

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
FAMILY DIVISION  
BETWEEN**

**2009  
FAM/div/00314**

**DEBORAH CHARLTON nee COLEBROOKE**

**Petitioner**

**AND**

**PERRY BENSON CHARLTON**

**Respondent**

**Before** The Hon. Madam Justice J. Denise Lewis-Johnson

**Appearances:** C.V Hope Strachan for the Petitioner  
J Michael Saunders for the Respondent

**Hearing Date:** 15 February 2022

**Judgment Date:** 31 May 2022

**Divorce - Ancillary Proceedings - Matrimonial Assets - Property adjustment - Whether the court should depart from the fair sharing principle - Equal division - Matrimonial Causes Act, 125 2001 Sections 28 and 29**

The instant application is by way of Notice of Intention to Proceed with Ancillary Relief filed 15 January 2020 on behalf of the Petitioner. After a seven year marriage the parties divorced on the ground of the Respondent's cruelty to the Petitioner. The Petitioner seeks, inter alia, an order for property adjustment and costs.

The Petitioner contends that the court should deviate from the equal sharing principal on the ground that she contributed greater financially to the matrimonial home as opposed to the Respondent. The Respondent, on the other hand, denies these claims and maintains that the court should uphold the equal sharing principle for the property adjustment.

**RULING**

**LEWIS-JOHNSON, J:**

**Facts**

1. The Petitioner and the Respondent were married on 7 September 2002. After a seven year marriage, the parties divorced.

2. There is one child of the marriage, a female age 18 years old who resides at home and faces major health issues.
3. A Decree Nisi was granted to the Petitioner on 23 September 2009 on the grounds of the Respondent's cruelty towards the Petitioner.
4. At a hearing for Ancillary Relief on 15 June 2020 The Honourable Madam Justice Ruth Bowe Darville granted the following Order:
  - i. The Petitioner and the Respondent have joint custody of the child of the marriage namely; P.B.C born 4 August 2003 with care and control to the Petitioner and reasonable access to the Respondent;
  - ii. The Respondent pay to the Petitioner the sum of \$275.00 per month for the maintenance of the said child with effect from 30 June 2020 and on before the last day of each month thereafter until the said child attains the age of 18 years or if enrolled in a tertiary education program, until she completes a first degree or attains the age of 23 years, whichever occurs first;
  - iii. The Respondent shall pay to the Petitioner bi-yearly, being on or before the last day of the month of May each year and on or before the last day of December each year the sum of \$275.00 towards the purchase of clothing, personal hygiene products and extra-curricular activities;
  - iv. The Petitioner and the Respondent shall share the cost of all school tuition and all other educational expenses until the said child attains the age of 18 years or if enrolled in tertiary education program, until she completes a first degree, or attains the age of 23 years, whichever occurs first;
  - v. The Respondent shall maintain health insurance coverage for the said child until she attains the age of 18 years or if enrolled in tertiary education program, until she completes a first degree, or attains the age of 23 years, whichever occurs first;
  - vi. The Respondent shall pay 50% of all co-payments related to the health insurance coverage for the said child either upfront or by way of re-imbusement upon presentation of receipts and/or invoices too him by the Petitioner or relevant medical facility;
  - vii. The Respondent shall pay 50% of all dental and optical expenses for the said child either upfront or by way of reimbursement upon presentation of receipts and/or invoices to him by the Petitioner or relevant medical facility.
  - viii. The Respondent shall pay to the Petitioner the sum of \$2,500.00 being reimbursement of a portion of medical costs for the said child for the year 2019.
  - ix. An appraisal of the matrimonial home be obtained, the costs of which shall be shared by the Petitioner and the Respondent.

- x. A Declaration under Section 73(1)(b)(i) of the MCA that satisfactory arrangements have been made for the welfare of the child of the marriage.

### **The Application**

5. The Petitioner's Application is for:
  - (a) An order from the Court of a 75/25 property adjustment in her favour; and
  - (b) Costs.
6. The Respondent's position is that he is entitled to a 50% share in the equity in the home. If not, the Respondent is requesting that the house be sold and the net proceeds be divided equally between the parties.
7. The Matrimonial home is the only relevant property owned by the Petitioner and the Respondent. The home was built during the course of the marriage and is situated at Lot No. 111, Coral Vista Subdivision in the Western District of the Island of New Providence. There is an existing mortgage over the home with Bank of the Bahamas Ltd in excess of \$250,000.00. There is conflicting evidence as to the contribution of each party to this mortgage. It is accepted that both parties purchased the property to form the matrimonial home, however, the degree of their respective interest is what is in dispute.

### **Issue**

8. What is the entitled percentage interest in the matrimonial property of each party?

### **The Petitioner's Evidence**

9. The Petitioner's evidence is contained in her Affidavits dated 6 April 2011, 16 December 2019, and 15 July 2020.
10. The Petitioner is employed as a Banker at the Bank of the Bahamas Limited with a monthly salary of \$2,700.00. She listed her expenses in the Affidavits at \$3,801.86. After expenses there is a shortfall of approximately \$1,627.70 each month.
11. It is the Petitioner's claim that she has contributed much more of the purchase and mortgage money as well as to the welfare of the entire family than the Respondent over the course of the marriage.
12. Apparent from the evidence is that the parties obtained multiple loans from numerous financial institutions to assist with purchasing the home, furnishes and security gates. However, before particular loans could be granted, outstanding balances had to be cleared. What is in dispute between the parties' evidence is the contribution of each party to the repayments of the loan.

13. The Petitioner states that out of the two existing loans from Royal Bank of Canada and Commonwealth Bank, the Respondent made one payment towards the Royal Bank of Canada loan and she was forced to pay the remainder without any assistance from him.
14. The Petitioner's evidence is that since the time of the acquisition of the property and the completion of the home she spent approximately \$55,467.00 towards the home without any assistance whatsoever from the Respondent.
15. Additionally, the Petitioner deposes that proceeds of the mortgage and other loans proceeds taken by both parties in the sum of \$55,551.00 was utilized to pay off the Respondent's personal loans but the loan was paid for solely by the Petitioner.
16. The Petitioner's position is that the Court should deviate from the established equal sharing principle and grant a property adjustment in her favour since she has provided a greater portion of the purchase and mortgage money as well as to the welfare of the family as opposed to the Respondent.

#### **Respondent's Evidence**

17. The Respondent's evidence is contained in his Affidavit dated 16 June 2011, 12 June 2020 and 3 November 2020.
18. He is employed as a Sargent on the Royal Bahamas Police Force with a monthly salary of \$3,083.00. His monthly expenses total \$3,481.49 not including the expenses for the child's school fees and supplies. After expenses the Respondent is in arrears of approximately \$398.49.
19. In response to the Petitioner's affidavit, he denies the large sum of \$55,551.00 being used to pay off his personal loans. At the time the mortgage was negotiated the Respondent claims he had a small loan with Commonwealth Bank not exceeding \$5,000.00 which was consolidated into the mortgage.
20. The Respondent states that on numerous occasions he has made the 20% co-payment towards his daughter's medical expenses.
21. In his Affidavit in Response, the Respondent evidences a letter from the Police Headquarters showing his salary deductions commencing in 2005. The letter exhibited by the Respondent illustrates an increase in his salary deductions for the following time periods: September 2005 to June 2006 in the amount of \$1,010.00, July 2006 to December 2009 in the amount of \$1,220.00 and January 2010 to the present date of the letter (July 2020) in the amount of \$1,520.00.

22. Further, the Respondent asserts that before authorizing salary deductions he gave the Petitioner cash in hand for the land payment until obtaining the Further Charged in June 2005 to build the home.
23. Additionally, the Respondent noted that the Petitioner's adult daughter also resides in the home contributing only to the utility payments and grocery purchase.

**Acquisition of the matrimonial home**

24. Down Payment - The Petitioner claims to have paid the down payment on the property in the sum of \$3,000.00. However, the Respondent says that is the result of an Asue he shared with the Petitioner.
25. Legal fees – The Petitioner paid \$500.00 in legal fees. The Respondent contends that he paid the balance which was twice the amount however, there is no evidence before the court to support this claim.
26. Mortgage dated November 4 2004, Deborah and Perry Charlton - BOB - \$57,950.00
27. Further Charge dated June 17 2005 - Deborah and Charlton to BOB – \$212,050.00
28. Second Further Charge dated 23 May 2006 Perry Charlton and Deborah Charlton to BOB - \$53,000.00
29. **TOTAL: \$323,000.00**

**The Law**

30. **Sections 27 and 28 of the Matrimonial Causes Act, Chapter 125 of the Statute Laws of the Commonwealth of The Bahamas (“the MCA”)** provides for financial provision to be made to parties to the marriage by way of property adjustment, periodical or lump sum payment.
31. **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;**

**32. 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.”**

**33. There is also Section 25 of the Act which sets out the purpose for the financial provisions and property adjustment orders 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-**

- (a) Any order for periodical payments in favor of a party to a marriage under Section 27 (1), (a) or 31(6)(a) or in favour of a child of the family under section 27(1)(d), (2) or (4) or 31(6)(d);**
- (b) any order for secured periodical payments in favour of a party to a marriage under section 27(1)(b) or 31(6)(b) or in favour of a child of the family under section 27(1)(e), (2) or (4) or 31(6)(e); and**
- (c) 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.....”

34. Section 29 of the MCA provides the considerations to which the Court must have regard in exercising its discretion to make financial provision and property adjustment orders. It reads:-

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 breakdown 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 the other.

#### **Decision**

35. The law in this area is well-settled. The Court is guided by the overriding objective to do what is right and just in an effort to achieve a fair outcome for the parties. In assessing the contributions made by each party, as stated in **White v White**, there should be no bias in favour of the ‘breadwinner’ if each contributed equally to the welfare of the family.

36. In **White v White [2001] 1 All ER** Lord Nicholls of Birkenhead stated:

**"divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms, the answer is obvious. Everyone would accept that the outcome of these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone's life is different. Features which are important when assessing fairness differ in each case. And, sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eyes of the beholder."**

37. The basis for the equal sharing principle is that usually the assets in the marriage are the result of both parties' contributions. This is regardless of whether a parties' contribution is financial or non-financial.

38. Lord Nicholls stated that the sharing principal is based on equality and equated a marriage to that of a partnership. Lord Nicholls stated:

**"parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: unless there is good reason to the contrary. The yardstick is to be applied as an aid not a rule"**.

39. Accordingly, regardless of the degree of interest contributed by each party, the court is not quick to discriminate. Lord Nicholls stated:

**"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...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."**

40. Later in *Miller v Miller; Mcfarlane v Mcfarlane* (2006) 3 ALL ER 1 page 7 of the House of Lords noted:

**"This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual**



dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.”

41. In the Bahamian case of *A v B* 2008/FAM/div/132, Barnett CJ stated that in The Bahamas the equal sharing of property is the correct approach for the division of assets unless the Court finds that there is compelling reason to depart from it.
42. The evidence of both the Petitioner and the Respondent clearly reflect and confirm that each party at the time they acquired the property and constructed the home, both viewed it as a partnership. The executed conveyance, mortgage, as well as the further charges all bear the names of both parties.
43. Accordingly, the property was to be regarded as a “family asset”, which was defined by Lord Denning MR in *Wachtel v Wachtel* [1973] 1 All ER 829 at 836:

**“The family assets**

The phrase 'family assets' is a convenient short way of expressing an important concept. It refers to those things which are acquired by one or other or both of the parties, with the intention that they should be continuing provision for them and their children during their joint lives, and used for the benefit of the family as a whole. It is a phrase, for want of a better, used by the Law Commission, and is well understood. The family assets can be divided into two parts: (i) those which are of a capital nature, such as the matrimonial home and the furniture in it; (ii) those which are of a revenue-producing nature, such as the earning power of husband and wife. When the marriage comes to an end, the capital assets have to be divided: the earning power of each has to be allocated.”  
[emphasis added]

44. The principles established in *Watchel v Watchel* were adopted by the Bahamian Court of Appeal in *Dean v Dean* [1991] BHS No. 164 in which the court had to determine the interests of the parties in the matrimonial home. Campbell J held at paragraph 36:

“36. On the evidence contained in the affidavits, the only joint enterprise established was in respect of the construction of the matrimonial home. The purchase by the Respondent of Blair Estate in 1973 was in their joint names,

even though she paid the purchase price. This clearly manifests her intention to treat Blair Estate as "family asset" or "marriage asset". At the time, some 12 years after their marriage, she was already the owner of the Mount Airy property. She had obtained this as a gift from her father. She had not transferred it into their joint names and in 1973 and even later until 1984 she "had been solely responsible for the maintenance and for any money owing" on this property, this manifests her intention of treating this property for her own benefit and not for the benefit of the family as a whole. Blair Estate was developed by their joint physical efforts and a mortgage loan obtained by them both, the repayment of which was agreed by allocation of financial responsibilities between them. There was here all the ingredients of a joint enterprise." [emphasis added]

45. In arriving at a decision I am guided by the considerations as laid out in **Section 29 of the MCA**.
46. The Petitioner's claim is that although the Respondent earned the greater income than her during the course of the marriage, the Petitioner has greater financial as well as non-financial contributions to the home and family.
47. The Petitioner submits that the Court must have particular regard to those contributions the Petitioner made to the initial acquisition of the property out of her own funds, the monies expended on the mortgage, further charges and loans used to pay off the Respondent's personal loans, the years when the Respondent was not making any payments towards the mortgage until he signed his salary assignment in 2005, the insurance premiums paid by the Petitioner alone, the renovations, maintenance and upkeep of the house in which the Respondent did not participate, the failure to share the cost of the utilities of the home, and finally the failure and/or refusal of the Respondent to support the minor child of the marriage throughout the marriage until 2020 when he was ordered by the Court to pay monthly maintenance and to share other related expenses of the couple's sick daughter.
48. The Respondent relies on the case of **In Re Rogers' Question [1948] 1 ALL ER 328** where the Court of Appeal had to consider the question between husband and wife in relation to the title to the matrimonial home and upon review of the evidence presented determined that the Court should attempt to conclude what was in the minds of the parties at the time of the purchase and then make an order which fairly ratifies in law what the parties must have intended at the time of the transaction.
49. **Re Rogers Question** was referred to in the Court of Appeal judgment of **Cobb v Cobb [1955] 2 All ER 696** where Lord Denning MR held at page 698:

**“In cases when it is clear that the beneficial interest in the matrimonial home or in the furniture belongs to one or other absolutely, or it is clear that they intended to hold it in definite shares, the court will give effect to their intention; see *Re Rogers' Question*, but when it is not clear to whom the beneficial interest belongs, or in what proportions, then, in this matter, as in others, equality is equity.”**

50. It is the Respondent's submission that the evidence of both parties reflect and confirm that each party at the time they acquired the property and constructed the home invested jointly in the enterprise.
51. I am of the opinion that based on the evidence put forward by the parties, the Respondent is in an advantageous position when considering 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.
52. The evidence indicates that the Petitioner and the Respondent have been faced with financial challenges forcing them to outsource help from financial institutions before the breakdown of the marriage. The evidence suggest that they enjoyed an average standard of living and at the start of the marriage they were partners and intended to share equally.
53. Based on the evidence, at the time of the hearing the Petitioner was approximately 56 years of age and the Respondent 51 years of age. The parties were married for approximately seven years which is not considered a long time.
54. The Petitioner nor the Respondent alluded to suffering from any physical or mental disability.
55. I place a greater weight on the Petitioner's evidence in regards to her contributions made to the welfare of the family. The Petitioner has provided the court with receipts and invoices to demonstrate the payments being made which drastically outweigh the payments being made by the Respondent over the years.
56. Upon the divorce, the Respondent still maintains his pension and insurance benefits with the Royal Bahamas Police Force, unlike the Petitioner who does not enjoy these benefits.
57. I believe from the evidence and taking into consideration, all of the circumstances mentioned above that the intention of the parties on the joint purchase of the home was that their respective interests are equal. Notwithstanding whether one party paid the deposits or cleared the outstanding balances of previous loans, it was meant to be a shared asset between partners. While starting at 50/50 the considerations at Section 29 can tip the scale in favour of one party.

58. Further, the parties were married for a short period of time which ultimately brings different factors into consideration. In **GB v. VB [2018] 1 BHS J. No. 87**, Justice Ian Winder stated the following:

**"9 A short marriage provides justification to exclude the sharing of non-matrimonial property as observed in the Hong Kong case of LKW v. DD [2010] HKEC 1727. At paragraphs 93 and 94 the Court stated that "where it is a short marriage, the court may well be inclined to regard as excludable non matrimonial property, assets acquired by one of the parties before the marriage..."**

59. It is clear from the evidence provided that there was an unequal distribution of responsibilities between the parties in that the Petitioner had greater financial and household duties during and after the breakdown of the marriage.

60. There is a drastic difference in household bills as the Respondent by his own affidavit dated 12 June 2020, pays only water, food and yard cleaning. Whereas the Petitioner is tasked with electricity, cable, home insurance, yard cleaning and groceries.

61. The Respondent has failed to enter into evidence proof that he contributed to all and any improvements, furniture and appliances bought for the home.

62. The Court does not accept the Respondent assertion that no receipt or invoice of his daughter's medical expenses were presented to him and if they were, he would have made a claim under his group insurance for reimbursement. Having a child with the level of medical challenges as in this case requires a greater level of support and commitment to the financial needs of the child. The Respondent is fully aware of the continuous medical needs and his failure to contribute without being asked specifically is unacceptable. This placed a greater financial burden of the Petitioner.

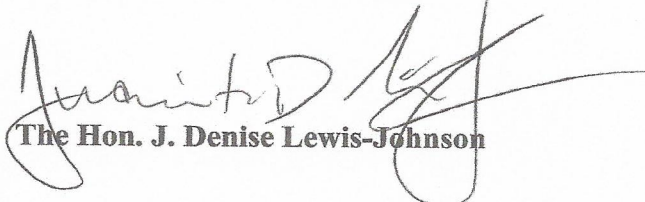
63. All parties embellished their contribution and support of the family, in most cases the numbers tell of the impossibility to have contributed what is being alleged with a fixed income. One cannot make a financial contribution that is equal to or twice the amount of your salary. It is therefore for the court in all the circumstances to determine what is likely to have been the contribution of these parties.

64. Having regard to all the evidence before me I find the Petitioner's evidence to be more credible. Accordingly, I am of the opinion that there is reason to depart from the equal sharing principle, and that the scales are to be tipped in favour of the Petitioner receiving a greater interest.

**Conclusion**

- 65. For all the reasons above, the Petitioner's application for a departure from the equal sharing principle is applied. The Petitioner is entitled to 60% interest in the matrimonial home, with 40% being awarded to the Respondent.
  
- 66. Cost to the Petitioner to be taxed if not agreed.

Dated this 31<sup>st</sup> day of May 2022



The Hon. J. Denise Lewis-Johnson