

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
FAMILY DIVISION
BETWEEN

2020

FAM/DIV/00026

J.J.J

Petitioner

AND

V.L.J

Respondent

T

Co- Respondent

Before: The Hon. Madam Justice G. Diane Stewart
Appearances: Mrs. Romona Farquharson for the Petitioner
Mr. Kevin Farrington & Ms. Floidira Collie for the Respondent
Ruling Date: March 3rd, 2023

RULING

BACKGROUND FACTS

1. The Petitioner, J.J.J was married to the Respondent V.L.J on 12th December 2015. There is one child of the marriage, namely J.J.J (female) born 18th September 2015. The Petitioner is employed as a Correctional Officer at The Bahamas Department of Corrections, the Respondent is employed as a Janitress with the Ministry of Education.
2. The Petitioner filed his petition on 17th January 2020 seeking dissolution of the marriage on the ground that since the celebration of the marriage, the Respondent had committed adultery and treated him with cruelty.
3. A Decree Nisi was granted to him on the ground of the Respondent's adultery on 10th November 2020. Ancillary matters were adjourned to Chambers.

4. By a Notice of Intention to proceed with application for ancillary relief filed August 18th, 2020, the Petitioner sought custody and a property adjustment order.
5. By an interim order made the 25th February, 2022 it was ordered that the Petitioner pay the Respondent maintenance for the child in the sum of \$150.00 per month. Further it was ordered that the Petitioner be granted access on alternating weekends.
6. On 23rd March 2022, it was ordered that:-
 - i. The parties have joint custody of the minor child of the marriage with care and control to the Respondent and liberal access to the Petitioner
 - ii. The Petitioner pay maintenance in the sum of \$200.00 per month for the minor child commencing 28th March 2022 and payable on the 28th of each month thereafter. The Petitioner is also at liberty to provide groceries
 - iii. The Petitioner is to have staying access to the minor child on Tuesday 3pm to 6pm and Fridays from 2pm to 6pm when there is no weekend access
 - iv. The Petitioner shall enjoy staying access every other weekend from 12pm Friday to 7pm on Sunday
 - v. The Petitioner will continue to keep the child insured under his work medical plan and the parties are to share equally all co-payments and all other expenses not covered by the insurance
 - vi. The parties shall share all back to school expenses and the Respondent is to provide the Petitioner with a listing with costs for the back to school supplies and the Petitioner is to pay one half of such costs by July 15th each year until the child completes secondary school
 - vii. The Petitioner is to pay \$100.00 towards the general clothing of the minor child every July and December until she attains the age of 18 years old
 - viii. The Respondent shall ensure on the access days and weekends that suitable clothing is sent with the child
7. The court also granted the Section 73(1) (b) (1) declaration certifying that all arrangements for the welfare of the child had been made and are satisfactory.
8. The only outstanding issue is the property adjustment of the matrimonial home.

PETITIONER'S EVIDENCE

9. The Petitioner filed his affidavit of means on 18th August 2021. The Petitioner is currently employed with The Bahamas Department of Corrections making a monthly salary of \$2,379.17. The Petitioner's monthly expenses are:-
 - i. **Rent** **\$250.00**
 - ii. **Pension** **\$84.98**
 - iii. **Prison Off Association** **\$10.00**
 - iv. **Life Ins.** **\$95.44**
 - v. **Bahamas Mortgage Corp.** **\$813.00**
 - vi. **Commonwealth Bank Loan** **\$538.00**
 - vii. **Teacher's Credit Union** **\$150.00**

viii.	Child Maintenance	\$150.00
ix.	Groceries	\$150.00
x.	Gas/transportation	\$100.00
xi.	NIB	\$89.98
xii.	Grooming	\$40.00
xiii.	Mobile	\$60.00
xiv.	Uniform/Laundry	\$100.00
	<u>TOTAL</u>	<u>\$2,631.40</u>

10. He maintains that his monthly expenses exceed his income and he still manages to pay a portion of his bills every month.
11. The parties obtained a home from the Department of Housing with a mortgage from The Bahamas Mortgage Corporation in 2014. The monthly mortgage payments were \$813.00. The Petitioner maintains that he used his savings to pay the down payment, in the amount of \$5,281.14.
12. The Petitioner moved out of the matrimonial home October 2019 and is now renting a room in his family members' home.
13. The Petitioner always paid the monthly mortgage as well as the utility bills and has always provided groceries for the family. The parties initially agreed that the Respondent would pay the water bill and they would both contribute towards the groceries. However, the Respondent always complained about not having any money although she received a monthly salary.
14. The mortgage payments are currently still being deducted from the Petitioner's monthly salary. As of 21st July 2021, the amount owing on the mortgage is \$84,728.33. The house was appraised in September 2022 at \$195,000.00 leaving an equity of \$110,277.67.

RESPONDENT'S EVIDENCE

15. The Respondent filed her affidavit of Means on 14th February 2022. She is employed with the Ministry of Education as a Janitress making an annual salary of \$11,450.00 or \$954.17 monthly. The Respondent has a secondary source of income cleaning Air BnB's and ironing clothes making an additional \$700.00 per month. Her total monthly income is \$1654.17.
16. The Respondent also receives approximately of \$400.00 per month from her two older children as well as her parents to assist with purchasing groceries, paying bills and maintaining her other children.
17. She resides in the matrimonial home with her children, two, of whom are sui juris and three are minors. Two of the minors are not the Petitioners children. She

attempts to pay the utility bills in the home, including the light, cable, telephone, water, cooking gas, and cesspit tank. She makes monthly payments on each bill and does not receive financial assistance from the Petitioner. She spends approximately \$375.00 monthly on utilities. She spends an additional \$400.00 each month on groceries for herself and the children.

18. In or about 2021, the Respondent began driving a rental car which she uses as a means of transporting herself and her children. The cost of the rental car is approximately \$1,000.00 per month and an additional \$120.00 on gas per month.

19. She also has a number of personal loans. She secured a loan with Fidelity Bank on 10th October 2017. The current balance owing on that loan is \$25,291.88. In July 2021, the Respondent secured another loan with Simplified Lending Ltd. the balance owing on that loan is \$3,252.47. She secured another loan with Pouland Ltd in or about 2019. The balance owing on this loan is \$14,589.26.

20. The Respondent's monthly expenses are:-

i.	Car rent & gas	\$1,120.00
ii.	Utilities	\$375.00
iii.	Loan- Fidelity Bank	\$420.00
iv.	Groceries	\$400.00
v.	Loan- Pouland Ltd.	\$260.95
vi.	Maintenance for 2 minor children	\$250.00
vii.	Maintenance for child of the marriage	\$150.00
viii.	Loan- Simplified Lending	\$85.80
ix.	NIB	\$37.21
	<u>TOTAL</u>	<u>\$2,995.99</u>

21. The Respondent maintains that both parties agreed to contribute to the down-payment of the matrimonial home. She claims that she used proceeds from her asue pay out on 21st June 2014 in the sum of \$4,800.00 to pay for her half of the down payment. The parties took cash to the Department of Housing to pay the down payment and as instructed they needed to produce a Manager's Cheque, which resulted in the Petitioner taking the cash to the Credit Union and getting a Manager's Cheque as the down payment.

22. The parties agreed that the mortgage payments would be paid by salary deduction from the Petitioner's salary while the Respondent's salary would be used to pay utility bills, purchase groceries and other household expenses.

23. The Respondent claims that she made further contributions to fix up the matrimonial home once the family moved in. It was agreed between the parties that she would obtain a personal loan with Fidelity Bank to assist with purchasing furniture.

24. The Respondent affirms that she has an equal interest in the matrimonial home and the proceeds of sale of the matrimonial home should be shared equally between the parties.

DECISION

25. The Petitioner submits that this is a case where the equal sharing principle should be departed from on the basis that his financial contributions to the purchase and maintenance of the matrimonial home were more than the Respondent. The Respondent submits that the Court should not depart from the equal sharing principle.
26. **Section 28 of the Matrimonial Causes Act (MCA)** enables the Court to make property adjustment orders in divorce proceedings. There is only one marital asset which falls for consideration, the matrimonial home located at Lot #3, Strachan Hill Estates.

MATRIMONIAL HOME

27. The starting point in making property adjustment order is the equal sharing principle unless there exists a compelling enough reason to depart from the same. The Court must however consider the guidelines established in **Section 29 of the MCA** as well as the final part of the section when making these orders.

28. **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.

29. The objective of the Court in these proceedings is to achieve a fair result between the parties having considered Section 29.
30. The equal sharing principle as established in **A v B [2010] 2 BHS J No.18**, which reaffirmed the English authorities is not an immoveable or inflexible principle. There may, be a departure from this principle in order to ensure that the assets are distributed between the parties based on their respective needs, contributions to the marriage and most importantly based on what is fair in the circumstances having regard to the financial positions they would have been in if the marriage had not broken down and each had discharged his or her obligation to each other.
31. As set out in **Jupp v Jupp SCCrApp No.37 of 2011**, a Judge must consider section 29 when exercising his discretion.

“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 vet), 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 enunciated by case law must be construed in this light. The statute required that you 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 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 reason for the same.”

32. In **White v White [2001] 1 All ER** Lord Nicholls 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. States 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.”

33. In **Miller v Miller; McFarlane v McFarlane (2006) 3 All ER 1** the House of Lord stated:-

“This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rises 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.”

34. In considering the statutory guidelines and determining what is fair in the circumstances, I accept the following:-

- i. The parties were married for five years. This was a short marriage.
- ii. There is no evidence that either party suffers from any physical or mental disability, therefore their earning capacity is not hindered in any way by disability. The Petitioner earns more income than the Respondent per month.
- iii. The Respondent lives in the matrimonial home with her children and the Petitioner rents a room from a relative. The majority of the children are not the Petitioner's children and no maintenance is sought for any of them except for the child of the parties. Two of the children are adults. They contribute monthly towards the groceries.
- iv. The Petitioner always paid and continues to pay the mortgage. During the marriage he paid the utility bills.
- v. The Respondent since the breakdown of the marriage has struggled to pay the utility bills.
- vi. The parties have presented contradictory evidence of their respective contributions to purchasing and maintaining the matrimonial home. The Petitioner maintains that he paid the down payment from his personal savings and continues to pay the mortgage via salary deductions and that during his time in the home he was responsible for paying the utility bills of the home. The Respondent on the other hand maintains that she contributed to half of the down payment and made financial contributions to the home in the form of paying the utility bills and maintaining the home and even went as far as taking out a personal loan to purchase furniture for the home.
- vii. The Respondent produced evidence of an asue draw in support of her contribution to the down payment which I accept.

35. I am satisfied that both parties made a financial contribution to the matrimonial home, with the Petitioner making a greater financial contribution than the Respondent. The Petitioner continues to pay the mortgage while not enjoying the benefit of the home. The Respondent along with her children enjoy the benefit of the home without paying the mortgage. The utilities paid by her are as a consequence of her living expenses and not contributing to the capital development of the home. Further there are other adults enjoying the benefit of the home without contributing to the mortgage.

36. Based on these facts, it is fair to depart from the equal sharing principle. I hereby order that the Petitioner be awarded 65% of the equity in the matrimonial home and the Respondent 35%, namely \$71,676.59 to the Petitioner and \$38,593.08 to the Respondent.

37. I am not satisfied based on the evidence before me that the Petitioner is able to afford to obtain a new home and continue to pay the mortgage, or the Respondent is able to pay the existing mortgage. I am also satisfied that the Respondent is enjoying the benefit of the matrimonial home along with her adult children while the Petitioner is compelled to pay the full mortgage as well as pay rent. This is not fair in the circumstances.
38. In the circumstances I order that the matrimonial home be sold after 90 days and the Petitioner receive 65% of the net proceeds and the Respondent 35% after settlement of the mortgage balance, all taxes owing on the same, as well as any advertising for sale costs and legal expenses for the sale.
39. Either party is able to purchase the other's interest as ordered as aforesaid within 90 days from the date of this order, and the parties shall execute the necessary documentation to give effect to this order. Should the parties fail to exercise the right to purchase the other's interest within the time ordered herein, the property shall be sold.
40. Both parties shall advertise the property for sale and the party who receives the highest offer shall control the sale.
41. Each party shall bear their own costs.

Dated this 3rd day of March, 2023



The Hon. Madam Justice G. Diane Stewart