

Case Comment

**THE ROLE OF CONDUCT IN THE AWARD
OF MAINTENANCE AND COSTS ORDERS**

WUP v WUQ [2024] SGHCF 15

[2024] SAL Prac 15

This case comment discusses *WUP v WUQ* [2024] SGHCF 15, a High Court decision on ancillary matters where a spouse who did not participate in the proceedings was not given a penalty for repeatedly flouting the court's directions. The High Court also found against her for bringing "nothing but grief" to the marriage, and only granted her an award of \$5,000 as lump sum maintenance with no share in the division of matrimonial assets.

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I. Introduction

1 The Women's Charter 1961¹ exhorts spouses to treat marriage as an equal co-operative partnership of their different efforts for their mutual benefit.² The expectation is that spouses co-operate to safeguard the interests of the union and to care and provide for the children.³ However, the reality may sometimes fall short, or in the case of *WUP v WUQ*⁴ ("*WUP*"), the reality proved to be the complete opposite.

1 2020 Rev Ed.

2 National University of Singapore, "Faculty Feature: Professor Leong Wai Kum" <<https://law.nus.edu.sg/media/faculty-feature-professor-leong-wai-kum/>> (accessed 18 June 2024).

3 Women's Charter 1961 (2020 Rev Ed) s 46.

4 [2024] SGHCF 15.

2 The question then arises of what a spouse like the wife in *WUP*, who did not put in reasonable (or in fact, any) efforts into the marriage, should expect in terms of sharing in the spoils of the marriage upon divorce.

II. Background

3 The case of *WUP* involved a 58-year-old Singaporean husband (“Husband”) who was a widower with two adult children from his previous marriage, and a Taiwanese wife (“Wife”) who was 40 years old. The parties first met through a dating agency in Taiwan in 2018 and after dating for a year, the Wife moved to Singapore in 2019 and got married to the Husband on 1 December 2019. About five months later, in May 2020, the Wife went back to Taiwan and never returned to Singapore.⁵

4 The Husband sent the Wife two sums of money amounting to about \$19,300 in total to persuade her to return to his side and she came back to Singapore in March 2021. However, she only stayed for about two months. She returned to Taiwan in May 2021.⁶

5 Divorce proceedings were commenced by the Husband on 9 April 2023 and the interim judgment for divorce was granted on 11 July 2023.⁷ The marriage lasted three years and seven months. The Wife initially indicated her intention to contest the divorce but eventually did not do so.⁸ She was not legally represented for the proceedings. Even at the ancillary matters stage, she did not participate fully in the proceedings nor file her ancillary matters affidavits despite being given multiple opportunities to do so and despite multiple directions for her to attend case conferences and even mediation.⁹ The ancillary matters hearing eventually proceeded without any affirmed affidavit by the Wife. The Wife also did not turn up for the ancillary matters hearing.¹⁰

5 *WUP v WUQ* [2024] SGHCF 15 at [1] and [2].

6 *WUP v WUQ* [2024] SGHCF 15 at [3].

7 *WUP v WUQ* [2024] SGHCF 15 at [4].

8 *WUP v WUQ* [2024] SGHCF 15 at [4].

9 See para 17 below.

10 *WUP v WUQ* [2024] SGHCF 15 at [10].

6 The ancillary matters went for hearing before the High Court on 19 February 2024 and the grounds of decision were delivered on 27 February 2024. The two issues before the court were the division of matrimonial assets and maintenance for the Wife.¹¹

7 The court found that whilst the Husband’s assets totaled \$6,539,430.45 (excluding his various joint accounts with his deceased wife and children, and accounting for his personal liabilities), all the Husband’s assets were essentially acquired before the marriage.¹² The court did not order any share of the assets to the Wife because there were no matrimonial assets subject to division. On the issue of maintenance, however, the court awarded the Wife a lump sum maintenance of \$5,000 “as a clean break”¹³.

8 There was no order as to costs.¹⁴

III. Wife’s maintenance award despite her lack of contribution to marriage

9 It seems right that the Wife did not get a share of the Husband’s assets (even if they had been matrimonial assets, which they were not), given that she had made no contributions in acquiring them, or even to the marriage itself. The court found that the Wife had “produced no evidence to show any direct financial contribution on her part to the family coffers”, and that “by [the Wife’s] own admission, she made no effort to add value to the matrimonial assets through indirect contributions”.¹⁵ She had “brought nothing but grief to the marriage, and added nothing to it during its brief span”.¹⁶

10 However, the Wife received a lump sum maintenance award despite her lack of contribution to the marriage. The court

11 *WUP v WUQ* [2024] SGHCF 15 at [10] and [11].

12 *WUP v WUQ* [2024] SGHCF 15 at [11].

13 *WUP v WUQ* [2024] SGHCF 15 at [14].

14 *WUP v WUQ* [2024] SGHCF 15 at [15].

15 *WUP v WUQ* [2024] SGHCF 15 at [12].

16 *WUP v WUQ* [2024] SGHCF 15 at [13].

in making this award was perhaps just carrying out its duty under s 114(2) of the Women's Charter 1961, which states that:

... the court is to endeavour to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

11 This is the concept of financial preservation. Section 114(1) of the Women's Charter 1961 lists the various factors the court should consider in determining the amount of wife maintenance, including the income, earning capacity and financial positions of each party.

12 The court considered a lump sum maintenance award fair because it was a brief marriage.¹⁷ In this case, the Husband was a manager earning about \$66,000 per month and his take-home pay was about \$44,000 per month. The Wife, on the other hand, was not employed during the marriage, and had been supported by the Husband for part of it (namely a monthly allowance of \$400 to \$800 whilst she was in Singapore), and had also been given cash gifts amounting to \$19,300.¹⁸ Arguably, \$5,000 (representing a mere 12 months of maintenance at \$400 a month) is a modest sum, given the Husband's far superior financial position to the Wife's and the fact that the Wife had financial support from him previously.

13 However, this author would like to highlight the phrase "having regard to their conduct, just to do so" in s 114(2) to argue that the concept of financial preservation would not be applicable to a marriage where one party had not discharged his or her responsibilities and duties in the marriage, nor carried out the partnership by putting forward equal (or at least reasonable) efforts to safeguard the interests of the union.¹⁹ It is submitted

17 *WUP v WUQ* [2024] SGHCF 15 at [14].

18 *WUP v WUQ* [2024] SGHCF 15 at [14]; though it should also be kept in mind that the Wife was apparently able to cover her own living expenses for most of the marriage, when she was living apart from the Husband.

19 See s 46 of the Women's Charter 1961 (2020 Rev Ed).

that this case is a good example of where this principle should apply. The Wife should have, in this author's view, not gotten any award of maintenance at all.

14 This is because it was clear on the facts of the case that the Wife had done nothing constructive or productive within the marriage, or in support of it. On record, the marriage lasted three years and seven months to the time of the interim judgment. During the marriage, however, the Wife was only present in Singapore and living with the Husband for a total of about *eight months*, ie, for the first six months of the marriage and for another two months between March and May 2021, when the Husband persuaded the Wife to return to Singapore. During this brief time, the court found that “the [Wife] proved to be difficult to live with, persisting in finding faults [*sic*] with the [Husband], and making numerous demands for money without success”.²⁰ She possessed a bachelor's degree in costume design but instead chose not to work during her brief stay in Singapore. She also did not contribute to the running of the household, and “seemed bored, not at all keen to do any housework”.²¹

15 It seems apparent from the Wife's course of conduct that she saw the marriage purely as an economic advantage to her, without her having to contribute or add any value to the partnership. She later chose to abandon the marriage. It is submitted that in cases like this, where a party has really not made any contributions at all to the marriage, there should be no maintenance award for the party, no matter what the party's financial or personal circumstances (*as per* the factors in s 114(1) of the Women's Charter 1961) are.

IV. An award of costs for indicating interest in court proceedings, yet not following procedures

16 The other troubling aspect of the Wife's conduct was her lack of proper participation and appreciation of the importance of the court process in the divorce proceedings.

²⁰ *WUP v WUQ* [2024] SGHCF 15 at [3].

²¹ *WUP v WUQ* [2024] SGHCF 15 at [2].

17 In the grounds of decision, the court detailed how at various stages of the proceedings, the Wife had completely disregarded and rebuffed the court's efforts to engage the Wife in complying with court directions, despite the court giving the Wife multiple opportunities to respond to the proceedings and file her affidavit. She had chosen not to attend five case conferences and even the ancillary matters hearing, nor did she affirm and file any affidavit but instead submitted her statement by way of an e-mail.²² The court had given the Wife multiple opportunities to take part in the proceedings, by granting multiple adjournments and extensions of time. This was not a case where the Wife was simply absent and silent the whole time. She kept indicating she was interested in being heard in the case (for example, e-mailing unsworn statements to the court, attending the mediation session but abandoning it halfway,²³ and turning up at a case conference on 28 November 2023 and attempting to submit an affidavit which had not been affirmed, giving the "incredible reason" that she could not find a Commissioner for Oaths),²⁴ but failed to follow the proper procedures, thus forcing the court to keep giving her multiple chances to participate in the proceedings.

18 It is trite that costs are "first and foremost, within the discretion of the court".²⁵ However, it is also trite that costs should follow the event. Moreover, it is a key principle that the conduct of parties in proceedings would be relevant to the court's exercise of discretion in determining costs.²⁶

19 In this case, the Husband had succeeded in the ancillary matters, with the court accepting his evidence and submissions on the division of assets. He had conducted his case in a timely and proper manner. On the other hand, the Wife's unreasonable conduct in indicating that she was interested in the proceedings and yet refusing to comply with the court's directions

22 *WUP v WUQ* [2024] SGHCF 15 at [5].

23 See para 21 below.

24 See *WUP v WUQ* [2024] SGHCF 15 at [9].

25 *BMG v BMH* [2014] SGHC 112 at [9]. The judge who heard this present case also heard *BMG v BMH* [2014] SGHC 112.

26 See s 46 of the Family Justice Act 2014 (2020 Rev Ed) and rr 852(2) and 854 of the Family Justice Rules 2014.

unnecessarily protracted the proceedings. It added a strain on public resources and an increase in the Husband's legal costs. It was also disrespectful to the court. It is submitted that a strong signal ought to have been sent as a deterrent against such conduct, by making an award of costs against the Wife. It might well be a paper judgment, given that the Wife was based overseas, but it would at least send a message that the court's rules and procedures should not be disobeyed with impunity.

20 Having said this, it is admittedly not easy to conduct a litigation from overseas. The Wife was a foreigner who was apparently not resident in Singapore at the time of the proceedings. It is possible that she did not have the financial resources to engage legal representation or to fly back to Singapore for the proceedings (though it should be noted that she had actually attended at least one case conference in person on 28 November 2023). She might not have been comfortable with drafting documents and conducting the proceedings in English. As a foreigner, even if she was of low income, she could not avail herself of legal aid in Singapore, as this is only for Singapore citizens and permanent residents.²⁷

21 While acknowledging all these, this author also notes that the Family Court had in fact bent over backward to ensure that the Wife could take part in the proceedings, by fixing a case conference over Zoom on one occasion on 13 September 2023, and also a mediation session via Zoom. The Wife had in fact attended the mediation session via Zoom, but then abandoned the session halfway by abruptly logging out of the session. The Family Court's efforts to ensure that the Wife could get access to justice were commendable. It is unfortunate that the Wife did not take advantage of this opportunity. This author therefore maintains the view that an award of costs should have been made in this case.

22 It is respectfully suggested, in this regard, that the court should ensure that litigants be made aware that if they indicate that they are interested in being heard in the court proceedings,

²⁷ See s 5(1) of the Legal Aid and Advice Act 1995 (2020 Rev Ed).

then they should comply fully with the relevant court procedures, or face the cost consequences of not doing so – it should be in for a penny, in for a pound!