

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

FAMILY DIVISION
2015/FAM/DIV/00526

BETWEEN

AL

Petitioner

AND

EL

Respondent

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Mrs. Yvette McCartney-Meredith for the Petitioner
Mr. Miles Parker for the Respondent

Ruling Date:

RULING ON ANCILLARY RELIEF

1. On the 8th April 2016, a Decree Nisi was granted to the Respondent, dissolving her marriage to the Petitioner of eighteen years. Both parties filed Notices of Intention to Proceed with Ancillary Relief for orders relating to the care, custody, access and maintenance of the child of the marriage, maintenance of the Respondent and property adjustment.
2. The parties filed numerous affidavits in support of their respective positions. Both the Petitioner and the Respondent were cross examined. Written submissions were finally received by both parties in September and October of 2022.

RELEVANT FACTS

3. The Petitioner is the owner of a trucking company and the Respondent is a manager at Sandy's Department Store. They were married on the 11th April 1998.
4. There is one child of the marriage, JL, born on 17th April 2001, who is now sui juris ("J"). Prior to the marriage, the Respondent had a son CCW Jr. ("C") who is also sui juris. No relief is being sought for C.
5. During the marriage, the parties, J and C all resided in a home situate on Lot 1401 Golden Gates Estates, Section Two which is not disputed as the matrimonial home (**the "Matrimonial Home"**). The Respondent alone obtained an initial loan to purchase the lot and to start construction and a subsequent mortgage was obtained by both parties to

complete construction on the Matrimonial Home. The matrimonial home is held in the name of the Respondent.

6. The parties equally paid the mortgage on the Matrimonial Home until the Petitioner left the matrimonial home in December of 2015. The Petitioner paid the electricity bill and purchased groceries, while the Respondent paid the water, cable, telephone bill and educational supplies. They both contributed equally to the maintenance of the home. The Petitioner continued to pay his half of the mortgage payments from the time he left the home in December of 2015 to January 2017. Thereafter, the Respondent made the remainder of the payments. The Respondent continued to reside in and maintain the home thereafter.
7. The Petitioner purchased for the Respondent a 2012 Hyundai Tucson jeep (**the "Tucson Jeep"**) which she still owns to date but she had to complete the loan payments for the same. The Respondent purchased for the Petitioner a 2004 Ford F-150 truck (**the "F-150 Truck"**) which is used in the Petitioner's business.
8. The parties jointly own shares with the Arawak Port (**the "Arawak Port Shares"**). The Petitioner seeks full ownership of the Arawak Port Shares and in return he would pay the Respondent half of its value. The Respondent does not contest this.
9. During the course of the marriage, the Petitioner paid for J to attend private school from his primary to secondary education but there were periods where he did not pay toward the end of J's secondary education.
10. There has been a breakdown in the communication between the parties. The Petitioner failed to make any maintenance payments to the Respondent for J after he left the home. The Respondent has been paying for J to attend university.
11. The matrimonial assets which are not disputed are the Matrimonial Home, the Tucson Jeep, the F-150 Truck and the Arawak Port Shares. The trucking business is not admitted by the Petitioner as a matrimonial asset.

DISPUTED FACTS

12. The Petitioner claims that the Respondent purchased a lot in South Beach Estates (**the "South Beach Property"**) prior to the marriage but during the marriage, she had initially agreed to either use it in order to build the matrimonial home or that she would gift it to C.
13. The Respondent on the other hand alleges that she was simply a signatory on the mortgage to assist a friend with the purchase of the South Beach Property and that in any event it had been repossessed and sold to a third party and she did not benefit from the sale.
14. The Petitioner alleges that he deposited maintenance payments for J in a bank account which he had opened and had provided J with an ATM card to access the account. The Respondent alleges on the other hand that the Petitioner never provided any

maintenance towards J after he left the Matrimonial Home. Any funds in a bank account that J had access to cannot be deemed maintenance as the Respondent was unaware of the same and such funds were not used for his daily needs.

15. The Respondent also claims that she and the Petitioner had always agreed that they would pay for J's tertiary education. The Petitioner refutes this claim and suggests that J should utilize the free tuition offered at the University of The Bahamas. The Petitioner maintained that they were unable to afford the cost of tertiary education abroad.

PETITIONER'S AFFIDAVIT EVIDENCE

16. The Petitioner is an independent trucking contractor. J lived with both himself and the Respondent after he left the home. The Respondent continued to reside in the Matrimonial Home along with J and C Jr. C. He earned six hundred dollars a week or twenty four hundred dollars a month. The Respondent was employed as a Manager at Sandy's Department Store ("**Sandy's**") and he was uncertain of her earnings. He contributed two hundred dollars and later two hundred and fifty dollars per month towards the maintenance of J. He continued to maintain him until June 2019 when he became sui juris and had completed high school.
17. During the marriage, he contributed half of the mortgage payments for the Matrimonial Home in the sum of four hundred and thirty dollars per month up to January 2017, which was a year after he had ceased living there. He also contributed to the electricity bill, half of the maintenance of the Matrimonial Home, groceries, cooking gas and school lunch and school fees for J. He also purchased two brand new vehicles for the Respondent, the last being a 2012 Hyundai Tucson jeep (**the "Tucson Jeep"**) which she paid three hundred and fifty dollars per month towards the loan on the same.
18. The Respondent contributed half of the mortgage payments in the sum of four hundred and thirty dollars per month and the full mortgage payment for a year and a half from January 2017 to June 2018. She also contributed to the water, cable and telephone bills and half of the maintenance of the Matrimonial Home. The Respondent had a property in South Beach West (**the "South Beach Property"**) solely in her name which was completely paid for during the course of the marriage.
19. The Petitioner's monthly expenses were:-

a. Contribute to Accommodations	\$ 450.00
b. Utilities (Light)	\$ 200.00
c. Cell Phone (Personal)	\$ 144.48
d. Groceries	\$ 225.00
e. Insurance (Medical/Life)	\$ 376.00
f. Vehicle Insurance (Personal)	\$ 304.49
g. Fuel/Transportation	\$ 400.00
h. Maintenance for J	\$ 250.00
i. Maintenance for J	\$ 225.00
j. School fee for J	\$

Total Monthly Expense

\$2,574.48"

20. He moved out of the Matrimonial Home in December of 2015 whilst J was still enrolled in Aquinas College. He stopped paying J's school fees in March 2016 and refused to make any contribution towards J's maintenance.
21. The Petitioner denied that he stopped paying school fees for J or that he did not make any contributions towards his maintenance. He maintained J throughout his minor life up to June 2019. After he discovered that J was enrolled in The Bahamas Global Academy for which he unknowingly paid for, he encouraged J to enroll in an established school because he felt as if that school had no structure.
22. Around that time, J alternated living with him for one week and with the Respondent for another week. J was subsequently enrolled into St. John's in August 2017 after being expelled from Aquinas College. He gave J three hundred dollars to purchase school uniforms and asked J to inquire into the school fees from the Respondent.
23. J returned to live with him sometime in June or July 2017 until September 2017 when he physically attacked and threatened to kill him. The Petitioner denied that the Respondent struggled on her own to maintain J and to keep him enrolled in school. Whenever the Respondent had custody of J, he assisted. They had always agreed that J would try to obtain an academic scholarship as they were both unable to financially support his college tuition.
24. J informed him that the Respondent wished to send him to New York and enroll him in a private school where the school fees were seven thousand dollars per year. He did not agree to it as he could not afford it.
25. The Petitioner also has a minor son, JA whom he supports financially. He denied agreeing to pay for J's tertiary expenses because he was unable to do so. He suggested that J take advantage of free tertiary education at the University of The Bahamas as neither parent were in a financial position to pay for J's tuition in Canada.
26. After leaving the Matrimonial Home, he stayed with his mother in Chippingham. He later moved into a rental accommodation. The Respondent benefitted solely from the Matrimonial Home which is the reason he ceased paying his half of the mortgage payments a year after he had moved out. The matrimonial home should have been placed in both of their names as they were dating at the time it was purchased and were married a year later.
27. The Petitioner would pay himself seven hundred dollars a week depending on which bills he had to pay. On numerous occasions he had to use his personal salary to repair and maintain his truck. He owned one truck and not three as alleged by the Petitioner. He denied that the Respondent played any role in his business, except for giving staff already made up payroll when he had to travel out of the jurisdiction.
28. He possessed two licensed firearms which he carried with him when he left the Matrimonial Home, along with his gun safe. He also took with him a 55" inch television set but none of his other belongings. When he attempted to retrieve the remainder of his

belongings the bedroom door was locked and they keys were not where they usually would be.

29. The Tercel Vehicle which he purchased for the Respondent broke down in early 2011 and he had it towed. It was discovered that the engine was blown. He had it rebuilt and then parked at Phil's Food Store as there was no space in the driveway of the Matrimonial Home to park it there. The Tercel Vehicle was eventually broken into and stripped. Thereafter, he assisted with the purchase of the Tucson Vehicle which the Respondent still drove to date.
30. The F-150 Truck purchased by the Respondent cost twelve thousand and not seventeen thousand as alleged. He wished to retain the said truck. The Petitioner also requested that the Respondent sign off on their fifteen hundred shares in the Arawak Port Development and in return he would pay her half of the value of the shares.

PETITIONER'S ORAL EVIDENCE

31. J & E Trucking stood for John and Equipment and not John and Eureka. It was not a limited liability company but a "trading as" company. It was created after he was made redundant from his previous job in either 2009 or 2010. As a part of his package he was given a truck by his previous owner to be able to make ends meet. The Respondent did not contribute anything towards his business nor was she a signatory on the company's bank account.
32. The trucks used for his business cost around fifteen thousand dollars to twenty thousand dollars. The Respondent did not assist him with purchasing any of his trucks. She did however purchase the Ford F-150 Truck for him as a gift. He did not question where she got the money from to purchase it. He agreed to take on the brunt of the bills in the Matrimonial Home because the Respondent had to make payments towards the South Beach Property
33. The figure of six hundred dollars per week was what he paid himself but was not indicative of any profit his company earned. His business was profitable and he was the only person who was able to withdraw funds from the business. He made all of his maintenance payments directly to J and not to the Respondent. It was an account in his name that J had access to by way of an ATM card.
34. He did not tell the Respondent that he was creating the account in January 2016 as they did not communicate. It was for J to maintain himself when he was with the Respondent. J was around fourteen or fifteen when the account was opened. He never told J to give the money to the Respondent and he never sought an accounting from J as to what he did with the money.
35. He never told the Respondent that he had no further interest in the Matrimonial Home after his departure. While he had initially attempted through their attorneys to hand over the Matrimonial Home to her and to fully take care of J, provided that she did not contest

the divorce, they could not come to such agreement. The Respondent had even stated that she did not want the Matrimonial Home. He had made the attempt to avoid dragging out the divorce and to move on with his life.

36. The Respondent stopped paying the mortgage after the actual separation was granted. He never had a conversation with C about assisting the Respondent with the mortgage payments since he would no longer be contributing to it. His business is home based, thus everything was done on his computer home from his bedroom. The Respondent had grown tired of all of his books being in the bedroom and contracted a team to construct a nine by six addition to their existing utility room. He gave her extra money to pay for it. None of his customers came to the Matrimonial Home.
37. He has a small loan at Commonwealth Bank on which he made monthly payments in the range of one hundred and eighty dollars a month, which he did not disclose. However, he was otherwise not indebted. He employs two drivers and would pay independent contractors from money paid to him by Bahamas Food Services. He had two trucks however he lost two and had to lease another.
38. He started paying rent at his girlfriend's house in October 2017. He usually paid half of the nine hundred and fifty dollars monthly payment however, he was now basically paying the rent in its entirety because his fiancée was not working due to COVID-19. He assisted with his mother's utilities up until April 2018. He was advised that J was going to college. He was not willing to assist J with college after he attacked and threatened to kill him. If he could have he would not.
39. By way of the Respondent's previous attorneys and in her presence he had suggesting paying J's maintenance directly to her upon him being provided a bank account to deposit the money to. While he had offered to pay four hundred dollars a month he only deposited a lesser amount.

RESPONDENT'S AFFIDAVIT EVIDENCE

40. The Respondent averred that the property on which the matrimonial home was built was purchased by her and remained in her name, however, she and the Petitioner made payments on the home jointly. In October 2015, they had exchanged proposals and made attempts to resolve their issues but were unable to do so.
41. The Petitioner had not paid maintenance for her or J since leaving the Matrimonial Home in December 2015. J lived exclusively with her from 2017 to 2019. He never lived with the Petitioner, only the Petitioner's mother on and off for approximately nine months. She denied that he contributed the sum of two hundred dollars and later two hundred and fifty dollars per month towards J's maintenance.
42. J had applied for and received a scholarship for a university in Arkansas however the scholarship was only for thirteen thousand dollars whilst the fees were over thirty thousand dollars. She could not afford it. The fees at Acadia were half of the fees of the university in Arkansas therefore she sent him there.

43. The Petitioner provided annual returns, income and expenses for the years 2017 and 2019 for his business J & E Trucking which reflected an annual turnover ranging from \$191,532.61 in 2017 to \$314,975.00 in 2019 and leaving him with a profit of \$24,447.90 in 2019.
44. During the marriage, the Petitioner was responsible for paying J's school fees while she was responsible for paying for J's school supplies. They would share the other household bills. J was enrolled in private school from kindergarten to graduation, a choice made by both parties.
45. The Petitioner moved out of the Matrimonial Home in December 2015 while J was still enrolled in Aquinas College. He stopped paying J's school fees in March 2016 and refused to make any contribution towards J's maintenance. Throughout J's childhood, he wanted to become a veterinarian. The Petitioner always encouraged him to attend university to pursue this dream as they both were willing to pay for it.
46. Since March 2016, she struggled to maintain J and keep him enrolled in school. In June 2019, J graduated from St. John's College ("**St. John's**") and he was determined to attend university. He subsequently enrolled in Acadia University ("**Acadia**") to take up their veterinarian medicine course which would take him four years to complete. The Petitioner exhausted most of her life savings to pay J's school fees for the first trimester at Acadia. She was uncertain how she would pay for the balance of J's school fees and needed the Petitioner's assistance.
47. The Petitioner was in the trucking business for more than ten years and that during the course of the marriage she would perform bookkeeping for the business up to 2015. She was also responsible for handling his payroll whenever he was out of town. The Petitioner had two trucks when he left the Matrimonial Home but obtained another thereafter. During the course of the marriage, the Petitioner earned on average eighteen hundred dollars per week and he would pay himself about seven hundred dollars per week.
48. The Respondent refuted the Petitioner's contention that he contributed the sum of two hundred dollars and later two hundred and fifty dollars per month towards J. Since the Petitioner left the Matrimonial Home in December 2015 he had not given her any money towards J's maintenance or refused to contribute towards J's high school or university fees. She recently had to pay for J's ticket home from school by borrowing money from a friend.
49. She agreed that the Petitioner did pay half of the mortgage payments on the matrimonial home up to December 2015. He was also responsible for the groceries, electricity, cooking gas, J's school lunch and school fees. She was responsible for the general maintenance of the Matrimonial Home, the phone, water and cable bills, landscaping bills and J's school supplies and private tutor.
50. She agreed that the Petitioner purchased a Toyota Tercel (the "**Tercel Vehicle**") for her in or about 1999 and around 2011 he purchased the Tucson Jeep. Around May 2015 the Petitioner removed the Tercel Vehicle from the Matrimonial Home and she never saw it

again. The Petitioner stopped paying the car loan for the Tucson Jeep in November 2015, and so she completed the payments.

51. Her monthly expenses were:-

a) Medical Insurance for me and J	\$185.00
b) Grocery	\$170.00
c) Loan/mortgage payment	\$860.00
d) Cable Bahamas	\$98.00
e) B.P.L.	\$270.00
f) BTC	\$48.00
g) Cell Phone	\$30.00
h) Credit Card	\$60.00
i) Vehicle Insurance & Licensing	\$63.00
j) House Insurance	\$190.00
k) Cooking Gas	\$24.00
l) Vehicle Gas	\$200.00
m) Vehicle Service	\$60.00
n) House Alarm	\$33.00
o) Grocery/maintenance money for J	\$150.00
p) J's school fee and housing	<u>\$3,071.00</u>
Total Expenses	<u>\$5,512.00"</u>

52. J's school fees for the January 2020 semester at university were eleven thousand eight hundred and forty dollars. She was faced with the daunting task of paying it without the Petitioner's assistance because of his refusal to contribute towards J's educational expenses.

RESPONDENT'S ORAL EVIDENCE

53. The Respondent did not recall being asked to provide an account to place funds for J's maintenance despite acknowledging a meeting at Counsel for the Petitioner's chambers. She never saw the letter sent after the meeting asking for the bank account information and she never knew about the account her son had.

54. She and the Petitioner had agreed to save a certain amount of money which would be used to pay off the mortgage on the Matrimonial Home. Once J graduated from high school, they would pay off the loan for the Tucson Jeep which would leave them with money to pay for J to go to college. They were both in an asue together, they had savings but they did not have any savings for J's education.

55. It was the Petitioner who wanted J to complete high school in New York. It was a public school and not a private school. She did not recall telling J that the school fees were seven thousand dollars. Everything changed after the Petitioner stated that he wanted a divorce

56. She relied on a third party's credit card to purchase J's ticket to Halifax and reimbursed her. Her boss at Sandys gave her a private loan for the erection of the fence around the Matrimonial Home. J was not presently at university but residing with her and selling dog supplies. She placed the funds received from her asue draw on her account to assist

with J's college tuition. She had no objection to J attending the University of The Bahamas however, they did not offer the program that he wanted to pursue.

57. The Petitioner was able to purchase a boat and assist his fiancée's daughter with college. If he was able to afford those expenses then he should have been able to take care of J. However, she could not provide proof of those expenses. She maintained that she never paid anything towards the South Beach Property but just acted as a co-signee. Mr. Evans brother in law also provided his boat as collateral towards the purchase.
58. When she purchased the Golden Gates Property the Petitioner was not working. C sometimes stayed with her in the Matrimonial Home but otherwise stayed with her sister or his father. He only paid the alarm and cable bills. She denied that the Petitioner never returned to the Matrimonial Home after he initially left as he had kept his house key and could return whenever he pleased and had even returned last January to remove the gas tank.
59. The Respondent confirmed that in January 2019 she met with the Petitioner along with their attorneys. The meeting did not end well as there was no agreement. She only became aware that the Petitioner was placing money on an account for J in December 2019 through her counsel. Through her asue she was able to save and make a profit.
60. She travelled to New York in May 2016 to look into the school for J. The Petitioner knew about the trip as J had to stay with him while she was away. She only visited one school as it was discussed between them that she would visit one. It was the same school that she had sent J the video of to send to the Petitioner. The Petitioner made the decision that J would not attend that school.
61. She paid to have the South Beach Property cleared. The Petitioner was not working at the time but got a friend to clear it. The Petitioner told her that since he was making way more money than her he would pay the electricity bill and she would pay the water, cable, phone, J's lunch and school supplies. The South Beach Property was never a factor.

ISSUES

62. The issues to be determined are:-

- 64.1 Whether there should be a property adjustment order for the Matrimonial Home?
- 64.2 Whether the South Beach Property is a matrimonial asset and if so whether there should be a property adjustment order?
- 64.3 Division of the shares in Arawak Port Development and the distribution of the motor vehicles.
- 64.4 Whether the Petitioner should be ordered to pay arrears for maintenance to the Respondent?

64.5 Whether the Petitioner should be ordered to pay arrears for maintenance to the Respondent for J?

64.6 Whether the Petitioner should be ordered to pay for the tertiary education of J?

64.7 Whether the Respondent is entitled to an interest in the Petitioners business and if so, what is the value of that interest?

PETITIONER'S SUBMISSIONS

63. The Petitioner has consistently deposited money into J's bank account from 2016 to June of 2019. The Petitioner initially deposited the sum of \$200.00 per month and thereafter the sum of \$ 250.00. In June, 2019 J reach the age of eighteen. Section 33 of the Matrimonial Causes Act enables the court to make an order for periodical payments for a child even though the child has attained the age of 18 years.
64. In considering whether the Petitioner should be ordered to pay one half of the educational expenses the court has to take into consideration the provisions of Section 29 (2) of the Matrimonial Causes Act:-
65. The financial needs of the child; The child is allegedly enrolled at Acadia University in Canada.
66. The income, earning capacity (if any), property and other financial resources of the child; The son of the marriage has a company where he sells pet/dog supplies as confirmed by the Respondent.
67. Any physical or mental disability of the child; There are no physical or mental disabilities.
68. The standard of living enjoyed by the family before the breakdown of the marriage; The Respondent owns Lot 1401 Golden Gates Estates; where the matrimonial home is situated in her sole name. However, the mortgage on the home was in both names. The Petitioner is an Independent Trucking Contractor in the City of Nassau and earns a modest salary. The Respondent is employed at Sandy's Department Store. Notwithstanding the said child always attended private schools, the parties were not in any financial position to afford to pay for tertiary education.
69. The manner in which he was being and in which the parties to the marriage expected him to be educated or trained; It was always agreed that the child would try to obtain an academic scholarship, as both the Respondent and the Petitioner were not in a position to financially support him for his college tuition. The Respondent and The Petitioner in 2016, agreed to give the Respondent's sister, a resident in New York, guardianship over J, so he could have completed his last two years of high school there, and thereafter, she could have enrolled him in a Community College in New York, because of this lack of financial means to support tertiary education for J.
70. The Petitioner relies on M v A [2014] 3 BHS J. No. 65 where Justice Bain held:

"36. It appears that the Petitioner and the Respondent intended the children to attend university. The proper course of action then should have been consultation between the Petitioner and the Respondent. The Petitioner maintains that the children could pursue their course of study at the College of The Bahamas and was prepared to assist financially with the cost not covered by the bursary from the Government of The Bahamas. The Respondent on the other hand has maintained that the children complete their university studies at Oakwood University. The Respondent has in fact paid tuition and all expenses for the children at Oakwood University since Fall 2012. There was no consultation in choice of universities for the children. The Petitioner should not be presented with a fait accompli and ordered to pay university fees that he is unable to afford."

71. Further Justice Bain referred to K v O 2008 3 BHJ where Hall CJ stated:-

"37. The court cannot compel a parent to contribute to school fees in the absence of evidence that such a parent can afford to do so and that it is unreasonable for him not to contribute having regard to the needs of the children notwithstanding the necessity of the other priorities following the breakdown of the marriage..."

72. In Brown v Brown [2004] D&M No. 416 of 1991 Sir Burton Hall CJ echoed similar sentiments and stated:-

"that the expense of tertiary education which can prove unpredictable, cannot be legally fixed on a parent according to the arbitrary choice of the other parent or child who is of full age unless there is the clearest evidence that the parent against whom an order is sought is in a position to do so and it is right for the court to so order.

73. The Petitioner and the Respondent in their evidence stated what was agreed. There is no evidence that both parties agreed to send J out of the jurisdiction for tertiary education where they had to pay equally as they both could not afford it. The Petitioner also suggested to send the said child to the University of the Bahamas for free.

74. It would be unfair of the court to obligate the Petitioner to contribute to J's tertiary education in these circumstances. The Petitioner has always maintained the same stance that, he is not in the financial position to afford the child's tertiary education. Both the Petitioner and the Respondent accepted this fact; and had the expectation that J would either receive a scholarship or enroll at a public college for financial reasons.

75. The Judge in determining whether to exercise its powers in awarding property adjustment, must have regard to Section 29 of the Matrimonial Causes Act:

- a. "The Petitioner earns more than the Respondent as an Independent Trucking Contractor. However, his salary fluctuates depending on available work;
- b. This Petitioner no longer resides in the matrimonial home; he moved into rental accommodation and has living expenses. The Petitioner also provided maintenance for their minor son, J. This has now stopped as he

is an adult. The Respondent continues to reside in the matrimonial home. The mortgage on the home only had another year and a half to continue. The outstanding balance at the time on the mortgage for the matrimonial home was the sum of \$7,685.48. The mortgage has now been paid in full.

- c. Both the Petitioner and the Respondent earn a modest living. The land where the matrimonial home is situated is in the Respondent's sole name but the mortgage that was used to construct the home is in both the Petitioner and Respondent's name. This home was intended to be the matrimonial home as it was purchased with both parties' funds prior to the marriage on contemplation of marriage;
- d. Both the Petitioner and the Respondent are (51) years old. They have lived as husband and wife for approximately seventeen (17) years;
- e. The Petitioner and the Respondent are in good health;
- f. It is agreed that the Petitioner and the Respondent shared the contributions made to the home and its upkeep equally. The Petitioner continued to pay the mortgage for one year after moving out of the matrimonial home in November, 2015;
- g. The Petitioner has no Pension Plan that the Respondent may benefit from. The Petitioner is unaware as to whether Respondent has any pension plan or Lump sum savings that he may benefit from.

RESPONDENT'S SUBMISSIONS

76. By virtue of the MCA the Bahamian Courts have jurisdiction over all matrimonial matters. The Act determines how the Court is to exercise its power and the factors to which the Court should have regard when exercising its jurisdiction.

77. Section 29 of the MCA sets out the statutory guidelines which the Court must consider while making property adjustment orders and financial provision orders.

78. The proper approach to the application of Section 29 to the present set of facts is as was taken by the House of Lords in **White v White [2001] 1 AC 596** and the conjoined appeals of **Miller v Miller** and **McFarlane v McFarlane [2006] UKHL 24**. Both of these cases endorse the court addressing its mind to the overriding principles of need, compensation and sharing which principles are to be tempered in their application by the courts consideration of fairness between the parties. In **White** Lord Nichols addressed the sharing principle to be applied to the familial assets in the following manner:-

"Implicitly, the objective must be to achieve a fair outcome. The purpose of these powers is to enable the court to make fair financial arrangements on or after divorce in the absence of agreement between the former spouses (see Thorpe LJ in *Dart v Dart [2007] 1 FCR 21 at 29*). The powers must always be exercised with this objective in view, giving first consideration to the welfare of the children.

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 (at 39) said in *Dart's* case, the statutory jurisdiction provides for all applications for ancillary financial relief, from the poverty-stricken to the multi-millionaire. But there is one principle 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 the 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 para (f) of s 25(2) of the 1973 Act, relating to the parties' contributions. This is implicit in the very language of para (f): '... the contribution which *each* of the parties 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.' (My emphasis.) 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-earner and against the homemaker and the child-carer."

79. The Respondent is privately employed on fixed salary as a manager at Sandy's. The Petitioner continues to run a successful trucking business which was started during the marriage and averages a profit of more than \$21,000.00 annually.
80. Without the Petitioner's assistance, the Respondent will continue to struggle to maintain herself and to meet the college tuition payments and associated expenses for J, and will likely exhaust any savings that she may still have in the process.
81. The family enjoyed a reasonable middle-class lifestyle and the Respondent has had to struggle financially since the Petitioner's departure, and the Respondent's continuation of this lifestyle is further jeopardized by the Petitioner's failure to assist her over the past seven years.
82. The Petitioner is 50 and the Respondent is 51.
83. Initially the parties both contributed to the welfare of the family, however after leaving the matrimonial home, the Respondent basically abandoned his familial responsibilities and left the Respondent to fend for herself financially with respect to both the household expenses, mortgage payments, child maintenance and educational expenses for the child of the marriage.
84. The matrimonial home was purchased immediately prior to the marriage, when the building had been constructed up to the belt course and it was mortgaged in the names of both parties a year into the marriage and both parties paid the mortgage up to December 2015 when the Petitioner left the home. The Respondent made significant

improvements thereto and was the party solely responsible for satisfying the mortgage between 2015 and 2020 and accordingly, it is inequitable for the Petitioner to seek a 50% interest therein.

85. The Petitioner's trucking business is clearly a matrimonial asset, having been started during the marriage, carrying the name "J & E Trucking", which represents the first initial of the names of the parties hereto, the Respondent having purchased a vehicle to be used in the business and also having worked with and in the business with the Petitioner. The profits from the business were used to maintain their home, educate the child of the marriage and fund their lifestyle. Even if the Petitioner were to incorrectly argue that he was solely responsible for operating the business, a point that is entirely without merit and is contrary to the facts, the profits from the business were used for the benefit of the family which would make the business a matrimonial asset.
86. The Respondent submits that she is entitled to 50% of the profits earned by J & E Trucking from the months of December 2015 to date.
87. In considering the maintenance of the children of the marriage the court has to take into consideration the provisions of Section 29 Matrimonial Causes Act.
88. The financial needs of the child of the marriage are clear. He was raised in a middle-class family, attended private schools and is now enrolled in university. The clear and present need is for provisions to be made for him to complete his university education and maintain a reasonably comfortable standard of living until such time as his studies are completed.
89. There is no evidence that J has any income earning capacity or mental disability at this time.
90. Both parents expected J to receive a college education with a view to a professional career and both parents took steps toward that end prior to the breakdown of the marriage.
91. The Petitioner alleges that he maintained J by virtue of having set up a bank account and giving him access thereto. However, it is submitted that such a step, taken without notifying the Respondent, does not and cannot amount to maintenance as there is no indication that the funds accessed by the child were used for his welfare or benefit. The Petitioner's conduct in addressing his purported maintenance payments in this manner is a clear indication of his refusal to assist the Respondent in any fashion which position we submit is further evidenced by his abandoning any responsibility for J's school fees and simply stating that he thought that J "*had a scholarship*", a fact which could have easily been verified by way of a phone call to the school or a text message to the Respondent.
92. The parties to a marriage have an obligation to provide reasonable maintenance for any child of the family. The failure to provide reasonable maintenance is ground for an

application under section 31 of the MCA for an order requiring the Respondent to make to the Applicant or any such person as may be specified in the order for the benefit of the child of the family such periodical payments (secured or otherwise) or a lump sum payment (secured or otherwise) as directed by the court.

93. Section 33 of the MCA provides that no order for periodical payments or secured periodical payments in favor of a child shall extend beyond the date of the child's 18th birthday unless it appears to the court that the child is, or will be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also or will also be, in gainful employment.

94. As was determined by Sir Burton Hall in the case of **Allison Alberta Brown v Edroy Leroy Brown et al**, it is within the courts jurisdiction to make an Order for the maintenance of J, despite his being over 18 years old, and it is submitted that it is fair and just to do so.

DECISION

95. Sections 27 and 28 of the Matrimonial Causes Act (**the "MCA"**) set out the various types of orders which the Court may grant before or after a decree of divorce is made absolute. They are categorized as financial provision orders and property adjustment orders. Section 27 provides:-

"27. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity 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) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified;

(c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified;

(d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified;

(e) an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;

(f) an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified; subject, however, in the case of an order under paragraph (d), (e) or (f) to the restrictions imposed by section 33(1) and (3) on the making of financial provision order in favour of children who have attained the age of eighteen.

(2) The court may also, subject to those restrictions make any one or more of the orders mentioned in subsection (1)(d), (e) and (f) —

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and
 - (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.
- (3) Without prejudice to the generality of subsection (1)(c) or (f) —
- (a) an order under this section that a party to a marriage shall pay a lump sum to the other party may be made for the purpose of enabling that other party to meet any liabilities or expenses reasonably incurred by him or her in maintaining himself or herself or any child of the family before making an application for an order under this section in his or her favour;
 - (b) an order under this section for the payment of a lump sum to or for the benefit of a child of the family may be made for the purpose of enabling any liabilities or expenses reasonably incurred by or for the benefit of that child before the making of an application for an order under this section in his favour to be met; and
 - (c) an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amount as may be specified in the order and may require the payment of the instalments to be secured to the satisfaction of the court.
- (4) The power of the court under subsection (1) or (2)(a) to make an order in favour of a child of the family shall be exercisable from time to time; and where the court makes an order in favour of a child under subsection (2)(b) it may from time to time, subject to the restrictions mentioned in subsection (1) make a further order in his favour of any of the kinds mentioned in subsection (1)(d), (e) or (f).
- (5) Without prejudice to the power to give a direction under section 71 for the settlement of an instrument by counsel, where an order is made under subsection (1)(a), (b) or (c) on or after granting a decree of divorce or nullity of marriage, neither the order nor any settlement made in pursuance of the order shall take effect unless the decree has been made absolute.”

Section 28 (1) provides:-

28. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity 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 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 in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
 - (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
 - (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or postnuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;
 - (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;

subject, however, in the case of an order under paragraph (a) to the restrictions imposed by section 33(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

96. Section 29 (1) of the **MCA** sets out the factors which the Court must consider when exercising its powers to make either type of order. Section 29 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 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.

(2) Without prejudice to subsection (3) it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that it to say —

(a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child; Matters to which court is to have regard in deciding how to exercise its powers under sections 25, 27 and 28.

(c) any physical or mental disability of the child;

(d) the standard of living enjoyed by the family before the breakdown of the marriage;

(e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of

subsection (1) just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

(3) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 against a party to a marriage in favour of a child of the family who is not the child of that party and, if so, in what manner, to have regard (among the circumstances of the case) —

(a) to whether that party had assumed any responsibility for the child's maintenance and, if so, to the extent to which, and the basis upon which, that party assumed such responsibility and to the length of time for which that party discharged such responsibility;

(b) to whether in assuming and discharging such responsibility that party did so knowing that the child was not his or her own;

(c) to the liability of any other person to maintain the child.

(4) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under section 25(3) in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under this section.

(5) Without prejudice to subsection (1) where the court grants a divorce on the basis of the ground specified in section 16(1)(d) the court, in exercising the powers referred to in subsection (1), shall have particular regard to the conduct of the petitioner where the evidence discloses that but for the misconduct of the petitioner the parties would not have lived separate and apart.”

97. These provisions are mandatory statutory guidelines to be considered when making orders under Sections 27 and 28.

98. Under the MCA, the objective of the Court in ancillary proceedings is to achieve a fair result between the parties based inter alia on a number of factors. The equality principle as established in this jurisdiction in **A v B #320 of 2008** is considered the starting point when dealing with property adjustment. This principle however may be departed from in order to ensure that the matrimonial assets are distributed to each party of the marriage based on need, contributions made and to ensure fairness.

99. Any sharing as set out in **Jupp v Jupp** may only occur after considering Section 29. In **Jupp v Jupp** the Court of Appeal held:-

“It must be remembered that authorities from the United Kingdom cannot trump what the statute law of The Bahamas says. It is only if these cases are consistent with the statute law can they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle

case law must be construed in this light. The statute requires you to look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reasons for the same.

100. Further, in **White v White [2001] 1 AER 1**, Lord Nicholls states:-

“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 by 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.”

101. In **A v B [2010] 2 BHS J No.18**, Barnett CJ, reaffirmed **White v. White** by holding that the modern day approach to the division of assets in The Bahamas is equal sharing of property unless there is a compelling reason to depart from it.

102. Further in **Miller v Miller**; and **McFarlane v McFarlane (2006) 3 All ER 1** the House of Lords stated:-

“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 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.”

103. The consideration for such distribution begins at the break down of the marriage and when mutual support has ended. This was confirmed **Rosemary Edith Burrows (nee Knowles) v Sylvester John Burrows SCCivApp No. 58 of 2021** where Crane Scott JA held:-

“68. The legal principle is that the date when the marriage broke down and mutual support ended is the point in time at which the property and financial resources of the parties which are or will be available for equitable distribution is to be assessed. That overarching principle is, in our view, well established and not seriously in dispute.”

104. The parties were married for eighteen years. From the evidence given by both parties, it is evident that there was a breakdown of the relationship between them before these proceedings were initiated, but the mutual support in relation to the mortgage over the Matrimonial Home did not end until a year after the Petitioner left the home. They both now seek orders for property adjustment for the Matrimonial Home and the Petitioner seeks an order for property adjustment for the South Beach Property. The Respondent also seeks an order mandating the Petitioner to pay for J's tertiary education and maintenance as well as maintenance he never paid to her after he left the Matrimonial Home. They claim that the matrimonial assets are the Matrimonial Home, the South Beach Property, the Arawak Port shares, the Tucson Vehicle and the F-150 Truck and the trucking business, although the Petitioner does not consider the trucking business as an asset.

ISSUE ONE – PROPERTY ADJUSTMENT

MATRIMONIAL HOME

105. The land on which the Matrimonial Home was built was purchased by the Respondent. The Respondent commenced construction on the home prior to the marriage with a loan. A subsequent mortgage was obtained by both parties to complete the construction of the Matrimonial Home and thereafter, both parties paid the monthly payments equally.

106. The Respondent claims that she obtained a loan from her employer to erect a fence around the Matrimonial Home which she had to repay. The Petitioner claims that he assisted with the erection. The Respondent also claims that she paid six thousand dollars for the construction of an office added to the Matrimonial Home. The Petitioner also claims that he financially assisted with its construction.

107. It is not disputed that aside from the parties' equal contribution towards the mortgage during the life of the mortgage, the Petitioner paid the larger bills and the Respondent paid the smaller bills. What is in dispute is the reason why. The Petitioner claims that it was because the Respondent was making the monthly mortgage payments towards the South Beach Property, whereas the Respondent claims that it was the Petitioner's suggestion because he earned more than she did. No evidence was produced to confirm that the Respondent was paying the mortgage payment on the South Beach Property.

108. After the Petitioner moved out of the Matrimonial Home in December 2015, he continued to pay his half of the mortgage payments up to January 2017. Thereafter, the Respondent obtained a loan to pay off the mortgage balance. The Petitioner maintains that the balance of the mortgage when he stopped paying was \$7,685.48.

109. While some of the evidence of each party is accepted some is rejected, I accept, the evidence of the Respondent in relation to the Matrimonial Home. Considering the evidence in the round, I accept that the Respondent's financial contributions to the

Matrimonial Home were ultimately greater than that of the Petitioner's. She paid the mortgage after the Petitioner stopped paying and she had paid for the initial purchase of the land.

110. During the course of the marriage, the Petitioner contributed to half of the mortgage payments in the sum of four hundred and thirty dollars per month up to January 2017. He contributed to the electricity bill, half of the maintenance of the Matrimonial Home, groceries, cooking gas and school lunch and some school fees for J. He also purchased two vehicles for the Respondent, the last being a 2012 Hyundai Tucson jeep (**the "Tucson Jeep"**) by way of a loan which the Respondent also contributed by paying three hundred and fifty dollars per month on the loan after the Petitioner ceased paying the loan for the Jeep.
111. The Respondent also contributed half of the mortgage payments in the sum of four hundred and thirty dollars per month and the full mortgage payment for a year and a half after January 2017 to June 2018 and paid off the final balance owing. She also contributed to the water, cable and telephone bills and half of the maintenance on the Matrimonial Home. After the Respondent left the home she paid all of the utilities.
112. The Petitioner has moved out of the Matrimonial Home and the Respondent still remains there. He is seeking that the Respondent pay him one half of the appraised value within sixty days of receiving the appraisal amount The Respondent is seeking a order that the Petitioner has no interest in the matrimonial home.
113. There is no evidence before me of the present value of the matrimonial home. The only appraisal obtained was provided by the Respondent and is dated February of 2015, which was obtained prior to the breakdown of the marriage. The property was appraised then at \$437,000.00. I am not satisfied that the value is the current value and hereby order an appraisal by an Appraiser agreed between the parties. I order that a formal appraisal be conducted of the Matrimonial Home and the appraised value provided to the parties. The cost of the appraisal shall be borne by the parties equally. Upon receipt, the Respondent shall pay to the Petitioner one third of the appraised value as his share in the Matrimonial Home. As there is no outstanding mortgage the parties own the full value. I am satisfied that the Respondent paid the majority of the mortgage payment, paid for the land and the initial construction of the house as well as the addition built on the home, and I am satisfied that based on these facts it is fair to depart from the equal sharing principle.

SOUTH BEACH PROPERTY

114. The Petitioner claims that while he met the Respondent with the South Beach Property, during the marriage she had suggested building a triplex thereon or that she would give it to C. The Respondent denies the suggestion as she claims that she did not have an actual interest in the South Beach Property.
115. She maintains that she was helping a friend qualify for a mortgage by becoming a signatory to the mortgage arrangement. The Respondent also claims to have

forgotten about the South Beach Property and that she only remembered it when one of her former attorneys brought it to her attention.

116. In any event, she says that it was sold by the bank because the actual owner defaulted on the mortgage payments. She refuted the Petitioner's assertion that they had agreed for him to pay the majority of the bills in order for her to pay off the mortgage.

117. In ancillary proceedings full and frank disclosure is deemed to be of the utmost importance. This much was said by Barnett P in **Richard Russell v. Christine Russell SCCiv App No. 119 of 2017**:

"11. We also again emphasize the critical importance of full disclosure by both parties in ancillary proceedings. In Livesey v Jenkins [1985] A.C. 424 Lord Brandon said:

"the requirement of full and frank disclosure always exist in proceedings for financial provision and other ancillary relief. It is, as I have sought to stress, a requirement founded on the term of S 25 (1) of the 1973 Act, and, for reason of public policy, it is not open to parties, whether represented by lawyer or not, to disregard, or to contract out of such requirement."

12. And later,

"It follows that, in proceedings in which parties invoke the exercise of the court's powers under sections 23 and 24, they must provide the court with information about all the circumstances of the case, including, inter alia, the particular matters so specified Unless they do so, directly or indirectly, and ensure that the information provided is correct, complete and up to date, the court is not equipped to exercise, and cannot therefore lawfully and properly exercise, its discretion in the manner ordained by section 25 (1)."

13. In Collie v Collie 2012/FAM/DIV/00432, I said:

"10. It is essential for the proper exercise of the court's discretion in this matter that the court has as much information as is available as to the assets of the parties that is to say "the in-come, 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."

118. In civil proceedings, the Court is tasked with determining whose evidence it is to be believed in the absence of supporting documentary evidence. The basis of this determination is dependent upon the credibility of the witness giving the evidence. In the instant case, I do not find the Respondent to be a credible witness with respect to the South Beach Property and its ownership. If in fact she had no interest in the property, she would not have cleared it down which she admitted to doing.

119. However, the Petitioner has not satisfied me that the property was used for the benefit of the marriage, a hurdle that must be crossed in order for an order to be made with respect to an asset acquired outside of the marriage. In the circumstances, I find that the South Beach Property is not a matrimonial asset. In addition the Respondent

maintains that the property was repossessed and sold to a third party, although no evidence was produced of this sale.

ARAWAK PORT SHARES

120. The Respondent does not contest the Petitioner's request to transfer her interest in the said shares to him. Accordingly, I order that the Respondent transfer her interest in the Arawak Port Shares to the Petitioner upon the Petitioner paying to her one half of its market value as determined by the Bahamas International Securities Exchange.

VEHICLES

121. The Petitioner shall retain her Tuscon Jeep and the Respondent his F-150 truck.

PETITIONER'S TRUCKING BUSINESS

122. The Petitioner does not address his Trucking Business in his submissions. The Respondent states that she was involved in the business during the marriage, doing the book keeping and payroll. The sum paid by her for the construction of the office inures to the increase in the value of her interest in the matrimonial home.

123. I accept that the profits from the business were used to maintain the house and the family. I also accept that the Respondent performed duties in the business. All of these facts support the fact that the trucking business is a marital asset. Further I believe the Respondent that the initials J and E represent each of the parties' names.

124. The majority of the effort expended however to run this business was from the Petitioner, and I order that the Respondent is entitled to one third (1/3) of the profits earned from December 2015 to date. Such profits to be ascertained by an independent assessor to be agreed by both parties and the expenses of such assessment to be shared equally.

125. Upon determination of the profits, the Petitioner shall pay to the Respondent the said sum, failing which the said sum shall be deducted from the Petitioner's interest in the matrimonial home.

RESPONDENT'S MAINTENANCE

126. Since leaving the Matrimonial Home the Respondent ceased contributing to its expenses. Further no maintenance was provided to the Respondent to assist with the household expenses except for the mortgage payments made for 1 year. Financial provision orders are made to place the parties to the best of their abilities in the position that they were in during the course of the marriage.

127. It was not disputed that during the marriage the Petitioner contributed to the larger bills and paid half of the mortgage. The Petitioner continued to contribute half of the mortgage payments for a year after he left. Thereafter, the burden rested on the Respondent to continue the payments in full in addition to incurring the larger

expenses that the Petitioner would normally have paid because he earned a greater salary than she did.

128. The Respondent had to subsequently obtain a loan to pay off the mortgage after the Petitioner left. She also had to pay the electricity bill, the house insurance, the grocery bill and cooking gas bill in addition to the other bills which she was already paying. The Respondent set the additional monthly costs incurred as follows:

\$430.00 – mortgage
\$270.00 – electricity
\$190.00 – house insurance
\$170.00 – groceries
\$24.00 – cooking gas
\$1084.00 – TOTAL

129. The arrears for the maintenance payments, calculated from January 2016 to March 2022 amounted to \$78,048 less \$5,160 which represented the mortgage payments made by the Petitioner for a year after he left leaving a total of \$72,888.00 being claimed. I am satisfied that the Respondent paid the bulk of these expenses but it must be noted that the Petitioner was not in the home and the utility bills and groceries are not capital expenses. They were paid during the marriage as each party's contribution to living in the matrimonial home. The Petitioner did not benefit from the electricity or water or any groceries after he left the home. However the child of the family lived in the home and incurred some of these expenses. I will address these expenses in the section addressing J's Maintenance. I have already allowed the parties' interest in the home which reflects also the greater burden placed on the Respondent subsequent to the Plaintiff leaving the home and accordingly make no order for the personal maintenance of the Respondent.

J'S MAINTENANCE

130. During the course of the marriage, the Petitioner maintained that he would bear the greater financial burden towards J as well as pay his school fees.

131. The Respondent claims that after the Petitioner left the Matrimonial Home, he no longer maintained J whereas the Petitioner claims that he did in fact continue to maintain J by placing monies on account and gave J an ATM card to access those funds. He had opened the account after he had attempted to get the Respondent to open an account for the maintenance but they had never agreed on this.

132. The Petitioner provided a print out the account opened. Between 2016 and 2019, he had deposited \$8,840.00 to the account. The deposit amounts would vary between \$200.00, \$250.00, \$400.00 or \$500.00. He provided photographic evidence of J accessing the account by way of ATM machines.

133. A consistent payment of \$250.00 from January 2016 to June 2019, when J turned eighteen years old, would have amounted to \$10,500.00. Therefore, arrears in the amount of \$1,660.00 are ordered to be paid. I also believe the Respondent when she stated that none of the funds were given to her to assist with the household

expenses. As stated previously, J used the utilities and accordingly his maintenance should have been used to assist with paying the same. J became of age in 2019. Accordingly, the Petitioner should have provided some maintenance to the Respondent to assist with these expenses until J became sui juris. The Petitioner is to pay the Respondent \$2,474.00 representing a 1/3 contribution to the electricity, groceries and cooking gas for the years 2016 to April 2019. Such sum if not paid within 90 days is to be deducted from the Petitioner's interest in the matrimonial home.

SCHOOL FEES

134. The Petitioner was able to provide one receipt for payment of J's schools fees which he attended Bahamas Global Academy for \$800. It is not disputed that he did not pay any school fees for J during his time at St. John's College. The Respondent claims that she spent \$3,071.00 monthly for housing for J and his school fees.
135. However, there is no breakdown of what was spent on housing and what was spent on the school fees. In his evidence, the Petitioner stated that J had informed him that he may have gotten a scholarship to attend St. John's College.
136. There was and is a failure to communicate by these parties. It is not seriously disputed that J did attend both Bahamas Global Academy and St. John's. There is evidence that there was no scholarship and accordingly I order that the Petitioner reimburse the Respondent the full amount of the school fees incurred by J while at Bahamas Global Academy which were not paid by him and all of the fees incurred at St. John's College.

SCHOOL FEES FOR TERTIARY EDUCATION

137. Section 29 (2) of the **MCA** set out the factors which a court should take into consideration when making any order in relation to a child of the marriage. These include the manner in which he was being and in which the parties to the marriage expected him to be educated or trained.
138. J is sui juris. The evidence of the contributions by both parents to his welfare while a minor have been set out above. If there was an agreement prior to the breakdown of the marriage for the parties to pay the tertiary education of J, the court would not hesitate to facilitate such agreement. The Petitioner made it clear that he maintained J up until he turned eighteen by ceasing any maintenance towards him thereafter.
139. The Petitioner claims that he cannot financially support J's tertiary education and that he never agreed that he would do so once J became of age. He suggests that J take advantage of the free university education offered by the University of The Bahamas. The Respondent has demonstrated that she is not in a financial position to pay the tuition at Acadia University however, she wishes for him to study abroad to pursue his passion for veterinary science. Under cross-examination she admitted that he was not in school at the time of the hearing but selling dog products.

140. Although the Respondent claims that during the marriage they agreed that they would pay for J's tertiary education, she does admit that they did not have the money to send him. She stated that they would save towards certain goals throughout the marriage but at the time the marriage broke down there was no money allotted towards J's tertiary education. The Petitioner also stated that he did not wish to pay the fees for someone who was violent and disrespectful towards him.

141. The authorities are replete on this issue and I respectfully adopt the same view.

142. In **Jewel Smith v Smith SC 2019/FAM/div/00185 19th May 2021 (unreported)** McKay J had to consider whether to make an order for the respondent to pay the tuition of private school fees for the eldest child of the marriage. She held that in the absence of evidence that the parent can afford to pay such fees, it would be unreasonable to order that parent to do so. She states:

"61. As Barnett CJ (as he then was) submitted in Henry Thurston v Mornette McKenzie (supra) and I accept, the Court cannot compel a parent to contribute to the payment of school fees in the absence of evidence that the parent can afford to do so. In the instant case, it would be unreasonable to order that the Respondent should contribute to the payment of the private school fees as he is not in a financial position to do so. Additionally, it was not the status quo prior to the breakdown of the marriage."

143. Further as Hall CJ in Brown v Brown 2004 D & M #416 of 1991 stated:-
"However, while the court has jurisdiction to make the award prayed for, I am not persuaded that the court should, in this case, do so. Without gainsaying the inestimable value of a tertiary education which all parents having the means to do so should – morally – afford their children, the expense of such education, which can prove unpredictable, cannot be legally fixed on a parent according to the arbitrary choice of the other parent or a child who is of full age unless there is the clearest evidence that the parent against whom an order is sought is in a position to do so and it is right for the court to so order. Here, the circumstances of this family where such as that none of the children was afforded a tertiary level education, yet the respondent paid for the further education of E beyond the age specified in the extant order of court, until he had obtained his associates degree. I am of the view that it would be unfair to the respondent to legally require him to do more. It is a matter for him according to his conscience to decide the extent to which he will further assist E but I am unable to order him to do so merely because E and the petitioner so desire."

144. In consideration of the evidence submitted by both parties I find that it would be unreasonable to order that the Petitioner contribute to the payment of the tertiary education of J.

CONCLUSION

145. Having considered the statutory guidelines and reviewed the evidence and submissions of the parties I order and declare that:-

145.1 The Petitioner shall receive a 1/3 interest in the Matrimonial Home and the Respondent shall receive a 2/3 interest in the Matrimonial Home. The Respondent is entitled to remain therein. The Respondent is to pay the Petitioner's interest within 90 days or any agreed extension between the parties after the obtaining of an appraisal as ordered failing which the house is to be sold and the net proceeds divided to settle each party's entitlement. The parties are to sign any necessary documentation to release the Petitioner's interest in the same after receipt of the funds. Should any party fail to execute any of the required documents the Registrar is empowered to sign said documents.

145.2 The parties shall obtain a joint appraisal of the Matrimonial Home. The costs of the appraisal shall be borne equally by both the Petitioner and the Respondent.

146. The South Beach Property is not a matrimonial asset.

147. The Petitioner shall pay to the Respondent 1/3 of the profits from the Trucking business from December 2015 to date. Such profits to be determined by an independent assessor agreed by both parties and at the joint expense of the parties.

148. The Petitioner shall pay to the Respondent arrears for maintenance for J in the sum of \$4,134.00, as well as the full amount of fees payable at St. Johns College and any fees incurred but not paid by the Petitioner at Bahamas Global Academy.

149. The Respondent shall release her interest in the Arawak Port Shares to the Petitioner and the Petitioner shall pay to the Respondent half of its value as determined by The Bahamas International Securities Exchange.

150. No order is made for the Petitioner to pay for the tertiary education of J.

151. Each party shall bear their own costs.

Dated this 20th day of October 2022



Hon. Madam Justice G. Diane Stewart