

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Family Division**

**2021/FAM/div/00329**

**BETWEEN**

**ABG**

**Petitioner**

**AND**

**CSG**

**Respondent**

**PM**

**Co-Respondent**

**Before: The Honorable Justice J. Denise Lewis-Johnson**

**Appearances:** Gia Moxey-Lockhart for the Petitioner

Respondent appearing Pro se

**Hearing Date:** 28 March 2003

**RULING**

**LEWIS-JOHNSON J:**

**Introduction**

1. The parties were married on 18 April 2003. There are two children of the marriage, (female) age 22 and (male) age 19.
2. On 7 October 2021 a Decree Nisi was granted to the Petitioner.

3. By Notice of Intention to Proceed with Ancillary Matters filed 20 September 2022, the Petitioner seeks the following Orders:
  - a. **That the Respondent makes a contribution to the Petitioner in the amount of \$600.00 per month towards the expenses of the children when they are away from University until they each complete tertiary level education, whichever is lateral**
  - b. **That the Respondent pays one-half (½) of all tertiary level educational expenses, school fees and supplies of the children until they each complete tertiary level education;**
  - c. **That the Respondent pays one-half (½) of all medical, dental and optical expenses of the children until they each complete tertiary level education;**
  - d. **That the Petitioner's fifty percent (50%) interest in the property situate Nassau Village be declared and the Respondent be made to purchase the Petitioner's interest therein;**
  - e. **That the Respondent be made to pay the Cost of these proceedings.**
4. In support of the application the Petitioner filed an Affidavit of Means on 20 September 2022 and a Supplemental Affidavit of Means on 27 March 2023.

#### **Children's Educational Status**

5. The eldest child attends university in the state of Arkansas and is enrolled in a Bachelor of Science Degree program in Speech Pathology. She is midway through the four-year program.
6. She has a partial scholarship valued at \$7,500.00 per year. The tuition fees for the full academic year total \$19,100.00. This figure includes the food program and accommodations. It does not include however books, travel and allowance for miscellaneous expenses.
7. The Petitioner indicates that she is currently paying the fees for their daughter, with the assistance of her father as the Respondent refuses to contribute towards these expenses.
8. The youngest child previously attended college in The Bahamas and was enrolled in a Bachelor of Arts program in Accounting. While enrolled the primary expenses were covered by the government grant. The Petitioner alleges that any additional expenses not covered by the Grant were covered by her as the Respondent refused to contribute towards these expenses.

9. The Petitioner indicates that during the marriage, the parties planned to share the university fees associated with the younger child's last two years of study as they did with all family expenses. It is her assertion that the Respondent reneged on this position after being served with the divorce petition. As a result, the youngest child deregistered from university.
10. The youngest child is currently living in the state of Tennessee and is employed as a hotel runner. He intends to return to university to complete his degree.

### **The Matrimonial Home**

11. The parties own, as joint tenants, commercial property situated Nassau Village, Nassau, The Bahamas, recorded in the registry of records at Volume 10504 at pages 374 to 386.
12. In 2012 the parties commenced construction of a triplex building for residential purposes. The Petitioner indicates that the Respondent later converted the building to a commercial shop space. She also indicates that the Respondent currently lives in one of the complete units. The unit contains two (2) bedrooms and one (1) bathroom.
13. The property was mortgaged to the Bank of the Bahamas in 2008 by both parties. As of 27 March 2023, the balance due on the mortgage is \$151,683.44.
14. As of 10 February 2022, the property was appraised at \$540,000.00.

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

15. The Petitioner is presently employed as a Fund Administrator and earns a monthly salary of \$2,593.00. Her monthly expenses total \$2,833.59 resulting in a deficit of \$240.59.
16. The Petitioner indicates that in 2021 the Respondent obtained a personal loan from Fidelity Bank which was consolidated with the mortgage at the Bank of The Bahamas.
17. She alleges that the Respondent earns approximately \$3,000.00 per month from National Insurances and is employed as a Security. In support of her allegation the Petitioner submitted into evidence the Respondent's pay slip demonstrating a monthly net salary of \$2,893.05. It is also her allegation that the Respondent earns extra money by way of Government Contracts for yard maintenance.
18. In December 2020, the Petitioner states that her mother gifted her home to her. The home is situated #5 Colony Village.

## **The Respondent's Evidence**

19. The Respondent avers that he is employed at the National Insurance Board earning an annual salary of \$43,539.00.
20. He further stated that he has one daughter in Arkansas University with a partial scholarship and the remainder of her tuition is paid by the Petitioner and her father. He also avers that he has another son who is currently working in Tennessee and that he refuses to assist with the tuition.
21. He further indicated that he does not intend to assist with the maintenance and education of the children, as he cannot afford it.
22. The Respondent avers that he lives with his mother and assist with rent, groceries, and the light bill amounting to \$940.00 monthly.
23. The Respondent further asserts that along with bills that he pays at his mother's home. He also has other bills amounting estimated at about \$3,000.00.

## **Issues**

24. Whether the Court has the jurisdiction to make an order to provide for tertiary level education for a child who has attained the age of 18 years and there is a break in the continuity of education due to previous employment; and
25. Whether the Court has the jurisdiction to make an Order to provide for Tertiary level education for a child over the age of eighteen years.
26. Are both parties entitled to an interest in the matrimonial home, and if so what percentage of interest are they entitled.

## **Law**

27. The jurisdiction to make orders for financial provision and property adjustment are prescribed by **Sections 27 and 28 of the Matrimonial Causes Act, Chapter 125 of The Statute Laws of The Bahamas ("MCA")**.
28. **Section 27 of the Matrimonial Causes Act ("MCA")** provides:

**"27. (1) – On granting a decree of divorce, a decree of nullify of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or nullify of marriage, before or after the decree**

is made absolute, the court may make any one or more of the following orders, that is to say-

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term as may be specified in the order;
- (b) 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.

24. Section 28 of the MCA Act provides:

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

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

25. Section 29 of the MCA identifies the factors the court must take into account when considering an application for financial provision and property adjustment orders. 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;
- (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.”

## Decision

24. The Petitioner contends that a matrimonial order ought to be made in favour of the children of the marriage, as the evidence provided clearly shows that they are both dependents, who are currently enrolled in university and the other living at home with the Petitioner and will enroll in the fall 2023 semester at the University of the Bahamas.
25. However, the facts are that one child is enrolled in University and the other plans to enroll in Fall 2023.
26. The Petitioner indicated that **the Matrimonial Causes (Summary Jurisdiction) Act Ch.126** defines a dependent as a person who:
  - (a) **Who is under the age of eighteen years; or**
  - (b) **Who, having attained the age of eighteen but not twenty-two years, is either receiving fulltime instruction at an educational establishment or undergoing training for a trade, profession or vocation in such**

**circumstances that he is required to devote the whole of his time to that training; or**

**(c) Whose earning capacity is impaired through illness or disability of the mind or body and who has not attained the age of twenty-two years;**

27. Further, pursuant to **Section 4 of the MCA Summary Jurisdiction Act**, the Court has the jurisdiction to make a matrimonial order relative to the maintenance and education of any child over the age of eighteen but younger than twenty-two.

**4. (1) Subject to this section and section 6, on hearing an application under section 3 by either of the parties to a marriage, the court may make a matrimonial order containing any one or more of the following provisions, namely**

**(g) a provision for the making by the defendant or by the applicant or by each of them for the maintenance and education of any child of the family of weekly payments and of such periodical lump sum as the court may determine, for each child, being —**

- (i) if and for so long as the child is under the age of eighteen years, payments to any person to whom the legal custody of the child is for the time being committed by the order or by any other order made by a court and for the time being in force;**
- (ii) if it appears to the court that the child is, or will be, or, if such payments were made, would be, a dependent though over the age of eighteen years, and that it is expedient that such payments should be made in respect of that child while such a dependent, payments to such person (who may be the child) as may be specified in the order, for such period during which the child is over that age but under the age of twenty-two as may be so specified.**

28. The Petitioner submits that pursuant to **Section 4 (1)(g)(ii)** the court has jurisdiction and power to make an order for both educational expenses and maintenance, for a child who has attained the age of 18 years, but not 23 years. Whether the child obtains gainful employment after graduating high school and thereafter returns to tertiary level education, is immaterial, so long as he or she complete tertiary level education before attaining the age of 23.



29. It is further argued that this provision gives a discretion to the Court to make such an order. In making such an order, the Court is to have regard to all the circumstances of the case including –

- (a) the financial needs of the child, the income, earning capacity (if any),
- (b) property and other financial resources of the child,
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the cause of the complaint of the application;
- (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
- (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (6).

30. The Court is tasked with determining whether the Respondent should be ordered to pay for the tertiary education and maintenance fees for the children of the marriage who are both sue juris; one being enrolled in University and the other planning to attend but at present engaged in full time employment.

31. In **K v O 2008 3 BHC** Hall CJ stated:

**“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...”**

32. In **Brown v Brown [2004] D&M No. 416 of 1991** Sir Burton Hall CJ also stated:-

**“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.**

33. Hall CJ in **Brown v Brown 2004 D & M #416 of 1991** proclaimed:-

**“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.”

34. In arriving at a decision, the Court is guided by Section 29 (1) (2) of the MCA which sets out the factors the Court must consider when making an order for a child of the marriage.
35. It is not disputed that the oldest child is presently enrolled in university and will continue for an additional two years. Although the youngest child is not presently enrolled, it is asserted by the Petitioner that he has intentions on doing so and will require financial assistance.
36. The eldest child has no income or financial resources. However, according to the evidence of the Petitioner the youngest child is employed as a hotel runner. There is no evidence before this court indicating that either child suffers from a physical or mental disability. Prior to the breakdown of the marriage, both parties were employed and resided together. The children also attended private school. I find that the parties enjoyed a modest standard of living.
37. The Petitioner and the Respondent are both actively employed. The Petitioner earns \$2,593.00 per month and the evidence before the court indicates that the Respondent earns \$3,628.25 per month. There is no evidence before this Court that either party has additional financial resources. The parties are the joint owners of the matrimonial home which was acquired during the marriage. The Petitioner was recently gifted property situate at #5 Colony Village.
38. The Petitioner’s monthly expenses far outweigh her monthly income. I accept that her financial needs are significant as she is tasked with maintaining the children of the marriage who are pursuing tertiary education. The Respondent expenses also outweigh his income, however the court has to consider what is in the best interest of the children.

39. The Petitioner is 56 years of age, and the Respondent is 57 years of age. The parties were married for 18 years at the filing of the Petitioner. There is no evidence to suggest that either the Petitioner or the Respondent suffer from any physical or mental disability.
40. The Petitioner maintains that since the breakdown of the marriage she is responsible for the majority of the expenses relating to the children of the marriage as the Respondent abandoned the family. The Petitioner was forced to secure alternative accommodations for the family shortly thereafter.
41. The Respondent however must maintain the eldest child who is currently enrolled in university and provide half of the educational expenses for that child until she has completed her tertiary education or attains the age of 23.
42. The Petitioner has requested an equal share in the matrimonial home and that the Respondent be made to purchase her interest. The parties both share the property jointly however, the Court must consider the Section 29 factors such as the contributions of both parties relating to the matrimonial home and the parties intent.
29. The evidence before this Court is that the property was mortgaged to Bank of the Bahamas in 2008 by both parties. it has a balance of \$151,683.44.
43. The court accepts the evidence of the Respondent in that he pays the mortgage solely from salary deduction in the amount of \$855.86 monthly.
44. The Court when making property adjustment orders must be fair to parties having regard to the circumstances of each case and the evidence put before it.
45. In **White v White** Lord Nicholls stated: -

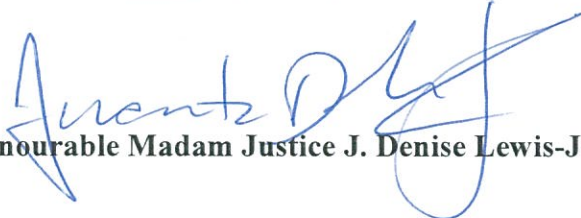
*“In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles... that fairness require that the respective roles chosen by them should not prejudice either party when considering subsection (f), relating to the parties contribution.”*

46. For all of the reasons stated above, after considering the evidence provided to the Court, examining the demeanor of the witness, and the relevant law, the Court finds as follows:-
- i. As the last child is over 18 and gainfully employed the Court cannot make an order requiring the Respondent to contribute to potential tertiary

educational expenses for him. It is a matter for the Respondent as a parent and his conscience.

- ii. Based on the considerations laid out in Section 29 of the MCA, the Court finds that the Petitioner is entitled to 35% interest in the matrimonial home and the Respondent is entitled to 65%. The Respondent is further Ordered to purchase the Petitioners interest in the matrimonial home within six (6) months of the date herein. Alternatively, the property is to be sold and net proceeds are to be divided based on the stated interest.
- iii. The Respondent is to maintain the eldest child in the sum of \$200.00 per month and pay half of educational expenses for the said child.
- iv. Each party is to bear their own cost.

**Dated this \_\_\_\_ day of September 2023, A.D.**

  
**The Honourable Madam Justice J. Denise Lewis-Johnson**