

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division
2020/FAM/div/FP/00160**

BETWEEN

**CS
Petitioner**

AND

**WS
Respondent**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mrs. Shavanthi Griffin-Longe for the Petitioner
Mr. Kevin M. Russell for the Defendant

HEARING DATES: September 18, 2021

DECISION

Hanna-Adderley, J

1. The following has been gleaned from the Affidavits filed herein which were read into the record and the viva voce evidence of the parties and the Submissions of Counsel for the parties. The Court disregarded the written Submissions of Mrs. Shavanthi Griffin-Longe filed herein on November 2, 2021, because Counsel, at the hearing on September 28, 2021 were not directed to file written Submissions

and Mr. Kevin M. Russell having not done so, it would be unfair to pay regard to Ms. Longe's Written Submissions.

Background

2. The Decree Nisi was granted on January 27, 2021 in the Petitioner's favour on the ground that the Respondent has since the celebration of the marriage treated the Petitioner with cruelty. The Defendant filed a Notice of Intention to Proceed with Application for Ancillary Relief on July 8, 2021. Her application is supported by her Affidavits filed July 8 and September 24, 2021 and the Affidavit of Destiny Pratt filed November 1, 2021. The Respondent relies on his Affidavits filed September 23 and September 28, 2021.
3. The parties were married on August 6, 2014 in the City of Freeport, Grand Bahama. The Petitioner was 29 years of age and is now 36 years old. The Respondent was 32 years old and is now 39. The parties have two (2) children namely, AQS born December 4, 2003, age 17, KAS born November 29, 2007, age 13.
4. The following issues have been agreed by the parties and are hereby now made an Order of the Court, that is, the parties shall have joint custody of the minor children of the marriage, with care and control to the Petitioner and reasonable access to the Respondent.
5. The Petitioner seeks the following Orders that:
 - (1) The Respondent pays to the Petitioner a lump sum for the arrears of child support in the sum of \$6,170.00.
 - (2) The Respondent pays to the Petitioner \$600.00 per month into her First Caribbean International Bank account no. 201724389 for the maintenance of the minor children until they attain the age of 18 or 21 should they pursue tertiary educations.
 - (3) The parties share equally the cost of medical dental and optical bills for the minor children.
 - (4) That the Respondent contributes \$600.00 annually on August of every year towards the cost of school books, uniforms school

supplies and educational accessories for the minor children until they shall attain the age of 18 or 21 if pursuing tertiary education

- (5) The Respondent shall pay to the Petitioner the sum of \$800.00 annually on December 1 every year towards the cost of general clothing and shoes for the minor children.
- (6) The Respondent conveys his interest in the matrimony home to the Petitioner subject to the extant mortgage.
- (7) Each Party bears their own costs.
- (8) The parties have liberty to apply.

6. The Respondent seeks the following Orders:

- (1) The Respondent shall pay to the Petitioner the sum of \$300.00 per month for the maintenance of the children of the marriage until they attain the age of 18 or 21 of pursuing tertiary education.
- (2) The parties share the cost of medical, dental and optical expenses for the minor children.
- (3) That the Respondent contribute the sum of \$400.00 annually on the 1st August towards book, uniforms, school supplies and educational accessories for the minor children until they attain the age of 18 or 21 if pursuing tertiary education.
- (4) The Respondent shall convey his interest in the matrimony home to the Petitioner for a reasonable sum and the Petitioner shall assume the payment of the mortgage.

Findings of Fact

Maintenance

7. I am satisfied on the evidence that the Petitioner earns \$2000.00 per month as Medical Claim Specialist at Lucayan Medical Centre and that her monthly expenses for herself and the children are \$3,416.71 and her annual additional expenses \$11,197.00. I accept that the Respondent average monthly earning at Clear Blue Marine Agency Ltd. is \$1,200.00 at this time but also that he has the capacity by doing side jobs, to earn more income per month. While I appreciate that the

Petitioner and the children's needs are many I am not satisfied on the evidence that the Respondent can pay the full sums claimed by the Petitioner for maintenance, clothing allowance and school expenses.

Arrears

8. The Respondent has not challenged the Petitioner claim for arrears of maintenance. The Court finds that sum to be \$6,170.00.

Matrimonial Home

9. The Matrimonial is jointly owned. The outstanding mortgage as at August 15, 2021 was \$104,218.06. The house has been appraised as having a market value of \$130,630.00. The parties equity totals \$26,411.94.

Analysis and Conclusions

The Law

58. Sections 25, 27 and 28 of the Act empowers the Court to make financial provision orders and property adjustment orders in relation to the parties and to the children of the marriage.
59. Section 29 of the Act Section 29 specifically states the issues that the Court must look at when determining settlements of property, which would, in summary be, the income of the parties, the financial needs, the obligations and responsibilities, the age, the physical and mental disabilities. In exercising its powers under Sections 25 or 27 or 28 the Court must have regard to certain factors "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 responsibilities towards the other."
60. Lord Nicholls of Birkenhead in his Judgment in **Miller v Miller; McFarlane v McFarlane** [2006] UKUL 24 states in part:

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

carer. Mutual dependence begets mutual obligations of support. When the marriage ends, fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party."

At paragraph 16 His Lordship went on to say that:

"A third strand is sharing. This "equal sharing" principle derives from the basic concept of equality permeating a marriage as understood today. This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: "unless there is good reason to the contrary". The yardstick of equality is to be applied as an aid, not a rule."

10. On the evidence before me I see no reason to depart from the equal sharing principle as relates to the parties interest in the matrimonial home.
11. It is based on the above-mentioned provisions of the Matrimonial Clauses Act and the case Law referred to that I make the following Orders that:
 - (1) The Petitioner and the Respondent shall have joint custody of the minor children of the marriage namely, AQS born on December 4, 2003 and KAS born on November 29, 2007, with care and control to the Petitioner and reasonable access to the Respondent.
 - (2) The Respondent shall pay to the Petitioner a lump sum of \$6,170.00 representing the arrears of child support pursuant to the Magistrate's Court Order made on October 26, 2020.

- (3) The Respondent shall pay to the Petitioner the sum of \$200.00 per month per child into her FirstCaribbean International Bank (Bahamas) Limited account for the maintenance of the minor children until they shall attain the age of 18 or 22 should they pursue tertiary education.
- (4) The parties shall share equally the cost of medical, dental and optical bills for the minor children.
- (5) The Respondent shall contribute the sum of \$250.00 per child per annum on August 1 every year towards the cost of school books, uniforms, school supplies and educational accessories for the minor children until they shall attain the age of 18 or 22 if pursuing tertiary education.
- (6) The Respondent shall pay to the Petitioner the sum of \$200.00 per child twice per annum on December 1 and June 1 every year towards the cost of general clothing and shoes for the minor children.
- (7) Each parties' equity in the matrimonial home is \$13,205.95. The arrears of maintenance hereinbefore-mentioned at paragraph 2 shall be deducted from the Respondent's equity leaving a balance due to the Respondent of \$7,035.97.
- (8) The Petitioner shall pay to the Respondent the sum of \$7,035.97 within 90 days at which time the Respondent shall convey his interest in the Matrimonial Home to the Petitioner.
- (9) The Petitioner shall use her best endeavors to have the Respondent released from the mortgage and until such time shall indemnify him against all claims whatsoever by the mortgagee in respect of the said mortgage. The cost of the transfer shall be borne equally by the parties.
- (10) Costs parties shall bear respective costs.
- (11) The parties shall have liberty to apply.

THE COURT HEREBY DECLARES pursuant to Section 73 (1) (b) (i) of the Matrimonial Causes Act that there are two children of the marriage to whom the section applies, namely, AQS born on the 4th day of December, A.D. 2003 and

KAS born on the 29th day of November A.D. 2007 and arrangements for their welfare have been made and are satisfactory.

Dated this 4th day of November, 2021

Petra M. Hanna-Adderley
Judge