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Singapore

## Father turns to court for ex-wife to pay maintenance after children went to live with him

The father had been ordered to pay his ex-wife S\$2,640 in maintenance when the children were in her care, but now sought a reversal as the kids moved in with him.



File photo of the Family Justice Courts (Photo: CNA/Lydia Lam)



[Lydia Lam](#)

15 Jun 2023 12:10PM



SINGAPORE: A man turned to the family court to get his ex-wife to pay the amount of maintenance he used to pay her, after their two kids began living with him instead.

In response, the ex-wife said maintenance should be in proportion to their incomes, and she was starting out afresh as a financial adviser with purely commission-based income.

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However, the children went to live with their father in October 2021 and remained with him for reasons not elaborated in the papers.

The father had been ordered to pay his ex-wife S\$2,640 in maintenance when the children were in her care.

After the kids started living with him, he asked for the order to be reversed and have his ex-wife pay him the S\$2,640 instead.

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The mother said she should pay only about S\$790 a month, which was about a quarter of her monthly income and about 10 to 15 per cent of the children's monthly expenses.

The woman had lost her job in September 2021 and could not find a job in her industry, so she began working as a financial adviser.

Her commission-based income was about S\$3,000 a month.

She said parties had agreed to share the children's expenses equally when she was earning a comfortable sum, and claimed that she lost her job because her ex-husband had lodged a complaint with her then-employers and the regulatory authority for certain misconduct.

The woman said that given her current income, she was simply unable to afford the quantum sought by her ex-husband.

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Judge Cheong chose to consider the parents' earning capacity instead of specific quantum as the woman's income fluctuated.

The father has an earning capacity of about S\$20,000, while the judge found the mother had an earning capacity of S\$5,000.

Affordability is not an issue for the father," said the judge.

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"Had the marriage remained intact, spouses would ordinarily be expected to do the same; supporting each other in times of financial (or other types) of difficulties."

The father had asked for the change to be backdated to November 2021, but the judge declined to do so.

She said to do so would be an "overly technical mathematical exercise that was not meaningful to parents who were committed to their children".

## CHILDREN NOT AN ACCOUNTING EXPENSE: JUDGE

"It is certainly not a holistic approach to treat the children as an accounting expense that should be reimbursed," said Judge Cheong.

"Taking this concept to the extreme, would be akin to parents claiming reimbursement from the care parent or deducting sums from monthly maintenance obligations, for toys or an ice cream treat that they bought for their children during access."

She said this was "certainly not healthy" for their relationship as co-parents and not what the law envisages.

She urged the parents to "exercise grace and patience" with each other to move forward in their co-parenting journey.

"It is my hope that the family can finally commence on the road to recovery and healing after a long-drawn period of litigation, especially with the assistance of counselling," she said.

*Source: CNA/II*

- (1) This judgment DOES/~~DOES NOT~~ need redaction.  
(2) Redaction HAS/~~HAS NOT~~ been done.

Adriene Cheong  
District Judge  
8 June 2023

**IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE\***

**[2023] SGFC 16**

Divorce No 1080 of 2018  
HCF/DCA 34 of 2023

Between

VDN

*... Plaintiffs*

And

VDO

*... Defendants*

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**JUDGMENT / GROUNDS OF DECISION**

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Family Law – Child – Maintenance of child

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**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**VDN  
v  
VDO**

**[2023] SGFC 16**

Family Court — Divorce No 1080 of 2018  
District Judge Adriene Cheong  
5 April 2023

8 June 2023

**District Judge Adriene Cheong:**

1 This judgment deals with the apportionment of maintenance between parents, in a variation of maintenance order post conclusion of the divorce proceedings.

### **Introduction**

2 The Defendant/Father (“Father”) applied to vary orders relating to the children, reversing the arrangement reflected in the ancillary order of 27 December 2019. After hearing parties on 8 September 2022, I delivered my decision on prayer 1 (care orders) earlier on 13 September 2022 and adjourned prayer 2 (maintenance orders) for submission of documents and further hearing as I was unable to make a determination on the maintenance issue due to a lack of relevant information by both parties. Directions were given to address this

with further affidavits, with a view to issue my decision via Registrar's Notice, but the information was insufficient. After a further clarification hearing on 27 February 2023, additional information was provided and I provided my decision on the remaining maintenance issue via Registrar's Notice (with brief reasons) on 5 April 2023.

3 The Defendant/Father has appealed the order on prayer 2 and I set out the reasons for my findings, limited to the issue of maintenance.

## **Facts**

### ***The parties***

4 Parties' marriage was dissolved in September 2018 and pursuant to the ancillary orders of December 2019, the 2 children (now aged 10 and 13) were to live with the Plaintiff/Mother ("Mother"). There was significant litigation, including an appeal and leave to appeal further. There was a subsequent variation which was eventually resolved by consent.

5 Subsequently, sometime in October 2021, the children went to live with their father and remained with him. This was the factual basis for the variation application by the Father who had applied to vary the orders to reflect the change in care and for consequential changes in maintenance orders.

6 As above, I made orders on the care arrangements in September 2022, for the orders to reflect that the children were in the Father's care. To support the family's healing, I also made orders for parties to attend counselling for therapeutic purposes.

7 Given the change in care orders, consequential adjustments would therefore have to be made to the maintenance orders.

### **The parties' cases**

8 The Father's final position (as stated in his skeletal submissions of February 2023) was for a simple reversal of the maintenance order, for the Mother to pay the amount that he had been ordered to pay her (\$2,640) when the children were in her care.

9 The Mother's final position (as stated in her February 2023 skeletal submissions) was for maintenance to be ordered in proportion with their incomes. She computed this to be about 10-15% borne by her, effectively about \$790 a month, which she stated to be about a quarter of her monthly income.

10 I was unable to agree with either party's position and found that the Mother should bear a quarter of the children's monthly expenses, in line with their current earning capacity. In other words, for the Mother to pay \$1,000 monthly (\$500 for each child) as maintenance for the children.

### **Findings**

11 Parties were in agreement on the estimated expenses of the children and there was also no dispute on the Father's income and earning capacity.

### **Issue 1: Mother's income**

12 The major dispute between parties was in relation to the Mother's current income. It was undisputed that the Mother had lost her previous job in September 2021 under difficult circumstances and could no longer find similar employment within the same industry. She was now working as a financial



advisor and her purely commission-based income was about \$3,000 a month. For context, the Mother stated that parties had agreed to share the children's expenses equally at the time as she was earning comfortably and stated that she had lost her job due to the Father lodging a complaint with her then-employers and regulatory authority for certain misconduct. Nothing turns on this specifically but provided me some context as to the current circumstances surrounding the Mother's change of employment and earning capacity/income.

13 The Mother explained that she was simply unable to afford the quantum sought by the Father given her current income. She asked that it be apportioned according to their respective incomes at present. There were some discrepancies in the figures in her income papers where the commission statements did not align completely with the associated bank statements. The Father had serious doubts about her disclosure and income.

14 Overall, after considering the state of the evidence before me, I was of the view that establishing a specific, exact quantum for the Wife's income was unnecessary as it would not significantly change the proportion of earning capacity between parties. Given the nature of commission-based employment, it was almost certain that an individual's income would fluctuate over the months. In my view, it would be more prudent and meaningful to consider the parties' respective current earning capacities in determining the appropriate apportionment between parties. Even if the monthly sums deviate, generally, it would not significantly alter the proportion between them.

15 Considering all the evidence available, and applying a broad brushed approach, I find that the current earning capacity for the Wife to be in the region of about \$5,000. In her affidavit filed in October 2022, the Mother had assessed her average monthly income to be about \$3,000, based on about 8 months of

employment. I acknowledged that the Mother's income would likely increase as time passed given the nature of her role as a financial advisor. Considering the slight discrepancies in the income documents, I found that achieving an earning capacity of \$5,000 in the near or immediate future was achievable and reasonable in the circumstances.

### **Issue 2: Apportionment of expenses**

16 Applying this proportionately to the Husband's earning capacity of about \$20,000 to the estimated monthly budget for both children, the Wife should pay a monthly sum of \$1,000 (\$500 each) for the children. The sum shall be paid directly into the Husband's designated bank account on the first day of each month or otherwise as agreed between parties.

17 I note that the Mother was in the process of establishing herself in a new industry. Time should be given for her to do so. There was no dispute that her current role was commission-based and she had only worked for a few months at that time. I find that it is reasonable for some lead time to be given for her since her previous career was no longer viable option to her. This is especially so when the Father is in a fortunate position to step up and step in to provide comfortably for the children. Affordability is not an issue for the Father. Had the marriage remained intact, spouses would ordinarily be expected to do the same; supporting each other in times of financial (or other types) of difficulties.

18 I do not think it is reasonable to hold her to her previous capacity at this point when there is nothing suggesting that she is able to earn that level of income at this present time. Certainly, after she establishes herself and increases her earning capacity, that issue can be reviewed in any future variation, if any.

I reiterate that my findings were based on her current income and current earning capacity and of course could, and would be reviewed, with time.

19 Overall, even taking the Father's case at its highest, that the Mother earned more than \$10,000, his proposal to share the expenses equally was also not logical. Based on his own figures, the Mother should bear a third of the expenses. It would not be reasonable to order that they share the expenses equally.

20 It is worth repeating that my decision for maintenance was made on earning capacity, at this time, and based on the information available before me.

21 For completeness' sake, the Father had also raised the issue of the Mother's bank balances. As it is trite that the law does not expect parties to drawdown on assets to pay for ongoing maintenance obligations in the long term, I did not think it appropriate to consider this issue in detail. Regardless, I found that even if I did consider the Mother's liquid assets at her disposal, the Father's liquid assets outranked the Mother's in this aspect as well, as rightly accepted by counsel at the hearing.

### **Issue 3: Backdating**

22 The Father had asked for the change in maintenance orders to be backdated to November 2021. Parties had pursued the issue of backdating of payments that they had made for the children in accordance with the orders (including a separate enforcement of maintenance order), after the change of care had already taken place. I considered this to be an overly technical mathematical exercise that was not meaningful to parents who were committed to their children. It is certainly not a holistic approach to treat the children as an accounting expense that should be reimbursed. Taking this concept to the

extreme, would be akin to parents claiming reimbursement from the care parent or deducting sums from monthly maintenance obligations, for toys or an ice cream treat that they bought for their children during access. This is certainly not healthy for their relationship as co parents and in my view, not what the law envisages.

23 On the issue of backdating, I am of the view that entering into a minute and detailed computation of the expenses that each parent paid in the past would not be helpful to the healing of their relationship. Both parents are clearly committed to their children and I encourage them to look beyond technicalities and dollars and cents, in supporting their children.

24 I therefore declined to order backdating from November 2021 but from October 2022 onwards (after my decision of 13 September 2022) as the change in maintenance obligations would have followed save for the additional information that was required.

### **Conclusion**

25 For avoidance of doubt, this order is separate from and does not supersede the earlier Enforcement of Maintenance Order (“EMO”) and arrears as computed by parties. I urge both parents, with the assistance of counsel, to discuss mutually acceptable solutions on the mathematical computations that follow, and to exercise grace and patience with each other to move forward on this stage of their co-parenting journey.

26 I would like to reiterate my earlier call to parties to communicate and discuss the issues moving forward. It is my hope that the family can finally commence on the road to recovery and healing after a long-drawn period of litigation, especially with the assistance of counselling.

27 For completeness' sake, I had invited parties to submit skeletal submissions on the issue of costs within 7 days, if they wished to pursue the issue of costs but none were received. I therefore confirm that no orders on costs were made.



Adriene Cheong  
District Judge

Sudhershon Hariram (Tan Rajah & Cheah) for the plaintiff;  
**Patrick Fernandez** (Fernandez LLC) for the defendant.

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