COMMONWEALTH OF THE BAHAMAS **2018/FAM/div/00015**

THE SUPREME COURT

FAMILY DIVISION

BETWEEN:

JULIUS DIANZA CHISHOLM

Petitioner

AND

OPHELIA ARNETTE CHISHOLM

Respondent

Appearances: Mr. V. Alfred Gray of Counsel for the Petitioner
Mrs. Marylee Braynen-Symonette of Counsel for the Respondent

Before: The Honorable Mr. Justice Keith H. Thompson

Dates of Hearing: October 25th, 2018
November 26th, 2018
December 4th, 2018
December 18th, 2018
July 25th, 2019

[1] The parties were joined in holy matrimony on December 28th 1998, the Petitioner being a widower and the Respondent a divorcee. At the time of marrying the Petitioner had five (5) children from his previous marriage and the Respondent had two (2) children from her previous marriage.

[2] At the time that ancillary matters came to be heard, the Petitioner was at least seventy-six (76) years of age and the Respondent seventy (70) years of age having been married for approximately twenty-one (21) years. The Petitioner obtained a decree nisi dated 3rd May 2018 and perfected on 17th May 2018. The decree nisi was made absolute 25th June 2018.

[3] By way of summons dated August 24th, 2018 and filed July 16th 2018, the Petitioner sought an order for the settlement of the matrimonial property. The claim by both parties is that they both owned property prior to their marriage. The Petitioner has disclosed the following properties as being owned either by him or by a company of which he is a shareholder along with his children from his previous marriage. He claims to own a 5% interest in the said company styled as J & J Chisolm Construction Ltd.

[4] The documents disclose the following as being owned by the Petitioner and/or the company.

i. Eight to twelve (8 - 12) acres of land situated in the island of Andros.

ii. Duplex situated on lot No. 9 Hampton Avenue, South Beach valued at approximately $300,000.00.

iii. Vacant lot adjacent to the said duplex at (ii) above valued at about $65,000.00.

iv. Property situated at 4th Street, the Grove which has attached to it a 4 unit apartment complex, three of which are rented at $600.00 per month with the other unit being rented at $1,000.00 per month.

v. J & J Chisolm Construction Ltd., a construction company.

[5] It is the above assets that the Respondent sought to negotiate in that the Respondent is suggesting that she divest herself of any right title or interest in items (i) – (vi).

[6] The Respondent further suggests as a part of the resolution, the following;

a) That the Husband/Petitioner shall pay the wife's costs of the respective transfers and the costs of these proceedings with such costs of case proceedings to be taxed if not agreed.

b) The Husband/Petitioner do forthwith transfer to the Wife/Respondent all of his right, title and interest in and to the property situated at Chester's Bay, Acklins together with the business called and known and doing business as "Chester's Highway Inn Bone Fish Lodge and upon such transfer the Wife/Respondent shall be responsible for the balance of the loan at The Bahamas Development Bank."

c) The Husband/Petitioner shall within ninety (90) days of the date of the order to be made pay to the wife a lump sum of $13,000.00 to assist the wife with the purchase of two vehicles.

d) The Husband/Petitioner shall within thirty (30) days of the date of the Order to be made return to the wife;

i. a 3 rowed all diamond wedding bands;

ii. three (3) gold slave bands ;

iii. a two (2) foot long gold rope chain with a large conch shell nugget;

iv. a 1971 independence mounted gold coin ring;

v. Three (3) diamond stoned ring with garnet studded earrings; failing which the Husband/Petitioner shall pay to the Wife/Respondent a lump sum of $15,000.00 representing one half of the value of the said jewelry.

vi. The Husband/Petitioner shall within ninety (90) days of the order to be made pay to the wife a lump sum of $25,000.00 to assist The Wife/Respondent with renovations and repairs (I take it to the Bone Fishing Lodge at Chester's Acklins).

[7] In the Affidavit of Means of the Petitioner, there is no mention of any possible settlement or resolution save and except for paragraph 18 which provides,

> **"18. All things considered, I am now willing to offer in settlement one of the apartments being Apartment No. (1) in full and final settlement of the matrimonial property and I will, because of my good name continue to pay The Bahamas Development Bank at $1,210.00 per month until the full balance is paid."**

[8] The sole issues to be resolved are;

a) Financial provisions and,
b) Property adjustment.

[9] In this regard we must now turn to the relevant statutory provisions and case law.

THE LAW

[10] There is no question that the Matrimonial Causes Act Chapter 125 of the Statute Laws of the Commonwealth of The Bahamas Revised Edition of 2000 ("The Act"), sections 27 and 28 of the Act confers on the Court the jurisdiction to make certain financial provisions and property adjustment orders.

[11] Section 27 of the Act so far as it is relevant provides

> **"27. (1) – On granting a decree of divorce, a decree of nullify of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or nullify of marriage, before or after the decree is made absolute, the court may make any one or more of the following orders, that is to say-**
>
> **a) an order that either party to the marriage shall make to the other such periodical payments, for such term as may be specified in the order;**
>
> **b) .....**
>
> **c) An order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;**

[12] Section 28 of the Act provides:

> **"28. (1)- On granting a decree of divorce, a decree of nullify of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullify of marriage, before or after the decree is made any one or more of the following orders, that is to say-**

a) **An order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified, being property to which the first-mentioned party is entitled, either in possession or reversion."**

[13] There is also Section 25 of the Act which sets out the purpose for the financial provisions and property adjustment orders which provides;

"25. (1) The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to the provisions of this Act). Under Section 27 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullify of marriage or judicial separation and undersection 31(6) on proof of neglect by one party to a marriage to provide or to make a major contribution towards reasonable maintenance for the other or a child of the family, that is to say-

1. **Any order for periodical payments in favor of a party to a marriage under Section 27 (1), (a) .....**
2. **.....**

3. **Any order for lump sum provision in favor of a party to a marriage under Section 27 (1), (c)..... And references in this Act to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or**

some of the financial provision orders requiring the sort of financial provision in question according to the context of each reference may require.

(2) The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of the Act) under Section 28 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the decree of divorce, nullify of marriage or judicial separation ....."

[14] It does not stop here due to the fact that when a court is deciding issues of financial provision orders and property adjustment orders, the Act by way of Section 29 says that the court when seeking to decide such issues must have regard to the matters set out in Section 29, which provides;

"29 (1) It shall be the duty of the court in deciding whether to exercise its powers under Section 25 (3) or 27 (1), (a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say:-

(a) The income earning capacity property and other financial resources which each of the parties to the marriage has or is likely to have in the FORESEEABLE FUTURE;

(b) The financial needs, obligations and responsibilities which each of the parties to

the marriage has or is likely to have in the FORESEEABLE FUTURE;

(c) The standard of living enjoyed by the family before the break down of the marriage;

(d) THE AGE OF EACH PARTY to the marriage and THE DURATION OF THE MARRIAGE;

(e) Any PHYSICAL OR MENTAL disability of either of the parties to the marriage;

(f) The contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring; and so to exercise those powers as 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 each other."

[15] In order now to approach the issues from a logical position, I will first look at Section 29 of the Act as it relates to the evidence of the parties.

[16] There is no denying that based on the evidence put forward by the parties, the Petitioner is certainly in an advantaged position when we consider income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the **FORESEEABLE FUTURE.**

[17] Paragraph 19 of the wife's affidavit filed October 18th, 2018 states;

> "19. **When the Petitioner and I married he insisted that I give up my career as a music teacher to work with him in the Construction Company. At the time I was teaching music and playing the Organ at the following institutions:**
>
> a. **Prince Williams Baptist High School where I earned $1,800.00 per month;**
>
> b. **Bahamas Baptist School of Music at $500.00 per month;**
>
> c. **Queen's College at $2,353.00 per month**
>
> d. **Bethell Baptist Church at $700.00 per month;**
>
> **In total I was earning from my Music Career some $5.353.00 per month. I gave up my career and income therefrom on the Petitioner's promise that working together we would build a life together and he would always provide for me and love and cherish me ....."**

[18] The Court accepted the evidence of the Respondent/ wife that subsequent to the marriage in 1998, she at the request of the Petitioner/husband resigned the various

employment arrangements she had with various employers. We also accept that this was done pursuant to a plan as between both of them to relocate to the Island of Acklins where they would construct a lodge for the wife to run and manage. The wife was proceeding on the promise of the husband/Petitioner that he would provide for her financially.

[19] I also accepted that apart from perhaps the love of music and work generally, the Respondent/wife was hardworking and had made up her mind to make the lodge a successful business venture.

[20] Based on the evidence which I accept, it is clear that the wife has no other income than the lodge and her pension. In this regard, I take special note that the wife/Respondent prior to the marriage in 1998 was earning approximately $5,000.00 per month.

[21] I accept the various properties claimed to be owned by the parties respectively and or interests one or the other may have in companies or otherwise.

[22] The Respondent says she owns a low cost house in Seven Hills, which she acquired in or about 1976. The house is a two (2) bed 1 ½ bath said to be valued at about $160,000.00.

[23] The Court accepts that Lot 238 Stapledon Gardens was foreclosed on by the bank. It is also accepted that Lot 118 Seven Hills Estates was conveyed to the Respondent's daughter and her husband. Thus the Respondent retains Lot 119 which was tied to Lot 238 Stapledon Gardens.

[24] On the other hand, the Petitioner says whatever he owned he transferred to a company of which his children are the substantive shareholders with him only retaining a 5% interest therein. We take special note that the construction company operates from the Caves Village, West Bay Street.

[25] Unfortunately, the Petitioner has not presented any evidence whatsoever as to his 5% interest, which would have assisted the Court greatly in its deliberation. However, the Court can only proceed on what is before it. The husband says in his affidavit filed October 24th, 2018 at paragraph 22 in response to the Respondent's affidavit filed October 18th, 2018;

> **"As to paragraph 40, the Petitioner has no interest in what the Respondent owned prior to the marriage and expects that the Respondent should not have any interest in what he owned prior to the marriage either."**

[26] In paragraph 6 of the Petitioner's affidavit filed November 6th, 2018, the Petitioner says;

> **"6 After my wife Myrtle died and I was contemplating getting married again, the few pieces of property which we had together, I transferred it to my children by way of a company called Chisolm's Holdings Ltd., in which company I hold only 5% of the shares. The property in that company name is Exhibited as "J.D.C. 1 (a – d).**
>
> **(i) Lots 18 and 19, South Beach Estates valued at about $185,000.00, purchased in 1986 and 1998 respectively;**
>
> **(ii) Two vacant lots in Little Creek South Andros valued together at $25,000.00, which was given to me and my deceased wife by our grandmother.**
>
> **(iii) In 1990 me and my son as trustee, purchased a piece of property in Coconut Grove, Englerston for $18,500.00 and**

I built, together with my children, a Fourplex one of which was used as the office of J and J Chisolm Co. Ltd. Recently that space is rented as a two bedroom apartment."

[27] Without going into all the details of the ownership of the property in Acklins, I accept that the Petitioner and the Respondent jointly own the property on which is located the lodge. I also accept the evidence of the Respondent that:

> **"..... Over the past twenty (20) years of our marriage, the Petitioner has always exercised control over the company and the properties which he transferred to the company."**

[28] The Court is not at all persuaded that the Petitioner would divest himself to the extent that he has virtually no say or control over what he had worked so hard to achieve thereby relying on his children to make up short falls. This is especially so in light of promising his wife the Respondent to care for her financially.

BANK ACCOUNT OF THE PETITIONER:

[29] The Petitioner never denied that the Respondent was actively involved in the various businesses including access to account information. She says at paragraph 57 of her affidavit filed October 18th, 2018;

> **"The Petitioner in addition to his substantial assets hereinbefore referred to also has substantial savings as a result of my direct and indirect contribution in terms of money or money's worth. The Petitioner has savings in Commonwealth Bank in excess of $100,000.00, savings in Bank of The Bahamas, Royal Bank and in the Central Bank. The Petitioner has deliberately failed to disclosed to this Honorable Court his substantial assets and savings; with a view,**

I verily believe, to having me after twenty (20) years of sacrifice, be deprived of my hard earned ability to live comfortably in my senior years."

[30] The Petitioner has produced some account information however, they all seem to be subsequent to the commencement of these proceedings. This I say leaves the claim by the Respondent that there are substantial sums in various banks to be highly plausible. Additionally, the Petitioner has not provided certain account information which was ordered by the Court by way of an Order dated the 28th day of March, 2019 and filed April 12th, 2019, which ordered the following;

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

FAMILY DIVISION

BETWEEN

SUPREME COURT
APR 12 2019
Nassau, Bahamas

2018

FAM/DIV/00015

JULIUS DIANZA CHISHOLM

Petitioner

AND

OPHELIA ARNETTE CHISHOM nee BATEMAN

Respondent

ORDER

Dated the 28th day of March A.D., 2019

BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE KEITH THOMPSON, Justice of the Supreme Court of the Commonwealth of The Bahamas situated at the Ansbacher Building, East Street and Bank Lane, Nassau, The Bahamas.

AND UPON HEARING Mr. V. Alfred Gray of Counsel for and on behalf of the Petiticner and Ms. Marylee L. Braynen-Symonette along with Ms. LaShanda Bain of Counsel for and on behalf of the Respondent.

IT IS HEREBY ORDERED that the Petitioner, Julius Dianza Chisholm and the Respondent Ophelia Arnette Chisholm produce and provide the following:

1. RBC Royal Bank of Canada (Bahamas) Limited copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Petitioner herein, Julius Dianza Chisholm or in the joint names of the said Petitioner, Julius Dianza Chisholm and any other person(s) for the period January 2014 to the present.
2. Scotiabank (Bahamas) Ltd; copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Petitioner herein, Julius Dianza Chisholm or in the joint names of the said Petitioner, Julius Dianza Chisholm and any other person(s) for the period January 2014 to the present.

3. Commonwealth Bank Limited copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Petitioner herein, Julius Dianza Chisholm or in the joint names of the said Petitioner, Julius Dianza Chisholm and any other person(s) for the period January 2014 to the present.
4. Fidelity Bank (Bahamas) Ltd; copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Petitioner herein, Julius Dianza Chisholm or in the joint names of the said Petitioner, Julius Dianza Chisholm and any other person(s) for the period January 2014 to the present.

KHT 10/04/19

5. FirstCaribbean International Bank (Bahamas) Limited/CIBC copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Petitioner herein, Julius Dianza Chisholm or in the joint names of the said Petitioner, Julius Dianza Chisholm and any other person(s) for the period January 2014 to the present.
6. The Bank of The Bahamas copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Petitioner herein, Julius Dianza Chisholm or in the joint names of the said Petitioner, Julius Dianza Chisholm and any other person(s) for the period January 2014 to the present.
7. The Bahamas Development Bank copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Petitioner herein, Julius Dianza Chisholm or in the joint names of the said Petitioner, Julius Dianza Chisholm and any other person(s) for the period January 2014 to the present.
8. RBC Royal Bank of Canada (Bahamas) Limited copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Respondent herein, Ophelia Arnette Chisholm or in the joint names of the said Respondent, Ophelia Arnette Chisholm and any other person(s) for the period January 2014 to the present.
9. Scotiabank (Bahamas) Ltd; copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Respondent herein, Ophelia Arnette Chisholm or in the joint names of the said Respondent, Ophelia Arnette Chisholm and any other person(s) for the period January 2014 to the present.
10. Commonwealth Bank Limited copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of

the Respondent herein, Ophelia Arnette Chisholm or in the joint names of the said Respondent, Ophelia Arnette Chisholm and any other person(s) for the period January 2014 to the present.

11. Fidelity Bank (Bahamas) Ltd; copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Respondent herein, Ophelia Arnette Chisholm or in the joint names of the said Respondent, Ophelia Arnette Chisholm and any other person(s) for the period January 2014 to the present.

12. FirstCaribbean International Bank (Bahamas) Limited/CIBC copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Respondent herein, Ophelia Arnette Chisholm or in the joint names of the said Respondent, Ophelia Arnette Chisholm and any other person(s) for the period January 2014 to the present.
13. The Bank of The Bahamas copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Respondent herein, Ophelia Arnette Chisholm or in the joint names of the said Respondent, Ophelia Arnette Chisholm and any other person(s) for the period January 2014 to the present.
14. The Bahamas Development Bank copies of all account statements including but not limited to savings, chequing and/or term accounts whether held in the sole name of the Respondent herein, Ophelia Arnette Chisholm or in the joint names of the said Respondent, Ophelia Arnette Chisholm and any other person(s) for the period January 2014 to the present.

BY ORDER OF THE COURT

REGISTRAR

PENAL NOTICE

IF YOU THE WITHIN NAMED JULIUS DIANZA CHISHOLM NEGLECT TO OBEY THIS ORDER WITHIN THE TIME SPECIFIED HEREIN, YOU MAY BE HELD IN CONTEMPT OF THE COURT AND LIABLE TO IMPRISONMENT

PENAL NOTICE

IF YOU THE WITHIN NAMED OPHELIA ARNETTE CHISHOLM NEGLECT TO OBEY THIS ORDER WITHIN THE TIME SPECIFIED HEREIN, YOU MAY BE HELD IN CONTEMPT OF THE COURT AND LIABLE TO IMPRISONMENT

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

FAMILY DIVISION

B E T W E E N

JULIUS DIANZA CHISHOLM

Petitioner

AND

OPHELIA ARNETTE CHISHOLM nee BATEMAN

Respondent

ORDER

2018

FAM/DIV/00015

Braynen Symonette & Co.

BRAYNEN SYMONETTE & CO.
Chambers
Suite A3, Amelia House
Mt Royal Avenue (North) Hawkins Hill
Nassau, The Bahamas

Attorneys for the Respondent

[31] No statements were forthcoming from the Petitioner's Royal Bank Account, Central Bank Account or Commonwealth Bank Account until May 27th, 2019 or thereabout.

[32] **THE FINANCIAL NEEDS, OBLIGATIONS AND RESPONSIBILITIES WHICH EACH OF THE PARTIES TO THE MARRIAGE HAS OR IS LIKELY TO HAVE IN THE FORESEEN FUTURE.**

[33] At paragraph 38 of the Respondent's affidavit filed 18th October, 2018, she outlines in a chart her personal financial needs and obligations.

"That in addition to the expenses relative to the Lodge my personal financial needs and obligations are as follows:

EXPENSES	TOTAL
Travel related expenses to Nassau least once per month	$ 825.00
Medication	$ 1,200.00
Medical (Optomologist, Medical)	$ 700.00
Food @ $315.00 per week	$ 1,260.00
Supplements	$ 200.00
Dental	$ 300.00
Clothing (Church/casual/business/hats/shoes etc.)	$ 300.00
Physical Therapy	$ 500.00
Mature Undergarment	$ 100.00
Transportation – Gasoline	$ 520.00
Licence &/Inspection	$ 100.00
Car Insurance	$ 58.00

Car Maintenance	**$ 333.00**
Personal Grooming	**$ 250.00**
Housewares	**$ 75.00**
Cell Phone	**$ 150.00**
TOTAL AVERAGE NEEDS AND OBLIGATIONS	**$ 6,871.00"**

[34] I accept that the evidence clearly shows that the Respondent has no other income except that which is generated by the lodge and her pension. Of special note also is paragraph 37 of the affidavit filed October 18th, 2018.

> **"37. I am a diabetic and was paralyzed in or about 2008. For my paralysis I underwent major back surgery, accruing substantial medical expenses which continues to date as I am in constant need of physical therapy. I further suffer major complications with my sight consequence on the diabetics. I am restricted to a special diet and costly medications including three (3) insulin shots every day for the rest of my life. I have no medical insurance."**

[35] The Respondent pegs her personal financial needs and obligations in total as being $6,871.00. She also sets out her further financial needs including a vehicle for Acklins at $5,000.00 and a vehicle for Nassau at $8,000.00 and $25,000.00 to assist with renovations and repairs to the lodge.

STANDARD OF LIVING ENJOYED BY THE FAMILY BEFORE THE BREAKDOWN OF THE MARRIAGE.

[36] The evidence strongly suggests that the Petitioner and the Respondent for an extended period of time lived a comfortable life.

[37] I go so far as to say that based on the evidence, both the Petitioner and Respondent meticulously planned their transition to Acklins to construct and operate the lodge for a better and comfortable life. The evidence further discloses that the lodge operated and managed by the Respondent made such an impact in Chesters that she became a respected hotelier in the tourism sector and the community. This won her membership on the Bahamas Out Island Promotion Board and an interview by the Nassau Guardian as a member of the Bahamas Hotel and Tourism Association. As a part of operating the lodge they also purchased two fishing boats.

THE AGE OF EACH OF THE PARTIES AND THE DURATION OF THE MARRIAGE.

[38] The parties were married for approximately twenty (20) years. Based on the evidence, at the time of the hearing the Petitioner was approximately Seventy-six (76) years of age and the Respondent Sixty-seven (67) years of age.

ANY PHYSICAL OR MENTAL DISABILITY OF EITHER OF THEPARTIES OF THE MARRIAGE.

[39] The Respondent in her affidavit filed October 18th, 2018 says at paragraph 37:

> **"37. I am a diabetic and was paralyzed in or about 2008. For my paralysis I underwent major back surgery, accruing substantial medical expenses which continues to date as I am in constant need of physical therapy. I further suffer major complications with my sight consequence on the diabetics. I am restricted to a special diet and costly medications including three (3) insulin shots every day for the rest of my life. I have no medical insurance."**

[40] The Petitioner offered no evidence as to any physical or mental disability on his part.

The contribution made by each of the parties to the welfare of the family, including Any contribution made by looking after the home and caring for the family.

[41] I would be hard pressed not to highlight several paragraphs of the Respondents Affidavit of Means filed October 18th, 2018, as they meticulously set out her contributions to the welfare of the family and have not been denied by the Petitioner. In fact, the Petitioner says in his affidavit of filed October 24th, 2018 at paragraph 2.

> "The contents of paragraphs 1 to 11 of the Respondents Affidavit ARE GENERALLY ADMITTED, but as for paragraph 12, the Respondent and I are both, signatories on the business account but as soon as any monies are deposited to that account by clients it is transferred the same day to an unknown account on which the Petitioner does not sign and has received no benefit whatsoever over the last five (5) or six (6) years."

[42] Paragraphs 8 - 11 and 20, 25 - 32 of the Respondents affidavit state;

> **"8. The Petitioner and I were married on 28th December, 1998 when the Petitioner was 56 years old and I was 47 years of our marriage. During the almost twenty (20) years of our marriage I sacrificed my career to be a dutiful wife to the Petitioner who was and is not only a Building Contractor but a Pastor as well.**
>
> **9. Throughout our marriage I worked at the Petitioner's side in our Church, Pilgrim Native Baptist Church in Acklins. As his wife, I literally wrote about 99% of all the Sermons delivered by the Petitioner, I organized and hosted all his church meetings, in**

fact I was his Executive Secretary and the Organist in the Church. At home I kept our home, wash and ironed my husband's clothes, cooked three (3) meals per day for him. Further whenever he was on a construction job, I not only cooked and hand delivered his lunch, but I did so for his workers as well.

10. **Throughout the marriage as a Christian and Pastor's wife, I submitted my body, my talents in music and finance together with all of my savings and resources to my husband for the benefit of our family, believing in the Petitioner's promise to always provide for me both financially, emotionally and spiritually.**

11. **I verily believe that the Petitioner's treatment towards me drastically change when his adult children begun interfering in our marriage, so much that the Petitioner became physically violent towards me.**

20. **On the Petitioner's promise I gave up my career and went to work with him in the Construction business, where I performed all weekly payroll banking. I was a signatory on the Company's Scotia Bank Account. Payroll for the company was occasionally in excess of $100,000.00. My duties included, but were not limited to Rental Agent/Manager of the six (6) rentals, which included all maintenance, i.e. personal mowing yards, reading apartments when vacant, cleaning windows, advertising/prospective tenants viewings etc., Court appearances, acting as collection agent, evictions, inspections, and filing Court documents. I was further responsible for all administrative work and was required to solicit, door to door,**

street to street, for new business on behalf of J & J Chisolm Construction, regardless of the constituency or subdivision.

25. **Acklins Property- Chester's Highway Inn Bonefish Lodge. Subsequent to our marriage, I assisted the Petitioner in acquiring Crown Grant of some 3.5 acres of land. The Grant was acquired in the name of the Petitioner and his now deceased mother. In or about 2003 the Petitioner conveyed only one half of the Crown Grant to him and I jointly. It was always our dream to relocate/ retire to Acklins and start a motel/lodge business. It was in fact this dream that motivated me to work do tirelessly in generating business for the Construction Company.**

26. **In or about 2002/2003 we had saved sufficient funds from J & J Chisolm Construction, together with the sale of a property in Golden Gates to commence the construction of our dream "Chester's Highway Inn Bone Fish Lodge". In or about 2004/2005 the Petitioner and I relocated to Acklins full time to closely manage the construction. From our savings we purchased the material and the Petitioner carried out the construction work.**

27. **We constructed 4 units, each comprising one bedroom, one bathroom, followed 2 years later by the construction of a restaurant "Junette's Café & Clubhouse. While the Petitioner carried out the construction work I alone purchased all of the furniture and decorated the units. I further purchased all items to furnish the restaurant from cutlery to commercial stove, chairs etc. I expended all funds that I had into realizing our dream including providing an unsecured overdraft facility from Barclays in the amount of $25,000.00 for the tiling of the Lodge.**

28. That on completion of the Lodge the Petitioner and I agreed that one of the four units would serve as out matrimonial home while the remaining 3 units would be used for our fish flying guests.

29. The Petitioner and I further agreed that the management and operation of the Lodge would be my sole responsibility. I made the applications and did all the work necessary to obtain out Hotel Licence, Business Licence, Liquor Licences etc. I was and am solely responsible for the marketing of the business. I did international promotions not only for the Lodge but for Acklins and the Bahamas as well, by the way of Ministry of Tourism. As a result of my ownership of the Lodge I was selected to be a member of the Bahamas Out Island Promotion Board as an arm of the Bahamas Tourism Department. There is now produced and shown to me marked Exhibit "OAC 3" a true copy of the current Business Licence Certificate 2018 together with a June 2013 article of me in The Nassau Guardian.

30. That in addition to the above, I further am responsible for the booking of guests, collecting them from the airport, arranging their fly fishing or deep water fishing tours, cooking, cleaning (with help) and the general operation of the Lodge.

31. That to promote the bone fishing, we purchased a 17" flat bone fish boat at a cost of $15,000.00, which can accommodate 3 to 4 persons at $600.00 per trip. We later purchased another boat for deep water fishing, which can generate income of about $600.00 to $800.00 per day for deep water fishing.

32. **That from its inception I managed and operated the Lodge without the assistance of a full-time staff. As needed, particularly during the peak season, November to May, I would hire persons from the community to assist me. The rate for the rooms is $157.00 per night (single) and $350.00 per night double occupancy. From the income, we have the following operating expenses, utilities levy fees, hotel taxes, maintenance and upkeep of the property, business licence fees, inventory for the restaurant, mail boat costs, payment to boat guide, maid, yard keeper, promotional costs and advertisements, guests' transportation."**

[43] All of the above paragraphs set out the contributions made by the Respondent to the welfare of the family.

[44] It is also the evidence of the Respondent that she assisted with tertiary educational expenses of Petitioner's children.

[45] At paragraph 43 of her Affidavit of Means she says,

> **"I refer to Paragraph 43 of the Petitioner's Affidavit filed herein on 16th July, 2018 ("The Petitioner's Affidavit") and state that contrary to the assertion made herein the Petitioner and his adult children whom I assisted in educating, had made numerous attempts prior to September 2017 to force me out of my business....."**

[46] The evidence bears out the fact that the Petitioner certainly brought more financially to the marriage than the Respondent. However, the Respondent through monies worth brought great assistance to the marriage. It would in my opinion have been an extremely costly thing to hire persons to perform all of the

duties and responsibilities the Respondent carried out for literally no re-numeration. There is no denial by the Petitioner that the Lodge was successfully operated.

THE LAW

[47] Having methodically set out all of the above, the court is still obligated to have regard **TO ALL THE CIRCUMSTANCES OF THE CASE.**

[48] Counsel for the Petitioner put to the court that whatever property the Petitioner had was not matrimonial property as those properties were already transferred to a company. The properties were transferred days before the marriage took place.

[49] In the case of **COLLIE Vs. COLLIE 2012/FAM/DIV/00432** the learned Chief Justice Sir Michael Barnett as he then was said at paragraphs 21-23.

> **" 21. I am not sure whether the Husband is simply saying that the Court cannot require Westfall to convey Unit 1 to the Wife or whether he is saying that the Husband's interest in Westfall is not a marital asset that can be taken into account.**
>
> **22. Even if the Court were to take the view that the Husband's interest was limited to a beneficial interest in three-fifths of the value of the assets of Westfall, it is an interest that must be taken into account in discharging the Court's duty "*to view the circumstances of the case broadly and come up with a proposal which meets the justice of the case and results in a fair outcome" [paragraph 13 of Husband's closing submissions].***

23. As I have said on previous occasions, in the absence of any reason to do otherwise, fairness is equality."

[50] And at paragraph 27 and 28 he says;

"27. "I agree that I cannot cause Westfall to transfer Unit 1 to the Wife. Notwithstanding, the powerful submissions by Counsel for the Wife, I am not prepared to treat Westfall, as the alter ego of the Husband and I accept that his three children have a two-fifths interest in the property.

28. I will however, order the Husband to pay to the Wife the sum of $340,000.00 on or before the 28th February, 2015. I will also direct that the Husband's 3,000 shares in Westfall be held as security for that debt. The shares are to be immediately placed in the joint custody of the Counsel for the Husband and the Wife. In the event the sum of $340,000.00 is not paid on or before the 28th February, 2015 the shares shall be sold at public auction."

[51] I can state right away that due to the age of the parties, the issue is not housing but the financial needs of the parties. In other words, sufficient income access to meet the respective needs of each party.

[52] It is trite that the law provides for periodic payments. However, certain circumstances may not be conducive for such form of maintenance. In some cases depending on the factors to be taken into consideration, it may dictate that a clean break is more suited.

[53] The case of **S V S. S [1977] Fam. No. 127** seems to me to be of great assistance when looking at things such as contribution to the welfare of the family etc.

[54] OMROD LJ. Delivering the judgment said;

"The case is unusual in one sense, it is a case in which the court is dealing with a second marriage between two persons of mature years, both of whom had previously been married, and whose marriage lasted in fact a very short time, a total of about two years altogether, or perhaps a little less. The case, therefore, is quite different from what one might call the average run of cases, the sort of cases that were dealt with by this court in Wachtel v. Wachtel [1973] Fam. 72 and it requires a different approach.

The relevant facts as far as the case is concerned are these: the marriage took place on May 23, 1970. At that date the husband, who is a doctor – and perhaps I might interpose here that for obvious reasons it would be convenient if this case were not to be reported using the full names of the parties – was 53 and the wife 52, so they are now both either 59 or within months of being 59. The husband was a widower who had some grown-up children; the wife had divorced her husband some time before and she had one son. Both these first marriages had lasted a long time.

The husband has still only one child dependent upon him, a boy who is now at university and is approaching 21 years of age. The parties met in May 1969, through a marriage bureau, both of them being anxious to find another partner. They got to know one another relatively slowly; they had a holiday together that year, they lived together in the husband's house from time to time before they actually married, and it is said that they considered their respective financial positions quite carefully.

The wife, at the time when she married, was a fully qualified secretary and a teacher in secretarial studies. She was working full time at that period and had worked full time for some period before, and she was earning some £2,600 a year. She owned her own house, which was described as a nice, pleasant semi-detached house in a good neighbourhood; it was a house that she was buying on mortgage. The position appears to be that she had had a previous house in the south of England, which she had sold, she moved up to the Durham area to take up this post that she was holding, she was housed temporarily by the local authority and then found the house which I have mentioned which she bought.

The husband was living, and is still living in what had been his original matrimonial home, a house in Durham itself, which it is agreed is now worth something of the order of £28,000. The wife, after considering her position, came to the conclusion that obviously she did not need her own house; that it would be better for them to move into his although I think it was some distance away from her work, but she had a car. So it was decided to sell her house; she sold it in 1970 for the sum of £6,750, she paid off the mortgage, leaving her with a balance of about £4,000.

She decided – and I do not think there is any suggestion that her husband demurred in any way – to give the bulk of that sum of £4,000 to her son, who had recently married, in order to help him set up house; in effect, she gave him the bulk of that money. So she now has no capital at all.

It seems that the marriage was not successful. The reasons for this are not relevant and do not need to be gone into in any great detail. They parted in September 1972. Before that, in June 1972, the wife

had had an acute depressive illness; she had been in hospital for a matter of three weeks or a month also, and was under treatment for some little time after that. Presumably her depression was due to the fact that this marriage had gone wrong, and she must have been in a difficult position, as no doubt was also the husband. In the circumstances it was inevitable that the wife should leave, because the house was plainly her husband's house.

She had an elderly mother who was in need of attention at that time, and she went to stay with her for a time. At that stage she started proceedings for judicial separation on the ground of section 1 (2) (b) of the Matrimonial Causes Act 1973. I daresay the reason why she started proceedings for judicial separation was that this was a case in which, as the potential widow of a doctor, she had substantial pension prospects for him – I do not know. The husband filed an answer by way of denial in those proceedings, but they dragged on, nothing effective being done in that suit for a long time. The marriage was eventually dissolved in September 1975 on a second petition by the wife on the ground of two years' separation.

The wife during and after the marriage and after the separation, continued with her job, she continued in the job until May 1973, when she gave it up. That date coincides in point of time with an application by her for alimony pending suit, and clearly the husband has felt that the two events were not unconnected, and perhaps has been jailed to some extent by that fact. She herself said – and there has been some medical evidence to support this – that by that time she was not in a good state of health; she was suffering from a frozen shoulder, diverticulitis and she also had depression from time to time. There is no point now in investigating that part of the history, the court has to deal with the situation as it finds it. The only comment one would

make in passing is that it is not very likely that a woman who had worked all her life would give up a secure job in order to improve – her bargaining position in maintenance proceedings, unless she thought she was going to do exceptionally well out of the maintenance proceedings; and I cannot help thinking myself that if she did anything like that she was in effect cutting off her nose to spite her face, so I do not think that this is a very useful point to pursue.

There was an order made by consent in September 1973 at the rate of £1,000 per year less tax by way of maintenance pending suit. There was a subsequent application by the wife to vary that on the ground that she had not appreciated the incidence of tax on that order. Again by consent the order was increased in January 1974 to £1,428.

After that the wife went to Australia to see friends; she stayed there for quite some time, working a little on and off in Australia and earning a certain amount of money. In January 1975, partly because the proceedings seemed to have come to a total stop and partly because I think he thought the wife did not need the money in Australia; the husband ceased to pay. Eventually, in February 1975, he applied to revoke the order for maintenance pending suit. The result of those manoeuvres, as I have indicated; was that in April 1975, the registrar stayed the judicial separation petition and gave leave to the wife to file a second petition, which she did, and in due course she made another application for maintenance pending suit, and on September 16, 1975, an order at the rate of £1,164, a year, less tax, was made. As I have mentioned, a decree nisi was pronounced on September 8, 1975, and the matter of financial provision on a permanent basis came before Mr. Registrar Curry on December 10. There were four affidavits from the parties and the facts are really not in issue in any substantial respect.

At that time the petitioner was earning about £450 a year as a part-time teacher, without very much in the way of prospects; I will come later to deal with the precise figures.

When the matter came before the registrar, the argument seems to have proceeded very largely on the footing of what was the right fraction to choose in this case. I think, with respect to the registrar, and to the judge, a lot of confusion has crept into this case by concentrating over much on trying to find the right fraction, it being common ground as the wife's counsel from the outset made it clear, that she was not asking for a one-third division mainly on the ground that the marriage had lasted so short a time.

In the event, the registrar selected as a fraction one-seventh of the joint income. In actual figures, he took the husband at £14,600, plus the wife's £450; he divided the total by seven and produced a figure of £1,700 a year. He decided that the wife should have £7,000 by way of lump sum, to provide herself with a small house or flat, or alternatively, an income if she chose to rent accommodation.

The judge simply accepted the registrar's approach, and I do not think that in the course of his judgment he added anything very much to the registrar's reasoning. The only comment he did make, to which perhaps I ought to refer, was that he said he did not see why the husband should indirectly have to provide for the wife's son and daughter-in-law. That was of course of reference to the fact that the wife had sold her own house in 1970 and given the proceeds of sale, or most of them, to her son. With respect to him, I do not think that is a fair comment by the judge, it was plainly a perfectly reasonable arrangement for the wife to make in 1970, she then had all the

prospects of a successful marriage to a successful man and it may well be said that at that time she certainly did not contemplate that she would need capital of the order of £4,000 in the foreseeable future. It was also known to her that the husband himself had made perfectly sensible arrangements to provide some capital for his own children, to a considerable extent more than she had done. So I do not think the criticism in that observation was justified.

The adoption of this one-seventh fraction is, and must be in the circumstances, a purely arbitrary exercise. The wife's counsel was arguing for one-fifth, and to choose one-seventh seems to be simply to pluck a fraction out of the air. It has the disadvantage of course, that it fixes the sum without any regard to the needs of the wife; it leads to a very unsatisfactory situation, in which this husband is ordered to pay over £7,000 capital, which is not enough on any view to enable the wife to buy a reasonable house, and at the same time it deprives the husband altogether of some £7,000 of his capital resources. In my view it is much easier, and better in these cases, to follow section 25 of the Act of 1873 and to perform the exercise there required, namely, to ascertain the means of the parties and their resources, and the charges and obligations that they have to meet; and also to take account of the needs of the parties and then have regard to such other matters as are set out there, such as contribution to the family welfare – obviously, in a case like this, not very great and Miss Booth in this court has made no attempt to place any great reliance, or indeed any reliance, on that aspect of it. The length of the marriage has to be taken into account also; and again Miss Booth has readily conceded that this was a quite short marriage.

So it seems to me that the primary consideration is to look at the needs of the wife first of all; and, having made some assessment of the need,

then to check the resulting figure that emerges against the resources of the husband and at that stage see what the ratio of the one to the other is, and to consider how, assuming an order for the lump sum, and for the periodical payments order – how the two parties will stand in relation one to the other, and relate that to all the circumstances of the case, the consequent calculations become very much easier and very much more logical, and discussion on the case will become very much more constructive."

[52] Also in the case of C v. C the facts of which were;

"The wife suffered from a form of dyslexia and had left school without much formal qualification. In spite of her handicap she worked hard and successfully, eventually becoming the regional director of a business. She was able to buy a house for herself and also one for her mother, though both were subject to a mortgage. When she was made redundant her self-confidence was severely undermined and for a time she became ill and unable to work. With mounting debts she was quite unable to cover she took a dramatic decision and became a high class prostitute in May 1991. In August of that year the husband utilized her services In October 1991 they became engaged and the wife immediately ceased work as a prostitute. They married in March 1992 and their child was born in October 1992. The marriage disintegrated after only 9 ½ months and came to an end on 31 December, 1992. The wife obtained a decree nisi in July 1993 and it was made absolute in February 1994. In November 1993 the wife began proceedings for ancillary relief.

The Judge determined the wife's claims in May 1996. She was aged 40 and the husband was 59. Their child had serious health problems. The Judge ordered that the husband pay the wife a lump sum of

£195,000 on her vacating the matrimonial home and transferring her interest to him; that the husband should pay [periodical payments of £19,500 a year for her during their joint lives until remarriage or further order and periodical payments of £8,000 a year to the child; and that a house belonging to the husband should stand charge as security for the periodical payments."

The husband appealed:

Held – dismissing the appeal: (1) This was a highly unusual case and its features made it unique. As to the principles of law to be applied, they were set out in ss 25 and 25A of the Matrimonial Causes Act 1973. The Judge had clearly had those provisions in mind and apart from the treatment of the issue of the term of periodical payments and as to the way in which he treated the duration of the marriage, there was no substantial complaint that he erred in law. As to credibility, the Judge had found that the husband had dishonestly and remorselessly sought to conceal or minimize the extent of his income and capital and had set out to deceive the wife and thereby the court. Had it not been for the determination and skill of the wife's professional team he would have succeeded. Those who set out to deceive the court forfeited the sympathy of the court. If as a result the Judge had found for the wife at the top of the bracket within which reasonable disagreement was possible, the Judge could not be criticized for so doing. The Judge held that the husband had an income of £100,000 a year and capital of £1m. The Judge found that both of the two properties the wife had purchased on mortgage now had substantial negative equity and that the wife was unfit for work and would be likely to remain so for a substantial time to come.

(2) The very short duration of the marriage was obviously a crucial factor in this case. The Judge had observed that in the case of a short, childless marriage which had not in the long-term had the effect of undermining the earning capacity of the dependent party, the provisions of ss 25 and 25A of the 1973 Act operated normally so as to allow the dependent party a short period to rehabilitate herself to her pre-marital level. However, the Judge had found that although the marriage was very short, it had had profound and continuing consequences on the earning capacity of the wife by virtue of her still demanding commitment to the child and the impact upon her health of the break-up of the marriage. The Judge went on to find that even though it might be inappropriate to limit support for the wife to a short period, the short period of the marriage might be relevant as to quantum. In the present case the requirement of s 25(1) of the 1973 Act as amended by the Matrimonial and Family Proceedings Act 1984 required the welfare of the child to be given the first consideration.

H v H (Financial Provisions: Short Marriage) (1981) 2 FLR 392 and Attar v Attar [1985] FLR 653 distinguished on the facts.

(3) When the court was considering the wife's needs and the amount of the order to be made, the structure of s25 of the 1973 Act showed that financial needs were one of several factors to be established. Financial need, objectively appraised, should be distinguished from what the claimant subjectively required and from bare necessity. The reasonable needs of the wife were for a sufficient level of financial provision to ensure that she was reasonably free from financial pressures and able to provide a reasonable standard of living for the child. In assessing quantum need was not a paramount or determinative factor. The wife had a long history of psychiatric and mental disturbances. The award made by the Judge was generous but

he had well in mind the needs of the wife and those of the child and had given prominent, though not paramount, consideration to the factor of the child's welfare. Many courts would not necessarily had allowed the high level sanctioned but the Judge had not stayed beyond the boundary of what properly lay within his power to award.

Lord Justice Ward:

"This is an appeal by Mr. C, whom, purely for convenience I shall call the husband, against the order of Mr. David Harris, QC sitting as a deputy Judge of the High Court on 3 May 1996 when he determined the petitioning wife's claims for ancillary relief upon their divorce by ordering, so far as is material for the purposes of this appeal, first, that the husband do pay the wife a lump sum of £195,000 upon payment of which she was to vacate the matrimonial home and transfer her interest in it to him; secondly, that he should pay periodical payments to her at the rate of £19,500 a year during their joint lives or until remarriage or further order,; order; thirdly, that he pay periodical payments to the only child of the family, J, at the rate of £8,000 a year, fourthly, that a property of his at Holland Park Mews stand charge as security for the payment of those periodical payment orders; and, fifthly, that he pay costs on an indemnity basis.

The Judge gave leave for his judgment to be reported provided the anonymity of the parties was preserved and in view of the fact that there is a young child involved, and I would make a similar reporting restriction.

The husband contends that the capital provision should be limited to £75,000, his primary submission being that such sum should be settled upon J during his minority with reversion to the husband; his

alternative submission was that, if a lump sum is to be paid at all to the wife, it should be a lump sum of only £75,000. Secondly, he submits that the periodical payments should be reduced to £4,000 a year for J and £10,000 for the wife and, moreover, that a term of two years should be imposed on that order, though without any prohibition against extension pursuant to s. 28(1A) of the Matrimonial Causes Act 1973 as amended by the Matrimonial and Family Proceedings Act 1984. He submits that the order for secured periodical payments should be dismissed and he asks for his costs here and below. It was only in idle musing that I reflected that the costs, which the Judge estimated in his judgment to be approaching £300,000 (and there will be a good deal more as a result of this appeal), would easily have satisfied the £120,000 by which he seeks to reduce the lump sum as well as providing periodical payments for the wife and child at the full rate until the boy was 18. One cannot but wonder whether something has not gone wrong somewhere.

I begin this judgment with an emphasis that it is a highly unusual case and it should never be forgotten that its features make it unique. The wife is 40 years old. She first married aged about 22. That was a disastrous marriage destroyed by her husband's violence which, she says, resulted in the loss of the child she was then carrying. The Judge indeed found that;

> **"It seems likely that the abusive experience of the first marriage played its part in the vulnerability of personality from which she suffers."**

She also suffers from a form of dyslexia which markedly limits her range of skills and undermines her confidence and self-esteem. She left school without much formal qualification, so that work even as a

filing clerk was then beyond her. None the less, and tribute is to be paid to her, she then worked by day as a laboratory technician and by night to obtain certain basic qualifications in business studies. That pressure of work led to some nervous breakdown for which she required treatment over a number of months.

As a result of disturbances at her place of work by her first husband she lost that laboratory employment. It was a serious setback but again, showing her resilience, she bounced back and early in 1980 developed a successful business related to the transporting of pop musicians. Unfortunately that collapsed in 1985. She then took much less well paid employment with a police vehicle clamping unit. From there she was recruited to become the regional director of a cold storage business, where, as she, she put it, "blossomed under the responsibility and confidence placed in her by her employers".

It was during this period of good employment that she bought her first property and sold it to acquire a two-bedroom flat in Ealing for some £100,000. In April 1991, again with the aid of a mortgage, she bought a two-bedroom flat in Sutton, originally intending that it should be a home for her mother. Alas, the catastrophe of redundancy struck her down and as a result, as the Judge found, her self-confidence was severely undermined and for a time she was quite ill and unable to work. With mounting debts which she was quite unable to cover, she took the dramatic decision in May 1991 to join the oldest profession and to work as a high class call-girl. It seems to have been a profitable occupation. But it was and remained work of which she was ashamed and she hoped that once her difficulties were resolved she could once again assume what she calls "a more conventional career".

It was however, whilst engaged in prostitution that she met the husband. Less is known about his background. He is 59 years of age. He is English. He was previously married with two daughters of that marriage. His working life has been spent mainly in shipping and latterly in trading in crude oil. He has travelled quite extensively. In August 1991 he utilized the wife's services as a prostitute. There was an issue between them at the trial which the Judge resolved by accepting her account of the development of their relationship. She said, and the Judge accepted, that the husband;

> ***"... told me it was love at first sight. He bombarded me with faxes promising me security and proclaiming his love for me [He] wanted to become engaged immediately and he proposed three weeks later when he paid for me to join him in Athens."***

In October 1991 following her return to England the wife accepted that proposal of marriage and immediately ceased work as a call-girl. They were married in Las Vegas on 13 March 1992. Shortly before that marriage the wife realized that she might be pregnant and that pregnancy was confirmed after their return from honeymoon. In the proceedings, the husband expressed the belief that;

> ***"The wife became pregnant with a view to marriage and, perhaps this was her well-planned scheme to have her debts ... paid by me".***

That as a plank of his case as he presented it in his evidence to the Judge. As the Judge recognized, if proved, it would have been a most material circumstance affecting the orders that were to be made. The Judge found, however;

"I am quite satisfied ... that the husband has deliberately sought to misrepresent the background to the pregnancy. I entirely accept the wife's evidence ... that the husband was very keen to have a child, and on one occasion even returned from Greece to have intercourse with her, after she had telephoned him to indicate that she may be ovulating ... I accept her evidence that she fell in love with him, that she agreed to marry him well before she became pregnant, and that it was the husband's insistent wish that they should have a child as soon as possible. As will become apparent as this judgment proceeds, the husband has desperately fought to reduce his financial liability to the wife, sometimes indeed to the extent of deception and misrepresentation. The false account he has given of the circumstances of the marriage and the pregnancy is in my view yet another example of this approach."

[53] In the case of **WHITE V WHITE [2000] UKHL 54 LORD NICHOLLS OF BIRKENHEAD** at paragraphs 24 and 25 states;

24. "Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. As Butler-Sloss LJ said in *Dart v Dart {1996}* 2 FLR 286, 303, the statutory jurisdiction provides for all applications for ancillary financial relief, from the poverty stricken to the multi-millionaire. But there is one principal of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and

wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contributions. This is implicit in the very language of paragraph (f); '.... The contribution which each has made or is likely to make ..... to the welfare of the family, including any contribution by looking after the home or caring for the family.' If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earned and against the home-maker and the child-carer. There are cases, of which the Court of Appeal decision *in Page v Page* (1881) 2 FLR 198 is perhaps an instance, where the court may have lost sight of this principle.

25. A practical consideration follows from this. Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the

extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination."

[54] Also in **WHITE V WHITE [2001] 1 AC 596 LORD NICHOLLS OF BIRKENHEAD** said at paragraphs 26 - 36;

"Equality:

26. This is not to introduce a presumption of equal division under another guise. Generally accepted standards of fairness in a field such as this change and develop, sometimes quite radically, over comparatively short periods of time. The discretionary powers, conferred by Parliament 30 years ago, enable the courts to recognize and respond to developments of this sort. These wide powers enable the courts to make financial provision orders in tune with current perceptions of fairness. Today there is greater awareness of the value of non-financial contributions to the welfare of the family. There is greater awareness of the extent to which one spouse's business success, achieved but much sustained hard work over may years, may have been made possible or enhanced by the family contribution of the other spouse, a contribution which also required much sustained hard work over many years. There is increased recognition that, by being at home and having and looking after young children, a wife may lose forever the opportunity to acquire and develop her own money-earning qualifications and may lose forever the opportunity to acquire and develop her own money-earning qualifications and skills. In Porter v Porter [1969] 3 All ER 640, 643-644, Sachs LJ observed that

discretionary powers enable the court to take into account the human outlook of the period in which they make their decisions'. In the exercise of these discretions 'the law is a living thing moving with the times and not a creature of dead or moribund ways of thought.'

27. Despite these changes, a presumption of equal division would go beyond the permissible bounds of interpretation of section 25 which differs from the applicable law in Scotland. Section 10 of the Family Law (Scotland) Act 1985 provides that the net value of matrimonial property shall be taken to be shared fairly between the parties to the marriage when it is shared equally or in such other proportions as are justified by special circumstances. Unlike section 10 of the Family Law (Scotland) Act 1985, section 25 of the 1973 Act makes no mention of an equal sharing of the parties' assets, even their marriage-related assets. A presumption of equal division would be an impermissible judicial gloss on the statutory provision. That would be so, even though the presumption would be rebuttable. Whether there should be such a presumption in England and Wales, and in respect of what assets, is a matter for Parliament.

28. It is largely for this reason that I do not accept Mr. Turner's invitation to enunciate a principle that in every case the 'starting point' in relation to a division of the assets of the husband and wife should be equality. He sought to draw a distinction between a presumption and a starting point. But a starting point principle of general application would carry a risk that in practice it would be treated as a legal presumption, with formal consequences regarding the burden of proof. In contrast, it should be possible to use equality as a form of check for the valuable purpose already described without this being treated as a legal presumption of equal division.

Financial resources and financial needs:

29. **I turn next to a point where the current state of the law is not altogether satisfactory. That this is so emerges clearly from the decision of the Court of Appeal in Dart v Dart [1996] 2 FLR 286. The point concerns the relationship of paragraph (a) and paragraph (b) in big money cases. Paragraph (a) concerns the available financial resources of each of the parties. Paragraph (b) is concerned with the 'financial needs, obligations and responsibilities' of each of the parties. In practice, paragraph (b) seems to have become largely subsumed into a wider, judicially-developed concept of *'Reasonable requirements'*. This wide concept appears, in turn, to have displaced consideration of the parties' available resources as a factor in its own right.**

30. **This development had its origins in a decision of the Court of Appeal in *O'D v O'D [1976]* Fam 83 where the alluring phrase 'reasonable requirements' was coined. In that case Ormrod LJ considered the wife's position, 'not from the narrow point of "need", *but to ascertain her reasonable requirements.'* A similar approach was adopted a few years later, in Page v Page (1981) 2 FLR 198, 201. This was a case where there was enough capital to provide adequately for both husband and wife. Not surprisingly, the court held that when considering the need and obligations of the parties a broad view could be taken. Ormrod LJ, whose judgments are a valuable source of much of the jurisprudence in this area of the law said:**

> **"In a case such as this "needs" can be regarded as equivalent to "reasonable requirements", taking into account the other factors such as age, health, length of marriage and standard of living."**

The third case in this trilogy of cases where resources exceeded financial needs is *Preston v Preston* [1982] Fam 17. Ormrod LJ set out a list of general propositions. His second proposition was as follows;

> **"…. The word "needs" in section 25 (1), (b) in relation to the other provisions in the subsection is equivalent to "reasonable requirements", having regard to the other factors and the objectives set by the concluding words of the subsection …"**

31. **Rightly or wrongly, these passages have been understood as saying that reasonable requirements is a more extensive concept than financial needs. This seems then to have led to a practice whereby the court's appraisal of a claimant wife's reasonable requirements has been treated as a determinative, and limiting, factor on the amount of the award which should be made in her favour.**

32. **The soundness of this approach was considered by the Court of Appeal in *Dart v Dart* [1996] 2 FLR 286. Thorpe LJ, who has much experience in this field, gave the leading judgment. He sought to reconcile the existing practice with the statutory provisions: see page 296 f-h. Reasonable requirements are more extensive than needs. What a person requires is likely to be greater than what that person needs. The objective appraisal of what the applicant requires must have regard to the other criteria of the section, including what is available, the parties' accustomed standard of living, their age and state of health and 'perhaps less obviously' the duration of the marriage, contributions and pension rights. Thorpe LJ said:**

'Used thus the consideration of needs ceases to be paramount or determinative but an elastic consideration that does not exclude the influence of any of the others ... in a big money case where the wife has played an equal part in creating the family fortune it would not be unreasonable for her to *require* what might be even an equal share.' (My emphasis).

This conclusion, I have to say, seems to me worlds away from any ordinary meaning of financial needs. Moreover, this conclusion gives an artificially strained meaning to reasonable requirements, the more especially as this phrase was adopted originally as a synonym for financial needs.

33. The other two members of the Court of Appeal were more doubtful. Peter Gibson LJ, at page 302, questioned the correctness of an approach which determines the quantum of an award by reference only to the reasonable requirements of the applicant. Butler-Sloss LJ. with her immense experience of family work, shared Peter Gibson L.J's doubts: see page 305. She wondered whether the courts may not have imposed too restrictive an interpretation upon the words of section 25 and given too great weight to reasonable requirements over other criteria set out in the section. She considered that if spouses are in business together, the traditional 'reasonable requirements' approach to a wife's application for ancillary relief is not the most appropriate method to arrive at the post-divorce adjustment of family finances.

34. Subsequently this question arose again, in *Conran v Conran [1997]* 2 FLR 615. Wilson J was of the view that, notwithstanding the observations of Thorpe LJ in the *Dart* Case, one could not sensibly fit

an allowance for contribution into an analysis of a wife's needs. That would do violence to language and to section 25(2), where contribution and needs are set out as different matters to which the court is required to have regard: see pages 623-4.

35. Thus, as matters stand, there is a degree of confusion. I venture to think this has arisen because the courts have departed from the statutory provisions. The statutory provisions lend no support to the idea that a claimant's financial needs, even interpreted generously and called reasonable requirements, are to be regarded as determinative. Another factor to which the court is bidden to have particular regard is the available resources of each party. As my noble and learned friend Lord Hoffmann observed in Piglowska v Pigslowski [1999] 1 WLR 1360, 1379, section 25 (2) does not rank the matters listed in that subsection in any kind of hierarchy. The weight, or importance, to be attached to these matters depends upon the facts of the particular case. But I can see nothing, either in the statutory provisions or in the underlying objective of securing fair financial arrangements, to lead me to suppose that the available assets of the respondent become immaterial once the claimant wife's financial needs are satisfied. Why ever should they? If a husband and wife by their joint efforts over many years, his directly in his business and hers indirectly at home, have built up a valuable business from scratch, why should the claimant wife be confined to the court's assessment of her reasonable requirements, and the husband left with a much larger share? Or, to put the question differently, in such a case, where the assets exceed the financial needs of both parties, why should the surplus belong solely to the husband? On the facts of a particular case there may be a good reason why the wife should be confined to her needs and the husband left with the much larger balance. But the mere absence of

financial need cannot, by itself, be a sufficient reason. If it were, discrimination would be creeping in by the back door. In these cases, it should be remembered, the claimant is actually the wife. Hence the importance of the check against the yardstick of equal division.

36. **There is much to be said for returning to the language of the statute. Confusion might be avoided if courts were to stop using the expression 'reasonable requirements' in these cases, burdened as it is now with the difficulties mentioned above. This would not deprive the court of the necessary degree of flexibility. Financial needs are relative. Standards of living vary. In assessing financial needs, a court will have regard to a person's age, health and accustomed standard of living. The court may also have regard to the available pool of resources. Clearly, and this is well recognized, there is some overlap between the factors listed in section 25 (2). In a particular case there may be other matters to be taken into account as well. But the end product of this assessment of financial needs should be seen, and treated by the court, for what it is; only one of the several factors to which the court is to have particular regard. This is so, whether the end product is labelled financial needs or reasonable requirements. In deciding what would be a fair outcome the court must also have regard to other factors such as the available resources and the parties' contributions. In following this approach the court will be doing no more than giving effect to the statutory scheme."**

LORD COOKE OF THORNDON stated at paragraph 62:-

62. **"In the present case, bearing in mind that it was a marriage of more than thirty years, that there were three children and that the wife was an active partner in the farming business as well**

as meeting the responsibilities of wife and mother, the only plausible reason for departing from equality can be the financial help given by the husband's father. I agree, however, that the significance of this is diminished because over a long marriage the parties jointly made the most of that help and because it was apparently intended at least partly for the benefit of both. As Lord Simon of Glaisdale said, in delivering the judgment of the Privy Council in a case under the former New Zealand legislation,

> **"Initially a gift or bequest to one spouse only is likely to fall outside the Act, because the other spouse will have made no contribution to it. But as time goes on, and depending on the nature of the property in question, the other spouse may well have made a direct or indirect contribution to its retention."**

[55] Having set out in great detail and at great pain the circumstances of the parties, based on the respective filings it becomes patently clear that the husband has sought to navigate around full and frank disclosure of his real and actual means of financial resources. He has not provided as ordered a complete disclosure of his financial means.

[56] It is indeed very difficult to accept that he would give up control of all of his income producing assets to his children and then rely on them to pick up "short falls" as he has said. In any event, if we were to accept that he retained nearly 5% of his assets, then the Respondent would have inherited a dower interest in that 5% as dower was only abolished some five (5) years after the marriage. However, so as not to complicate matters I will address that in whatever order I make.

[57] This is a unique case in that the parties are not young people who are marketable in the job market. There is no question in my mind that the husband is in a better financial state than the wife. The evidence bears out the fact that the only two sources of income for her are funds generated from the Lodge and her pension.

[58] I think the cases cited in this judgement are clear and dictate that what is to be looked at in these particularly peculiar circumstances. The wife has worked very hard alongside her husband for some twenty (20) years and relied on his promise to take care of her financial, emotional and spiritual needs. She, as any wife ought to, did everything to advance her husband. The husband in my view has relatively substantial financial resources inclusive of properties.

[59] The husband was well aware that his wife gave up her several means of income to take up her duties as "WIFE". He knew of her diabetic issues. Thus in these circumstances, it is not so much the housing needs of the parties but more importantly, their income needs. The wife obviously needs consideration that would put her in a position to meet her financial needs and her obligations.

[60] At paragraphs 84, 85 and 86 of the wife's submissions, she sets out an explanation as to why there is a need for what is being claimed.

> **"84. The wife's request that the Husband be made to return her jewelry or pay to her the sum of $15,000 being the equivalent of one half of the value of the jewelry.**
>
> **85. The evidence of the Wife is that consequent on the most recent hurricanes, the Lodge sustained damages, which the Husband, despite his ability to so do, refused to assist her with the repairs. In fact, on her evidence, which again was not countered by the Husband, she on behalf of the Lodge solicited from The Bahamas Out Island Promotion Board hurricane relief in the form of air conditioning units, commercial washer and dryer,**

generators etc. The Husband, despite the objection removed the air conditioning units and had them installed in his house in Nassau.

86. We submit that in the circumstances the prayer by the Wife, that the Husband, pay to her a lump sum of $25,000.00 to assist with the repairs to the Lodge is not unreasonable.

We invite the Court to so order."

[61] **JEWELRY:**

The Husband does not address the jewelry at all. It would appear that this jewelry would have been given to the wife by the husband. The husband having not replied to this claim, leaves the court no other choice than to accept that the jewelry existed. A gift is generally defined as;

> **"A transfer of property whereby the transferor (the donor) receives no valuable consideration from the transferee (the donee). Gifts maybe made by deed or, more usually, by a transfer of the property by the donor to the donee with the intention that the ownership in the goods (as distinct from mere possession) shall be transferred."**

[62] A gift thereafter is not complete until possession of the thing has actually been transferred to the donee; the mere intention alone is insufficient, there must be an actual transfer of possession.

[63] The wife refers to the jewelry as "her jewelry", possessory.

[64] The wife sets out what she is seeking as remedy in the following terms.

"a. The Husband do forthwith transfer to the Wife all his right title and interest in and to the property situate Chester's Bay, Acklins, together with the business Chester's Highway Inn Bone Fish Lodge and upon such transfer the Wife shall be responsible for satisfying the balance of the loan at the Bahamas Development Bank.

b. The Husband shall within ninety (90) days of the date of the Order to be made pay to the Wife a lump sum of $13,000.00 to assist the Wife with the purchase of 2 vehicles.

c. The Husband shall within thirty (30) days of the date of the Order to be made return to the Wife 3 rowed all diamond wedding bands, 3 slave bands (gold); a two (2) foot long gold rope chain with a large conch shell nugget, a diamond chain, a 1971 independence mounted gold coin ring, 3 diamond stoned ring and garnet studded earrings, failing which the Husband shall pay to the Wife a lump sum of $15,000.00 representing one half of the value of the said jewelry.

d. The Husband shall within ninety (90) days of the Order to be made pay to the Wife a lump sum of $25,000.00 to assist the Wife with renovations and repairs.

e. The Wife shall forthwith transfer to the Husband and/or the Husband shall retain the following assets:-

    i. 8-12 acres of land on the Island of Andros;

    ii. Duplex – situate #9 Hampton Avenue, South Beach comprising Unit #1, 2 bed, 2 bath and Unit #2, 2 bed, one bath – valued about $300,000.00;

iii. Vacant Lot adjacent to South Beach Duplex – valued about $65,000.00,

iv. Property – 4th Street, the Grove to which is appurtenant 4, Unit apartment complex, 3 Units rented at $600.00 per month each and 1 Unit rent at $1,000.00 per month;

v. Parcel of Land – Chester's Bay, Acklins vacant.

vi. J & J Chisholm Construction Ltd., a construction company.

f. The Husband shall pay the Wife's costs of the respective transfers and of these proceedings, such costs to be taxed if not agreed."

[65] Having regard to all of the circumstances of the case and the peculiar circumstances of the parties themselves, I order the following:

I order as prayed, that is to say;

"a. The Husband do forthwith transfer to the Wife all his right title and interest in and to the property situate Chester's Bay, Acklins, together with the business Chester's Highway Inn Bone Fish Lodge and upon such transfer the Wife shall be responsible for satisfying the balance of the loan at the Bahamas Development Bank.

b. **The Husband shall within ninety (90) days of the date of the Order to be made to pay to the Wife a lump sum of $13,000.00 to assist the Wife with the purchase of 2 vehicles."**

[66] In the circumstances I am not of the view that two cars are necessary as there was no evidence as to the use of or the existence of a car in Chester's Acklins, wherein I believe that a vehicle does exist presently. In this regard I order the sum of $8,000.00 for the purchase of a vehicle for Nassau.

c. **"The Husband shall within thirty (30) days of the date of the Order to be made return to the Wife 3 the rowed all diamond wedding bands, 3 slave bands (gold); a two (2) foot long gold rope chain with a large conch shell nugget, a diamond chain, a 1971 independence mounted gold coin ring, 3 diamond stoned ring and garnet studded earrings, failing which the Husband shall pay to the Wife a lump sum of $15,000.00 representing one half of the value of the said jewelry."**

[67] In this regard, I order the relief as claimed except that if the jewelry is not returned within the Thirty (30) days, then the $15,000.00 SHALL be paid within Twenty (20) days from the expiration of the Thirty (30) days.

d. **The Husband shall within ninety (90) days of the Order to be made pay to the Wife a lump sum of $25,000.00 to assist the Wife with renovations and repairs.**

[68] In this regard there is no evidence as to the actual cost of repairs as in quotes for such repairs. Therefore within Thirty (30) days of this Order Three (3) quotes from reputable registered Contractors on the Island of Acklins shall be obtained and the lowest quote is to be accepted for the repairs, such quote not to exceed the sum of $25,000.00. Anything in excess thereof shall be for the account of the wife.

Ordered as prayed if necessary:

e. The Wife shall forthwith transfer to the Husband and/or the Husband shall retain the following assets:-

i. 8-12 acres of land on the Island of Andros;

ii. Duplex – situate #9 Hampton Avenue, South Beach comprising Unit #1, 2 bed, 2 bath and Unit #2, 2 bed, one bath – valued about $300,000.00;

iii. Vacant Lot adjacent to South Beach Duplex – valued about $65,000.00,

iv. Property – 4th Street, the Grove to which is appurtenant 4, Unit apartment complex, 3 Units rented at $600.00 per month each and 1 Unit rent at $1,000.00 per month;

v. Parcel of Land – Chester's Bay, Acklins vacant.

vi. J & J Chisholm Construction Ltd., a construction company.

f. Ordered as prayed.

g. I also order that the costs thrown away in the amount of $500.00 to the Petitioner on November 26th, 2018 for the non-appearance by the Respondent and/or her counsel be set off against costs thrown away on October 25th, 2018 in the amount of $500.00 for the adjournment of the hearing for the failure of the Petitioner to file and/or serve his affidavit of means, thereby leaving costs in that regard at $0.00.

h. Each party shall bear their own costs.

i. I also order that the Respondent execute a renunciation of dower as it relates to the Petitioner's 5% retention interest in the various assets of the Petitioner.

And I so order.

Dated this 17th day of September A.D., 2020.

Keith H. Thompson
Justice