are on foot is a culpable act by the non-disclosing spouse. The effect of the concealment is countered by drawing an adverse inference and applying either the "quantification approach" or "uplift approach" to allow the concealed assets to be factored into the division of matrimonial assets.[137]

17.62 Another culpable act involves a spouse expending a large amount of money when divorce proceedings are imminent, with the intention of depriving the other spouse of his or her rights in relation to that property or even rights to maintenance. Such behaviour is known as "wrongful dissipation" and may result in the court setting aside the disposition of the property pursuant to s 132(1) of the Women's Charter.[138] This ensures that the wrongfully dissipated amount returns to the matrimonial pool and becomes subject to division.

134 *UZN v UZM* [2021] 1 SLR 426 at [39].
135 See Institute of Singapore Chartered Accountants, "Family Justice Courts and Institute of Singapore Chartered Accountants Sign MOU on Setting up Panel of Financial Experts", media release (29 Decenber 2020).
136 *UZN v UZM* [2021] 1 SLR 426 at [74].
137 *UZN v UZM* [2021] 1 SLR 426 at [61].
138 *UZN v UZM* [2021] 1 SLR 426 at [63].

17.63 Theoretically, a concealment of matrimonial assets could take place even before divorce proceedings are imminent. There may be situations where spouses are unable to account for the withdrawal of large sums of money during the marriage. When that happens during the period where the marital relationship was still functioning, it would be an uphill task to establish an intention to wrongfully dissipate or conceal assets to prevent the other spouse from sharing in it.[139]

17.64 However, closer to when the divorce is imminent, more scrutiny will be placed on a spouse's unusual activities that may result in large sums of monies being unaccounted for. Examples of this include a spouse taking a sudden interest in gambling, investing, religious activities, entertaining, expensive hobbies, buying extravagant gifts, gifting away property or even buying property in the name of a third party. The adverse inference to be drawn here is that the unaccounted sums were set aside or deliberately depleted instead of being expended in the ordinary course of living, or that the property was deliberately placed out of reach of the other spouse so that the matrimonial asset pool is undervalued.[140] On the other hand, where the spouse engaged in financially irresponsible behaviour throughout the marriage, such conduct may be taken into account when assessing the party's indirect financial contributions to the marriage.[141]

17.65 There are also non-culpable acts of dissipation that occur when a divorce is imminent. This is when significant sums of money are expended by a spouse without the other spouse's consent, and is known as the "*TNL dicta*". The *TNL dicta* generally covers spending that occurs (a) when divorce proceedings are imminent; or (b) after interim judgment has been granted but before the ancillary matters are concluded. Put specifically:[142]

> … if, during these periods … one spouse expends *a substantial sum*, this sum must be returned to the asset pool *if the other spouse is considered to have at least a putative interest in it and has not agreed, either expressly or impliedly, to the expenditure* either before it was incurred or at any subsequent time. [emphasis in original]

This form of dissipation is "innocent" in the sense that it could be for the benefit of the family and was fully disclosed to the court. That said, any unilateral decision to spend significant matrimonial funds that do not include daily, run-of-the-mill expenses during the period when the

139 *UZN v UZM* [2021] 1 SLR 426 at [68].
140 *UZN v UZM* [2021] 1 SLR 426 at [66].
141 *UZN v UZM* [2021] 1 SLR 426 at [67] and [70].
142 *UZN v UZM* [2021] 1 SLR 426 at [62].

marriage is ending, must be returned to the matrimonial asset pool for the division exercise.

17.66 The *TNL dicta* was applied in *VMO v VMP*,[143] which had a unique factual matrix where the husband and wife lived separately for five years before the divorce writ was filed.[144] This raised the question of when the relevant period would be for divorce proceedings being "imminent" in the context of dissipation arguments. The Family Division of the High Court applied the *TNL dicta* and ordered that moneys spent unilaterally by the wife on her business during the period of divorce negotiations and prior to the filing of the divorce proceedings, were to be added back to the matrimonial pool.[145] However, the Family Division of the High Court declined to claw back sums spent on the business prior to the divorce negotiations as spouses should generally share both their good fortunes as well as their losses as a family.[146] The Family Division of the High Court also declined to claw back certain credit card expenses as it did not find that any of the expenses were substantial in light of the parties' lifestyles.[147]

17.67 While there may be various reasons why the matrimonial pool may be undervalued, the Court of Appeal in *UZN*[148] gave its observations in respect of assessing the true value of the matrimonial pool and dividing the true material gains of the marital partnership.[149] The framework laid down in *UZN* provided much needed clarity on the various legal tests to be applied to the different categories of dissipation and concealment of matrimonial assets. Moving forward, it is expected that practitioners are to present their client's arguments on dissipation and concealment in accordance with the Court of Appeal's framework to facilitate the court's exercise of its division powers under s 112 of the Women's Charter.

III. Child welfare

17.68 In 2020, the Family Division of the High Court demonstrated how a child's best interests may be promoted in less traditional family units. Despite changing circumstances and evolving family dynamics in today's world, the court's emphasis remained on what would serve the child's best interests in the long run. In the context of a guardianship

143 [2020] SGHCF 23.
144 *VMO v VMP* [2020] SGHCF 23 at [1].
145 *VMO v VMP* [2020] SGHCF 23 at [49].
146 *VMO v VMP* [2020] SGHCF 23 at [50].
147 *VMO v VMP* [2020] SGHCF 23 at [56].
148 See para 17.45 above.
149 *UZN v UZM* [2021] 1 SLR 426 at [72].

application involving a same-sex couple, the Family Division of the High Court had to decide whether a fit parent may delegate parental responsibility to a third party using the guardianship process. The Family Division of the High Court also had the opportunity to comment on the impact that the COVID-19 pandemic would have on relocation and other child-related orders.

A. Guardianship

17.69 *VET v VEU*[150] ("*VET*") concerned the scope of the appointment of a guardian under the Guardianship of Infants Act.[151] The Family Division of the High Court in *VET* had to decide whether orders on guardianship, joint custody and shared care and control should be granted to a third party, where the biological parent is fully capable of exercising his parental authority and discharging his parental responsibilities.[152] The Family Division of the High Court declined to do so, therein re-affirming its limited role in the intervention of parenting children. Intervention will only be provided when it is necessary and in the children's best interests to do so.

17.70 The father in *VET* had previously applied for an adoption order for his biological son who was conceived through *in vitro* fertilisation and birthed by a surrogate mother.[153] The Family Division of the High Court granted the father the adoption order in *UKM v Attorney-General*.[154] The same father subsequently adopted his biological daughter, who was similarly birthed through a surrogate mother.[155] The father in *VET* applied for orders on guardianship, joint custody and shared care and control over the two children for his same-sex partner, who consented to his application.[156]

17.71 At the centre of *VET* is the notion of parental responsibility. Parental responsibility is enshrined in s 46(1) of the Women's Charter, which provides that "the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children".[157] Being a parent entails safeguarding the children's best interests and exercising parental authority

150 [2020] 4 SLR 1120.
151 Cap 122, 1985 Rev Ed.
152 *VET v VEU* [2020] 4 SLR 1120 at [8].
153 *VET v VEU* [2020] 4 SLR 1120 at [1].
154 [2019] 3 SLR 874.
155 *VET v VEU* [2020] 4 SLR 1120 at [3].
156 *VET v VEU* [2020] 4 SLR 1120 at [6].
157 *VET v VEU* [2020] 4 SLR 1120 at [15].

over the children.[158] Such parental responsibility is not a voluntarily delegable responsibility, unless the children are put up for adoption.[159] That said, there are situations where less major day-to-day matters relating to the children are delegated to other adults during their physical care of the children.[160] The Family Division of the High Court observed that those situations are significantly different from appointing a third party as a guardian to share parental responsibility with the biological parent over the children, as was the case in *VET*.[161]

17.72 A preliminary issue that the Family Division of the High Court had to address was whether the court has jurisdiction and powers to appoint a guardian under the Guardianship of Infants Act. The father relied on s 5 of the Guardianship of Infants Act to contend that the court has a broad discretion to appoint guardians. Section 5 of the Guardianship of Infants Act allows either a party or a court-appointed guardian to apply for orders on custody, access and maintenance for a child.[162]

17.73 In interpreting that statutory provision purposively, the Family Division of the High Court considered ss 6, 7 and 10 of the Guardianship of Infants Act that empower the court to appoint guardians. It held that court intervention for the appointment of a guardian would only be justified in the limited circumstances where the child does not have a parent, or when replacing an existing guardian. It was clear from the statutory analysis that the Guardianship of Infants Act operates to grant orders for the welfare of a child without intervening unnecessarily in a parent's responsibility.[163]

17.74 In light of the above, the Family Division of the High Court held that it did not have the power to make the guardianship order sought by the applicant. While the court may exercise its wardship jurisdiction to appoint guardians, there was no evidence that the children in *VET* were in need of protection.[164] The Family Division of the High Court also held that appointing the applicant's same-sex partner as a guardian would not be necessary for or in the children's welfare. It would appear that the applicant's motivations stemmed mostly from convenience and there would be no need for non-parental caregivers to be given such

158 *VET v VEU* [2020] 4 SLR 1120 at [13].
159 *VET v VEU* [2020] 4 SLR 1120 at [17].
160 *VET v VEU* [2020] 4 SLR 1120 at [18].
161 *VET v VEU* [2020] 4 SLR 1120 at [19]–[20].
162 *VET v VEU* [2020] 4 SLR 1120 at [22].
163 *VET v VEU* [2020] 4 SLR 1120 at [32].
164 *VET v VEU* [2020] 4 SLR 1120 at [39] and [43].

heavy responsibilities that would otherwise only belong to parents and guardians.[165]

17.75 The Family Division of the High Court declined to grant the joint custody and shared care and control orders that were sought by the father.[166] The Family Division of the High Court found that there was no necessity to do so, given that the parties had been caring for the children jointly and without issue.[167] It reiterated that orders of custody and care and control were legal constructs that ought to be used only when it is necessary for the court to intervene in the balance of parental authority and responsibility.[168] That would most commonly occur in situations like death, where there is a breakdown in the relationship between the parents and/or guardian, or where there are severe breaches of parental responsibility. In the factual circumstances of *VET*, granting the joint custody and shared care and control orders would merely lead to the continuation of the present care arrangements, which the children were already thriving under.[169]

17.76 *VET* reaffirmed the court's longstanding position that it will only interfere in the parenting of children "as a last resort".[170] It reiterated the legal principle that the court will not unnecessarily intervene in a family's dynamics, unless there are disputes on children's matters which the parties cannot otherwise resolve.[171] *VET* also clarified the court's powers and jurisdiction when determining applications made by a parent to appoint a third party as a guardian of the children. In doing so, the Family Division of the High Court in *VET* recommended a reform to guardianship laws in Singapore to allow non-parental caregivers to apply for orders relating to the children in specific circumstances.[172] This call for law reform is especially pertinent in today's familial context, given the significant number of families with full-time working parents and the increase in less conventional family units. It may not be long before reconsideration and recalibration of the local guardianship laws take place.[173]

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165 *VET v VEU* [2020] 4 SLR 1120 at [46]–[48].
166 *VET v VEU* [2020] 4 SLR 1120 at [56].
167 *VET v VEU* [2020] 4 SLR 1120 at [55].
168 *VET v VEU* [2020] 4 SLR 1120 at [50].
169 *VET v VEU* [2020] 4 SLR 1120 at [54].
170 *VET v VEU* [2020] 4 SLR 1120 at [32], citing the Family Division of the High Court's decision of *UNB v Child Protector* [2018] 5 SLR 1018.
171 *VET v VEU* [2020] 4 SLR 1120 at [53], citing the Court of Appeal's decision of *CX v CY (minor: custody and access)* [2005] 3 SLR(R) 690.
172 *VET v VEU* [2020] 4 SLR 1120 at [58].
173 See also parliamentary response on the Ministry of Social and Family Development website where adjustments to adoption laws were contemplated to govern less conventional family units: *Singapore Parliamentary Debates, Official Report*

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B. Relocation

17.77 The COVID-19 pandemic in 2020 resulted in travel restrictions being imposed by many countries globally. These travel restrictions caused the number of international travellers and visitors to plummet. How did the court deal with a parent's application to relocate to a foreign country with her child in the midst of such a pandemic? *UYK v UYJ*[174] ("*UYK*") provided an opportunity for the Family Division of the High Court to consider this issue.

17.78 *UYK* involved a father's appeal against a mother's application for leave to relocate with the parties' five-year-old child to the UK. The mother had been awarded care and control of the child. The mother and father were not legally married, and the family are all British citizens.[175] Despite allowing the father to adduce further evidence on recent developments arising from the COVID-19 pandemic,[176] the Family Division of the High Court dismissed the father's appeal and allowed the mother to relocate with the child.

17.79 The Family Division of the High Court re-affirmed the key legal principles on relocation and placed an emphasis on protecting the child's welfare by helping the family move on to the next stage of life after the breakdown of the parents' relationship.[177] The child's welfare is the paramount consideration in relocation cases, and includes the balancing of factors such as the child's age, the child's attachment to each parent and other significant persons in the child's life, the child's current wellbeing in his or her present country of residence as well as the child's developmental needs at that particular stage of life.[178]

17.80 The Family Division of the High Court analysed recent case trends on relocation and observed that in most cases where leave to relocate was not granted, the parents and children had been living in Singapore as their home for a substantial period of time, or either or both parents had been away from their home countries for a substantial part of their lives such that their children were raised largely in Singapore.[179] On the other hand, in cases where leave to relocate was granted, the parents

(14 January 2019) vol 94 "Oral Answers to Questions: Government's Position on Court Ruling to Award Adoption to Man in Same-sex Relationship" (Desmond Lee, Minister for Social and Family Development).

174 [2020] 5 SLR 772.

175 *UYK v UYJ* [2020] 5 SLR 772 at [1].

176 *UYK v UYJ* [2020] 5 SLR 772 at [15].

177 *UYK v UYJ* [2020] 5 SLR 772 at [3]–[5].

178 *UYK v UYJ* [2020] 5 SLR 772 at [36].

179 *UYK v UYJ* [2020] 5 SLR 772 at [27].

were usually returning to their home countries after the breakdown of the parents' relationship.[180]

17.81 In allowing the mother to relocate to the UK with the child, the Family Division of the High Court focused on the child's wellbeing and balanced the interests of the parties to reach a decision that benefitted the family.[181] It found that the parties' intentions in a signed joint letter that provided for a breakdown of their relationship suggested that any long-term stay in Singapore was subject to how circumstances developed.[182] The child was young and would be able to adapt to the environment in the UK with support from the mother.[183] Both the parties did not have any roots in Singapore and relocating to the UK would grant the child long-term stability from an immigration perspective.[184] It was also open to the father to relocate to the UK or a country closer to the UK if he wished to continue substantial physical access with the child.[185]

17.82 The Family Division of the High Court considered the father's contentions that the COVID-19 pandemic had a negative impact on the mother and child's relocation. The father raised concerns that the COVID-19 situation in UK was less stable than in Singapore, and that restrictions on international travel would make it difficult for him to have access to the child.[186] However, the Family Division of the High Court held that the COVID-19 situation was dynamic and that it would not be appropriate to make orders on relocation depending on transient factors that may become quickly outdated as the global situation changes.[187] The aim of the court in a relocation case is to secure the child's long term interests with ramifications that far outlast the COVID-19 pandemic. It would not be the court's role to compare the nuances between the various approaches taken by governments in managing the pandemic.[188]

17.83 The Family Division of the High Court also cautioned against a party prolonging proceedings to create an artificial status quo in support of an argument that a child is "well-settled" in a particular jurisdiction. If the mother had managed to obtain a relocation order shortly after returning from the UK to Singapore with the child pursuant to the

180 *UYK v UYJ* [2020] 5 SLR 772 at [32].
181 *UYK v UYJ* [2020] 5 SLR 772 at [72].
182 *UYK v UYJ* [2020] 5 SLR 772 at [48].
183 *UYK v UYJ* [2020] 5 SLR 772 at [51] and [52].
184 *UYK v UYJ* [2020] 5 SLR 772 at [61] and [74].
185 *UYK v UYJ* [2020] 5 SLR 772 at [66].
186 *UYK v UYJ* [2020] 5 SLR 772 at [42].
187 *UYK v UYJ* [2020] 5 SLR 772 at [70].
188 *UYK v UYJ* [2020] 5 SLR 772 at [71].

father's Hague Convention[189] application, the amount of time spent and naturally the settledness of the child in Singapore may be different. The reality is also that globalisation has resulted in a world where families are geographically mobile and adaptable. In light of this, the Family Division of the High Court held that while the well-settledness of a child is a relevant factor, the court will weigh this factor in the context of other relevant factors.[190]

17.84 *UYK* provides useful guidance on the fact-centric nature of the balancing exercise that the court engages in when determining whether relocation should be granted. While the frameworks laid down by the Court of Appeal in *BNS v BNT*[191] and *TSF v TSE*[192] remain useful for practitioners as a guide on the relevant factors that the court considers, caution must be had before parties pigeonhole cases into categories, with the assumption that prescribed outcomes would ensue. Ultimately, the court will have regard to all the relevant circumstances of the case, with its paramount consideration being the long-term interests of the child.

IV. Maintenance

17.85 In 2020, the Court of Appeal re-affirmed the legal framework in respect of whether there exists a material change in circumstances that would justify the variation of an order of maintenance. The decision also clarified what legal threshold would constitute materiality when relying on the ground of material change when applying to vary orders for former spouse and child maintenance under the Women's Charter.

17.86 *BZD v BZE*[193] ("*BZD*") involved a wife's appeals against the decision of the Family Division of the High Court to dismiss her application for an upward variation of her maintenance and relocation costs, and to allow the husband's cross-application to vary her and the children's maintenance such that such monthly maintenance need only be paid up to 1 February 2020. This would effectively mean that the wife would no longer be entitled to former spouse maintenance and child maintenance past that date.[194] The original order of maintenance provided that the husband pay the wife monthly maintenance for, *inter alia*, her personal expenses and the children's maintenance for the period they were with

189 The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.
190 *UYK v UYJ* [2020] 5 SLR 772 at [51]–[54].
191 [2015] 3 SLR 973.
192 [2018] 2 SLR 833.
193 [2020] SGCA 1.
194 *BZD v BZE* [2020] SGCA 1 at [8].

her. The husband was also responsible for the children's educational expenses under the original order.[195]

17.87 The Court of Appeal held that when examining whether a material change in circumstances exists, the court has to determine whether the change is sufficiently material such that it is no longer fair to expect the *status quo* to remain. On the facts of *BZD*, that would involve an analysis of whether it is fair for the husband to solely bear the increase in the children's overseas educational expenses when it was undisputed that his income increased significantly more than the children's overseas educational expenses.[196] A second relevant inquiry would be whether the alleged change in circumstances that led to the increase in the children's overseas educational expenses can be said to be unforeseeable.[197]

17.88 The Court of Appeal considered various factors and held that the increase in the children's education expenses was not a material change in circumstances that would justify a variation of the original order. It found that the husband could well afford to pay the increase of educational expenses of $6,374 each month, given that the net increase in his monthly income is around $25,000 since the original order was made.[198] The Court of Appeal also found that such increases in the children's overseas education expenses were not unforeseeable at the time the original order was made. The husband's employment package only subsidised the children's school fees to a certain extent, and the husband should therefore have contemplated that he would have to independently finance the children's education expenses. There was also no evidence that the children pursuing their education in the UK was unexpected.[199] The Court of Appeal also rejected the husband's contention that the wife's wealth had increased materially since the date of the original order and that she could have obtained employment in Taiwan.[200]

17.89 Considering the overall backdrop of the case, the Court of Appeal held that the increase in the children's education expenses cannot be said to be sufficiently material such that it would be unfair to expect the *status quo* to remain. That being the case, the husband had not succeeded in showing that there should be any downward variations of the maintenance order on his alleged grounds. Additionally, the Court of Appeal declined to vary the order upwards based on the wife's arguments that her personal expenses and relocation costs would increase if she were

195 *BZD v BZE* [2020] SGCA 1 at [3].
196 *BZD v BZE* [2020] SGCA 1 at [14].
197 *BZD v BZE* [2020] SGCA 1 at [15].
198 *BZD v BZE* [2020] SGCA 1 at [14].
199 *BZD v BZE* [2020] SGCA 1 at [15].
200 *BZD v BZE* [2020] SGCA 1 at [17].

to relocate to the UK to be with the children.[201] The eventual outcome was that the original order was reinstated and the husband had to continue to pay the wife monthly maintenance for her personal expenses and the children's maintenance for the period they were with her.[202]

17.90 *BZD* serves as a timely reminder that the court's determination of whether there is a material change in circumstances is a holistic one that aims to achieve a fair result for both the parties. Merely showing that a material change in circumstances has occurred is insufficient. A party seeking to vary an order for maintenance would also have to show how this material change has rendered it unfair for the parties to expect the *status quo* to remain. This requirement of fairness is a common-sense one that protects the finality of litigation and promotes the court's aspirations of helping the parties to move on after the breakdown of their marriage.

17.91 The requirement of fairness in granting maintenance likewise featured in *UYT v UYU*[203] ("*UYT*"). *UYT* involved a 24-year-old child (at the time of the hearing) claiming maintenance from his father in the form of overseas university expenses for a specific course in Canada. In that case, the parents of the child divorced when the child was eight years old and the father did not have to pay any maintenance for the child pursuant to a consent order.[204] The father appealed against the Family Court's order for him to pay 60% of the child's educational expenses in Canada.[205]

17.92 The Family Division of the High Court allowed the appeal in *UYT* and held that the father would not have to contribute towards the child's further education in Canada. It held that the provisions of the Women's Charter are not intended to be used by an independent adult to claim for maintenance.[206] The court reasoned that the provisions do not create a specific obligation on the parent to pay for the tertiary education of the child, and maintenance may not necessarily mean maintaining fully or paying an unreasonable amount.[207] Balancing the child's claim for overseas university expenses against the father's limited financial means and his obligations to maintain his present wife, the court applied its sense of fairness and declined to award maintenance.[208]

201 *BZD v BZE* [2020] SGCA 1 at [22].
202 *BZD v BZE* [2020] SGCA 1 at [11].
203 [2021] 3 SLR 539.
204 *UYT v UYU* [2021] 3 SLR 539 at [2].
205 *UYT v UYU* [2021] 3 SLR 539 at [1].
206 *UYT v UYU* [2021] 3 SLR 539 at [11].
207 *UYT v UYU* [2021] 3 SLR 539 at [12].
208 *UYT v UYU* [2021] 3 SLR 539 at [10].

VI. Procedural aspects of family law

A. Variation of consent order

17.93 The Court of Appeal issued a decision in 2020 clarifying the scope of the ancillary powers of the court in varying a consent order that was recorded before the introduction of s 112(4) of the Women's Charter. Section 112(4) was enacted in 2005,[209] and grants the court the power to vary orders for the division of matrimonial assets under s 112.

17.94 In *CDV v CDW*[210] ("*CDV*"), the husband applied for a variation of a consent order to allow him to sell off the parties' matrimonial home. Under the consent order that was entered into in March 1994, the parties agreed that the wife would have exclusive occupation and control of the matrimonial home during her lifetime and that the matrimonial home would not be sold unless she remarried.[211]

17.95 The Family Division of the High Court granted the husband's application for the sale of the matrimonial home.[212] It considered the husband's probable bankruptcy as new circumstances which constituted a radical change in circumstances amounting to unworkability of the consent order.[213] The wife appealed against the sale of the matrimonial home, and the Court of Appeal reversed the lower court's decision on the appeal.[214]

17.96 As the statutory power to vary orders for the division of matrimonial assets did not exist at the time the consent order was recorded in court in 1994, the Court of Appeal preliminarily addressed the issue of whether the new statutory power under s 112(4) of the Women's Charter could be invoked to vary the consent order.[215] The Court of Appeal considered both the historical context and the legislative intent leading up to the introduction of s 112(4) of the Women's Charter. Given that the consent order was entered into between the parties in March 1994, it was made under s 106 of the Women's Charter. The Court of Appeal observed that the prevailing legal position at the time when the consent order was entered into was that courts were not empowered to vary orders for the division of matrimonial assets, including consent orders.[216]

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209 Women's Charter (Amendment) Act 1996 (Act 30 of 1996).
210 [2020] 2 SLR 1427.
211 *CDV v CDW* [2020] 2 SLR 1427 at [6]–[7].
212 *CDV v CDW* [2020] SGHC 61 at [1].
213 *CDV v CDW* [2020] SGHC 61 at [39].
214 *CDV v CDW* [2020] 2 SLR 1427 at [4].
215 *CDV v CDW* [2020] 2 SLR 1427 at [41].
216 *CDV v CDW* [2020] 2 SLR 1427 at [41], [59] and [60].

17.97 The central question before the Court of Appeal was therefore whether s 112(4) of the Women's Charter was intended to apply retrospectively to orders made under s 106 of the Women's Charter. The Court of Appeal devised a two-step inquiry to determine whether s 112(4) of the Women's Charter applied retrospectively. A court would have to first determine whether Parliament intended for the statute in question to be applied retrospectively. It is only when there is ambiguity, that the court will go on to the next step of the inquiry and determine whether it is fair for the statute in question to be applied retrospectively.[217]

17.98 The Court of Appeal answered both these questions in the negative.[218] It held that it was clear from the relevant Hansard on the substantively different provisions for the division of matrimonial assets that Parliament had not intended for s 112(4) of the Women's Charter to have retrospective effect. Parliament had intended for s 112 of the Women's Charter to provide a new set of legal principles that the court could apply to achieve a more just and equitable division of matrimonial assets.[219]

17.99 The Court of Appeal also analysed the transition provisions for the different statutory regimes governing the division of matrimonial assets. Section 112 of the Women's Charter that replaced the repealed s 106 came into force on 1 May 1997.[220] However, Parliament delineated the applicability of s 112 by expressly stating in s 186(3) of the Women's Charter that s 106 of the Women's Charter shall continue to apply to the hearing of any proceedings which had begun before 1 May 1997 and that were not fully heard, as if the division of matrimonial assets regime under s 112 had not been enacted.[221] The ancillary matters hearing at which the parties recorded the consent order had been fully heard in March 1994,[222] and would therefore fall squarely within the division of matrimonial assets regime under s 106 where the court did not have the power to vary such orders.

17.100 Even if there had been any ambiguity on whether s 112(4) of the Women's Charter was intended to apply retrospectively, the Court of Appeal would not have allowed the retrospective application of s 112(4) of the Women's Charter.[223] As a matter of principle, it recognised that the effect of allowing the retrospective application of s 112(4) of the Women's

217 *CDV v CDW* [2020] 2 SLR 1427 at [44] and [45].
218 *CDV v CDW* [2020] 2 SLR 1427 at [105].
219 *CDV v CDW* [2020] 2 SLR 1427 at [51].
220 Women's Charter (Amendment) Act 1996 (Act 30 of 1996).
221 *CDV v CDW* [2020] 2 SLR 1427 at [55].
222 *CDV v CDW* [2020] 2 SLR 1427 at [6].
223 *CDV v CDW* [2020] 2 SLR 1427 at [58].

Charter would result in the parties being able to utilise a power that was unavailable to the courts at that time. Besides, the expectation of finality in litigation may have a bearing on the terms of the parties' consent order.[224] That would make it unfair to allow a party to retrospectively invoke s 112(4) of the Women's Charter to undermine those settled expectations.

17.101 In the event that the preliminary issue on the retrospective operation of s 112(4) of the Women's Charter could be resolved in favour of the husband, the Court of Appeal nonetheless held that it would not have exercised its powers to vary the order. The husband's basis for seeking the variation was that the consent order was no longer workable due to his financial difficulties and imminent bankruptcy.[225] The variation of an order for the division of matrimonial assets is disallowed if the adverse change in circumstances are self-induced. A similar legal principle bars the variation of a maintenance order.[226] The Court of Appeal considered the available evidence on the husband's financial difficulties and concluded that the unworkability of the consent order was self-induced. The variation would therefore have been disallowed even if the court had the jurisdiction to vary the consent order.[227]

17.102 Interestingly, the Court of Appeal in *CDV*[228] highlighted the considerable uncertainty over whether the consent order would eventually become unworkable.[229] The Court of Appeal disagreed with the Family Division of the High Court's finding that the husband's financial difficulties would result in his bankruptcy and a forced sale of the matrimonial home.[230] While the Court of Appeal was unable to rule out the possibility that the court may order a forced sale in the event of the husband's bankruptcy,[231] the Court of Appeal observed that such powers would only be exercised if the court considered it "necessary or expedient" to do so.[232] As such, the Court of Appeal was of the view that it would not be appropriate to pre-emptively vary the consent order for a scenario that has yet to come to pass.

224 *CDV v CDW* [2020] 2 SLR 1427 at [58].
225 *CDV v CDW* [2020] 2 SLR 1427 at [85].
226 *CDV v CDW* [2020] 2 SLR 1427 at [88].
227 *CDV v CDW* [2020] 2 SLR 1427 at [97].
228 See para 17.94 above.
229 *CDV v CDW* [2020] 2 SLR 1427 at [91].
230 *CDV v CDW* [2020] 2 SLR 1427 at [92] and [95].
231 *CDV v CDW* [2020] 2 SLR 1427 at [94].
232 *CDV v CDW* [2020] 2 SLR 1427 at [93].

B. "Liberty to apply" orders

17.103 "Liberty to apply" orders, which are ubiquitous in court orders, are intended to supplement the main orders of court and allow them to be carried out efficaciously. They are not intended to be abused by the parties to subsequently vary the court's final orders.[233] The circumstances in *BRZ v BSA*[234] ("*BRZ*") provided the Family Division of the High Court with a useful opportunity to set out the law on the interpretation of court orders and examine the scope of "liberty to apply" orders in the family law context.

17.104 In *BRZ*, the husband applied for the wife to make certain instalment payments owed under the ancillary matters order.[235] The ancillary matters order provided, *inter alia*, that the parties were to appoint a joint valuer to value various properties as at the date of the ancillary matters, following which the wife shall pay to the husband 50% of the net equity of the properties in instalments. The ancillary matters order had also granted the parties "liberty to apply".[236] A valuer had been appointed after the ancillary matters order was made and the valuation of the properties had been conducted as at the "current date".[237]

17.105 The wife asserted that the valuation ought not to be used as the properties were valued at the "current date" instead of the ancillary matters date, causing the valuation to be different from that as envisaged by the ancillary matters order.[238] The significance of the appointment of a valuer and the obtaining of a valuation report is twofold, as it would determine the amount the wife was to pay to the husband under the ancillary matters order and when she should transfer the relevant sum to the husband.[239]

17.106 The starting point for interpreting an order would require a consideration of the natural and ordinary meaning of the words and the manner in which they are used. The reading of each portion of the order should be uniform and result in an outcome that is consistent with the intention of the court. The interpretation of a court order should also be consistent with prevailing legal principles and practice.[240] In light of this,

233 *BRZ v BSA* [2020] SGHCF 17 at [16], citing *Anwar Siraj v Teo Hee Lai Building Construction Pte Ltd* [2014] 1 SLR 52.
234 [2020] SGHCF 17.
235 *BRZ v BSA* [2020] SGHCF 17 at [14].
236 *BRZ v BSA* [2020] SGHCF 17 at [4].
237 *BRZ v BSA* [2020] SGHCF 17 at [46].
238 *BRZ v BSA* [2020] SGHCF 17 at [29].
239 *BRZ v BSA* [2020] SGHCF 17 at [27].
240 *BRZ v BSA* [2020] SGHCF 17 at [21].

the Family Division of the High Court concluded that the scope of the "liberty to apply" order would only allow the court to consider matters that would supplement the ancillary matters order and not vary it.

17.107 The Family Division of the High Court found that the issues that rose to be determined in the husband's application fell within matters that are supplementary to the ancillary matters order. Even if those matters did not fall within the scope of a "liberty to apply" order and had to be brought under separate proceedings, the Family Division of the High Court had the power to cure any procedural irregularity pursuant to r 10(2) of the Family Justice Rules 2014.[241] As such, there was sufficient legal basis to proceed with hearing the husband's application.[242]

17.108 The evidence surrounding the appointment of the valuer showed that the parties had jointly appointed the valuer for the purposes of the ancillary matters order.[243] This suggested that the parties had agreed to depart from the valuation as at the ancillary matters date, which was the date stated in the ancillary matters order. In light of this, the wife was estopped from asserting that the current valuation should not be relied on notwithstanding that the ancillary matters order provided otherwise.[244]

17.109 The husband's approach towards calculating the net equity due to him under the ancillary matters order was also preferred over the wife's as it was more consistent with the language, context and intent of the ancillary matters order.[245] The context and wording of the ancillary matters order further led the Family Division of the High Court to hold that the cut-off date for the accounting of the mortgage payments in the net equity is the date of the ancillary matters order.[246] As for the timeline for the wife to make payment of the net equity owing to the husband, it was held that the timeline ought to run in the manner prescribed in the ancillary matters order,[247] save that the parties had agreed on a separate timeline in an application to stay the order pending the wife's appeal (which was dismissed). The timelines for payment therefore ran from the time when the appeal was disposed of as agreed on by the parties.[248]

17.110 Notwithstanding the relatively liberal approach the Family Division of the High Court adopted towards the scope of the "liberty to

241 S 813/2014.
242 *BRZ v BSA* [2020] SGHCF 17 at [24] and [25].
243 *BRZ v BSA* [2020] SGHCF 17 at [37]–[47].
244 *BRZ v BSA* [2020] SGHCF 17 at [49]–[51].
245 *BRZ v BSA* [2020] SGHCF 17 at [52]–[63].
246 *BRZ v BSA* [2020] SGHCF 17 at [64]–[76].
247 *BRZ v BSA* [2020] SGHCF 17 at [78].
248 *BRZ v BSA* [2020] SGHCF 17 at [82].

apply" order, it declined to order the payment of interest to the husband for the late payments. It found that the present proceedings were not an action for the enforcement of a judgment debt, and to award interest would go beyond the scope of curing procedural irregularities.[249] Likewise, the Family Division of the High Court declined to make orders allowing the husband to set-off sums that he owed the wife under the ancillary matters order against costs ordered in his favour and payment already made to the wife. It held that it would be inappropriate to grant an order that would involve the set-off, as those issues did not pertain to the ancillary matters order and were distinct from the division of matrimonial assets. The husband would therefore have to commence separate proceedings to seek relief for interest and the various other sums.[250]

17.111 *BRZ* demonstrates how court orders may be interpreted in a consistent way taking into account the language, context and intent of the order. While it appears that the Family Division of the High Court has the powers to supplement orders and cure procedural defects, family law practitioners have to be mindful when advising their clients on the appropriate causes of action and applications to make in Court. Practitioners now have the benefit of *BRZ* to assist them in making the judgment call as to whether an application would fall within the scope of a "liberty to apply" order or whether separate proceedings ought to be commenced. It would also be important for practitioners to exercise due care when instructing experts to ensure that the order is being accurately carried out and to avoid unnecessary complications in executing the order.

249 *BRZ v BSA* [2020] SGHCF 17 at [83].
250 *BRZ v BSA* [2020] SGHCF 17 at [86].