Published on 12 March 2025

Case Comment

ADULT CHILD MAINTENANCE IN DIVORCE PROCEEDINGS – WHO SHOULD APPLY?

XFD v XFE [2024] SGHCF 43

[2025] SAL Prac 4

In a divorce, the parent with care and control of the child of the marriage will usually seek an order for maintenance of the child against the other parent in the ancillary matters hearing. However, what happens if the child is 21 years old or above ("adult child")? Should the child make an application for maintenance herself? Or can the parent to whom she is aligned ("aligned parent") make the application on her behalf? The case of *XFD v XFE* [2024] SGHCF 43 held that the aligned parent can make the maintenance application on behalf of the adult child as part of the ancillary matters in the divorce proceedings. However, this decision is problematic in the light of some earlier authorities. Nonetheless, the approach taken in *XFD v XFE* appears to be more convenient for the adult child and her aligned parent, as opposed to the adult child making her own maintenance application. The author suggests a workaround to get the ancillary matters court to hear the adult child maintenance matter, and also recommends legislative reform for a more efficient process in this regard.

LIM Hui Min[1]
Director of Legal Aid, Legal Aid Bureau.

1 The views expressed by the author are personal to her and do not represent the views of the Legal Aid Bureau or the Ministry of Law. The author is grateful to her colleague Darren Chan for his help with this article. All errors and omissions are entirely hers, however.

I. *XFD v XFE* [2024] SGHCF 43 – court has power to order maintenance for adult child in divorce proceedings

1 In *XFD v XFE*,[2] the husband was a UK citizen, who was living in the US at the time of the divorce proceedings. He used to work during the marriage but had retired by the time of the divorce proceedings. The wife was a Singapore citizen and homemaker for most of the marriage. They had one son, aged 22 years, studying in a UK university on scholarship. The ancillary matters were heard in the High Court, and comprised the division of matrimonial assets, and wife and child maintenance. This article will focus solely on the child maintenance issue.

2 The wife had applied for a "fair and just"[3] lump sum maintenance amount for the son to bring him through his university education. The husband submitted that the court had no power to order maintenance for a child 21 years or older ("adult child") in divorce proceedings. The husband's counsel referred to the following sections of the Women's Charter 1961[4] ("WC"), which state:

> **Meaning of 'child'**
>
> **122.** In this Chapter, wherever the context so requires, 'child' means a child of the marriage as defined in section 92 but who is below 21 years of age.
>
> …
>
> **Power of court to order maintenance for children**
>
> **127.**—(1) During the pendency of any matrimonial proceedings or when granting or at any time subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, the court may order a parent to pay maintenance for the benefit of his or her child in such manner as the court thinks fit.
>
> (2) The provisions of Parts 8 and 9 apply, with the necessary modifications, to an application for maintenance and a maintenance order made under subsection (1).

2 [2024] SGHCF 43.
3 *XFD v XFE* [2024] SGHCF 43 at [12], *per* Choo Han Teck J.
4 2020 Rev Ed.

3 The husband's argument was that since a child of the marriage is defined as a child below 21 years old in s 122 of the WC, s 127(1) which confers power on the court to order child maintenance in divorce proceedings would not apply to a child 21 years old or above.

4 The judge disagreed. His reasoning was as follows:

(a) Section 127 of the WC is merely a procedural provision which brings into operation the provisions of Pts 8 and 9 of the WC in divorce proceedings.

(b) The substantive obligation of parents to maintain the children is found in s 68 of the WC,[5] and the court's power to make orders pursuant to this obligation is found in s 69 of the WC, both of which appear in Pt 8 of the WC. The relevant subsection of s 69 states:

> **Court may order maintenance of wife, incapacitated husband and children**
>
> …
>
> (2) The court may, on due proof that a parent has neglected or refused to provide reasonable maintenance for his or her child who is unable to maintain himself or herself, order that parent to pay monthly sums or a lump sum for the maintenance of that child.

(c) Section 127 read with s 122 of the WC does not restrict the power of the court under s 69 of the WC to order maintenance for an adult child in prescribed circumstances (*ie*, s 69(5) of the WC). Section 69(5) of the WC states:

> The court shall not make an order under subsection (2) for the benefit of a child who has attained 21 years of age

5 Section 68 of the Women's Charter 1961 (2020 Rev Ed):

> **Duty of parents to maintain children**
>
> **68.** Except where an agreement or order of court otherwise provides, it shall be the duty of a parent to maintain or contribute to the maintenance of his or her children, whether they are in his or her custody or the custody of any other person, and whether they are legitimate or illegitimate, either by providing them with such accommodation, clothing, food and education as may be reasonable having regard to his or her means and station in life or by paying the cost thereof.

> or for a period that extends beyond the day on which the child will attain that age unless the court is satisfied that the provision of the maintenance is necessary because —
>
> > (*a*) of a mental or physical disability of the child;
> >
> > (*b*) the child is or will be serving full-time national service;
> >
> > (*c*) the child is or will be or (if an order were made under subsection (2)) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
> >
> > (*d*) special circumstances, other than those stated in paragraphs (*a*), (*b*) and (*c*), exist which justify the making of the order.

As it is merely a procedural provision, it cannot curtail the court's power under s 69 of the WC.

(d) If the adult child satisfies one of the conditions in s 69(5) of the WC, a parent has the right to apply for maintenance for that child. Section 69(3) of the WC sets out who may apply for maintenance for a child, including maintenance for an adult child. Section 69(3) of the WC states:

> An application for the maintenance of a child under subsection (2) may be made by —
>
> > (*a*) any person who is a guardian or has the actual custody of the child;
> >
> > (*b*) where the child has attained 21 years of age, by the child himself or herself;
> >
> > (*c*) where the child is below 21 years of age, any of his or her siblings who has attained 21 years of age; or
> >
> > (*d*) any person appointed by the Minister.

However, it does not say that the *only* person who may apply for maintenance for an adult child is *that child*.

(e) If a parent in divorce proceedings could not apply for maintenance for an adult child, it would render s 69(5) of the WC "almost entirely nugatory".[6] The judge illustrated this point with an example:[7]

> … a university-going child above 21 whose breadwinner father refuses to support him would be left to fend for himself throughout and even after the divorce proceedings – at the time when he needs maintenance the most. In my view, Parliament could not have intended such an absurd outcome.

5 Having decided that the court had the power to order maintenance for an adult child in divorce proceedings, the judge proceeded to order a small lump sum maintenance for the child in *XFD v XFE*. The court took into account that he was on scholarship and his scholarship moneys would cover his reasonable expenses, but he would still have to pay for his insurance policies. The husband was ordered to pay 89% of the insurance policy premiums for three years, which was the duration of the child's university education. This amounted to $7,338, which the husband was ordered to pay the wife out of his share of the proceeds from selling the matrimonial home.

II. Previous authorities – court has *no* power to make maintenance orders for adult children in divorce proceedings

6 With respect, the author is of the view that a plain reading of s 127 of the WC read with s 122 of the WC does indeed prevent the court from ordering maintenance for an adult child. It is submitted that this interpretation would not render s 69(5) of the WC "almost entirely nugatory"[8] and that the adult child would not "be left to fend for himself throughout and even after the divorce proceedings".[9] This is because the adult child is free to make a maintenance application for herself at any time, whether

6 *XFD v XFE* [2024] SGHCF 43 at [16].
7 *XFD v XFE* [2024] SGHCF 43 at [16].
8 *XFD v XFE* [2024] SGHCF 43 at [16].
9 *XFD v XFE* [2024] SGHCF 43 at [16].

before, during or after the divorce proceedings, pursuant to s 69(3)(*b*) of the WC.

7 The author notes that the cases cited by the husband's counsel in support of his position were District Court cases, namely *WLA v WLB*[10] and *VYT v VYU*,[11] in which the judges declined to follow, in so far as they held that s 127 of the WC restricts the court from granting maintenance to an adult child.[12]

8 However, there were at least three earlier authorities which this author suggests should have been cited to the court – one Court of Appeal case and two High Court cases.

9 The Court of Appeal case is *Thery Patrice Roger v Tan Chye Tee*[13] ("*Thery*"). This case was an appeal by the husband against the orders made by the High Court judge in relation to the division of matrimonial assets and maintenance for the wife and children. The parties had two children, a son aged 26 years and a daughter aged 24 years, at the time of the appeal hearing. The High Court had ordered maintenance of $50,450 for the son's education, and maintenance of $19,466.38 for the daughter's education. The son was already 25 years old when the ancillary matters hearing took place. It is not specifically stated in the judgement, but presumably the daughter was also over 21 years old when the ancillary matters hearing took place, since she was already 24 years old at the time of the appeal hearing. The Court of Appeal stated that since the son had already attained 21 years of age, he should have personally made an application for maintenance under s 69(3)(*b*) of the Women's Charter[14] ("WC 2009") and that the wife was not in a position to apply for the son's maintenance on his behalf under s 69(3)(*a*) of the WC 2009 because "it cannot reasonably be said that she is

10 [2023] SGFC 8.
11 [2021] SGFC 129.
12 See *VYT v VYU* [2021] SGFC 129 at [59], which makes this point. However, *WLA v WLB* [2023] SGFC 8 featured an adult child who applied for his own maintenance.
13 [2014] SGCA 20.
14 Cap 353, 2009 Rev Ed.

a 'guardian' or in 'actual custody' of her 25 year old son".[15] (The court also said that it was in any event unable to uphold the order of maintenance for the son's education because, on the evidence, the son had failed to state on affidavit that he was enrolled in a course at a higher education institute. Nor did he provide an affidavit with details of the expenses he had incurred in studying at the institute.) The husband's argument against the order for the daughter's education expenses was that they had already been paid for out of the matrimonial assets. The Court of Appeal agreed with this argument and decided that there was no need to award maintenance to the wife for the daughter's education. It is respectfully submitted, though not explicitly stated by the Court of Appeal, that the same reasoning for the son's maintenance should also apply to the daughter's, namely that she ought to have made the application for maintenance for herself under s 69(3)(*b*) of the WC 2009, instead of the wife doing so on her behalf in the divorce proceedings. The Court of Appeal ordered that "[n]o maintenance order [was] made in respect of both children, without prejudice to the son making a fresh application for maintenance *in his own right*" [emphasis added].

10 It is respectfully submitted that the court in *XFD v XFE* should have been bound by the decision on child maintenance in *Thery*, since *Thery* was decided by the Court of Appeal. *Thery* was followed in the High Court case of *TBZ v TCA*,[16] where the divorcing parties had three children, an elder son aged 25, a daughter aged 24, and a younger son aged 22, at the time of the ancillary matters hearing. All three children were in or embarking on tertiary education at that juncture. The husband had submitted that the court did not have the power to make maintenance orders for adult children as part of the ancillary orders. The High Court stated: "*Thery's* guidance … is that any adult child who seeks maintenance from a parent ought to file an application under s 69 of the WC, and moreover, accompany

15 *Thery Patrice Roger v Tan Chye Tee* [2014] SGCA 20 at [50], *per* Andrew Phang Boon Leong JA.
16 [2017] SGHCF 18.

the application with an affidavit regarding his expenses".[17] The judge had suggested to the parties in the case that the adult children ought to file maintenance summonses and affidavits, as required by *Thery*, and the complaints should then be transferred to the High Court, so that she could hear them together with the ancillary matters. Pursuant to her suggestion, the three adult children filed maintenance summonses with the relevant supporting affidavits for their own maintenance (with the elder son claiming maintenance from the mother from whom he was estranged, and the younger two children claiming maintenance from the father, from whom they were estranged). These summonses were transferred to the High Court, who dealt with them at the same time as the rest of the ancillary matters (the division of the matrimonial assets).[18]

11 The High Court case of *UAP v UAQ*[19] also followed *Thery's* guidance. In this case, the divorcing parties had one son. Counsel for both parties had agreed that the son was 20 years old at the time that the court made various child-related orders at the ancillary matters hearing. In fact, both counsel had made oral submissions on the child-related orders on the day of the judgement itself. However, the judge stated that she realised, in the course of writing the grounds of judgment for the case, that "regrettably",[20] at the time of the judgment, the son was two days past his 21st birthday. She went on to state that in view of s 122 of the WC 2009, the child-related orders should not have been made. She nonetheless ordered $500 per month for the son's maintenance, which was ordered to continue until the son finished his tertiary education. However, as the son had not yet decided on which local university he wanted to go to, a specific sum for his tertiary education was too remote at present. The judge stated that:[21]

17 *TBZ v TCA* [2017] SGHCF 18 at [69], *per* Valerie Thean JC.
18 Eventually, the court dismissed all the maintenance applications, on the basis that each parent was and would continue to bear the expenses of the child/children who was/were aligned with them.
19 [2017] SGHCF 11. The appeals to this decision were deemed to be withdrawn on 19 September 2017.
20 *UAP v UAQ* [2017] SGHCF 11 at [97], *per* Valerie Thean JC.
21 *UAP v UAQ* [2017] SGHCF 11 at [98], *per* Valerie Thean JC.

> In the circumstances, while maintenance may be ordered in respect of a child over the age of 21 who is serving full-time National Service, in view of the approach of the Court of Appeal in *Thery Patrice Roger v Tan Chye Tee* [2014] SCGA 20 … other recourse is necessary and the son should consider making an application under s 69 of the [WC 2009].

12 It is submitted that the $500 child maintenance order should, strictly speaking, not have been made, in the light of *Thery*. However, the judge is likely to have done so as a matter of practicality, given that all the oral submissions on this matter had already been made, and she had already made the order when she realised the son was an adult on the day of her judgment. If she had not made the order, the son would have had to file a maintenance summons and the whole matter would have had to be heard afresh, which would have been an unnecessary duplication of resources on the part of all parties and the court. However, these are exceptional circumstances, and it is submitted that the $500 child maintenance order for the adult son should not be viewed as a precedent for the court having the power to make maintenance orders for adult children in divorce proceedings.

III. Workaround and legislative amendments for greater expediency

13 In the light of the foregoing, practitioners with divorce cases where adult children (who are not mentally incapacitated) still require maintenance should advise the adult children to apply for maintenance themselves. The divorcing parent with whom the children are aligned ("aligned parent") can then apply for the child's maintenance application to be placed before the court hearing the ancillary matters, as was done in the case of *TBZ v TCA*.[22]

22 This court noted that this was allowed by s 29 of the Family Justice Act 2014 (Act 27 of 2014) and s 2(*a*) of the Women's Charter (Cap 353, 2009 Rev Ed) ("WC 2009"). The former provides for the power to transfer proceedings from the Family Court to the General Division of the High Court, and *vice versa*. The latter defined "court" for the purposes of maintenance applications in Pt 8 of the WC 2009 as the General Division of the High Court or a Family Court.

14 In this regard, under the new Family Justice (General) Rules 2024 ("FJR 2024"), the application to consolidate a maintenance application with the ancillary matters can be made pursuant to P8 r3 which provides:

> The Court may order 2 or more actions to be consolidated, or order them to be tried together or one immediately after another, or order any of them to be stayed pending the determination of the other action or actions, if the Court is of the opinion that —
>
> (*a*) there is some common question of law in the actions;
>
> (*b*) the reliefs claimed in the actions concern or arise out of the same factual situation; or
>
> (*c*) it is appropriate to do so.

15 Part 1 r3(1) of the FJR 2024 defines an "action" as "proceedings commenced by an originating application *or* in accordance with Part 3" of the FJR 2024 [emphasis added]. Divorce proceedings must be commenced via an originating application under P2 r2 of the FJR 2024. Maintenance applications (under P8) are commenced via P3, Divs 1 and 2 of the FJR 2024. Given that both divorce proceedings and maintenance applications are "actions" which are covered under P8 r3 of the FJR 2024, they can be consolidated, provided that they satisfy the relevant criteria, as set out above. If the ancillary matters are heard at first instance in the Family Division of the High Court, the FJR 2024 will still apply since it covers proceedings commenced in the Family Division of the High Court as well, pursuant to P1 r2(2) of the FJR 2024.

16 There are good reasons to have the adult child maintenance application and ancillary matters heard together. One of the reasons is that the decision on the division of matrimonial assets and wife maintenance might affect the child maintenance orders, especially if the party who is supposed to pay maintenance is not wealthy. It would therefore be best for the ancillary matters court to be able to deal with all the issues together, so it can make orders which cohere with each other. This would avoid a situation, for example, where the adult child maintenance order made by the maintenance court, which, combined with the wife maintenance order made by the ancillary matters court,

would outstrip the paying parent's income; or where the adult child maintenance order made by the maintenance court is too modest, in comparison with the net worth of the paying parent, because the maintenance court was not privy to certain findings made by the ancillary matters court on the paying parent's income and assets. Of course, these results could be avoided by waiting for the ancillary matters hearing to be over, before hearing the adult child maintenance application. However, this drags out proceedings for the adult child as well as both parents, and generates unnecessary costs from additional post-ancillary matters hearings. Moreover, hearing the adult child maintenance application and ancillary matters together would enable the court to order more expedient ways of getting the child maintenance paid, for example, by ordering it to be paid in a lump sum from the paying parent's share of the matrimonial assets, as was done in *XFD v XFE*.

17 In view of all the considerations above, it is respectfully submitted that the *XFD v XFE* approach of having a single forum hear the adult child maintenance issue together with the other ancillary matters is an efficacious one. This same outcome can be achieved, as stated earlier, through the adult child filing a maintenance application which the aligned parent applies to be heard together with the ancillary matters, as was done in *TBZ v TCA*. However, this seems to be an unnecessary hoop to make the adult child jump through. It would be much more convenient for the adult child and his aligned parent, for that parent to seek the adult child maintenance order as part of the ancillary matters – this would entail less administrative work for all involved, including the parties' lawyers and the court. In this regard, it is suggested that s 127 of the WC could be amended to insert a provision stating that for the purposes of this section, the definition of "child" would include an adult child.

18 One issue which might arise if s 127 of the WC were amended as suggested, is whether the aligned parent is accurately representing the adult child's wishes and needs, so that there will not be a situation where the adult child subsequently or during the ancillary matters hearing alleges that she has been misrepresented or that decisions have been made for her by the

aligned parent without her consent. (For example, the adult child might not wish to apply for maintenance at all and decides to take on part-time jobs and be financially independent, so as not to burden the non-aligned parent. However, the aligned parent might insist on applying for the adult child's maintenance despite this, for her own reasons.) However, this problem could be overcome by requiring the adult child to file her own affidavit in the proceedings, stating her desire to receive maintenance, her consent to the aligned parent seeking an order for her maintenance in the ancillary matters proceedings and listing her expenses and other relevant information. The court could also ask the adult child to attend court as a witness in the ancillary matters proceedings, if necessary, to make sure she understands that a child maintenance order is being sought by the aligned parent, and the evidence and rationale being put forward for this. The adult child would also have to acknowledge that in choosing to have her aligned parent apply for maintenance for her in the ancillary matters proceedings, she would be taken to be bound by the court's decision in the case, and estopped thereafter from filing her own child maintenance application under s 69(3)(*b*) of the WC, and additionally, from filing or deciding not to file her own appeal against the child maintenance order made by the ancillary matters court. In respect of the latter issue, it would have to be the aligned parent, as the party to the divorce proceedings, who would have the right to decide whether to file an appeal. Also, could there be a scenario where the non-aligned parent is the one who applies for maintenance for the adult child against the aligned parent? This would be an extremely unusual scenario – perhaps in a situation where the adult child lives with the aligned parent but keeps asking for money from the non-aligned parent because he is not getting a sufficient allowance from the aligned parent, and the non-aligned parent who may already be giving money to the adult child voluntarily or under a court order (or has no financial means to give the adult child any maintenance) is of the view that the aligned parent ought to pay the adult child a regular allowance. It is submitted that the non-aligned parent could make the application against the aligned parent on behalf of the adult child for the latter's maintenance, since care and control is not an issue with an adult child, and "alignment" is not a legal concept. Therefore, theoretically, either parent should be

able to apply for a maintenance order for the adult child against the other parent. All the issues listed in this paragraph would have to be catered for in the legislative amendments.

19 In conclusion, it is respectfully submitted that *XFD v XFE* was sound in terms of the efficiency of its approach in resolving the adult child maintenance issue. However, it is not in line with the cases of *Thery*, *TBZ v TCA*, and *UAP v UAQ*, and given that *Thery* is a Court of Appeal decision, practitioners would be well advised to follow *Thery*, for the time being. It is to be hoped that the legislative reform recommended above can be implemented sooner rather than later, however, to ensure that dependent adult children and their aligned parents can get their child maintenance orders in the most efficient way possible.