

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

**2021**  
**Fam/div/00655**

**IN THE MATTER of the child Protection Act, Chapter 132 of the Statute Laws of  
The Bahamas.**

**IN THE MATTER OF SAES**

**(a MINOR)**

**AND**

**BETWEEN:**

**ANS**

**Applicant**

**AND**

**LDS**

**Respondent**

**RULING**

**Before:** The Honourable Madam Justice C.V. Hope Strachan

**Appearances:** Glenda Roker for the Applicant  
Ramona Farquharson Seymour and Samuel Taylor for the  
Respondent

**Hearing Dates:** 9<sup>th</sup> May, 2023 and 3<sup>rd</sup> July, 2023

**Unmarried Parents – Amount of child maintenance payable by Applicant to  
Respondent – Whether Applicant obligated to pay for extracurricular activities -  
Welfare of child paramount.**

1. The matter herein commenced by way of an Originating Summons filed by the Applicant on 12<sup>th</sup> October, 2021 supported by a Certificate of Urgency filed even date, an Affidavit filed 13<sup>th</sup> October 2021 and Summons filed 14<sup>th</sup> October, 2021.

By Virtue of the Originating Summons the Applicant sought the following relief:

1. An Order pursuant to sections 14, 21(4) and 22 of The Child Protection Act and under the inherent jurisdiction of the Honourable Court;
  - a) The Applicant herein and the Respondent herein (both the Applicant and the Respondent collectively hereinafter referred to as "the Parties) have joint custody of the minor child (F) born on the 19<sup>th</sup> day of December A.D., 2011.
  - b) The Respondent shall have day to day control of the minor child from the date of the Order until the minor child attains the age of Eighteen (18) years old or until further ordered as follows;
    1. Every other weekend from the pronouncement of the Order from 3;00pm to 8;00pm;
    2. Every Tuesday and Thursday from 3 pm to 8 pm;
    3. One Half of Summer and Christmas Holidays;
    4. One half of school breaks;
    5. Every Father's Day (weekend)
    6. Alternate Birthdays of the minor child;
    7. The Applicant's Birthday being;
    8. Alternate National Holidays; and
    9. Any other times as agreed between the Parties.
  2. Under the inherent jurisdiction of the Court for an Order that the Applicant and the Respondent seek the respective consent of the other party in relation to any off island/ out of country travel with the minor child.
  3. An Order with respect to the general maintenance, education expenses, medical dental and optical expenses and general clothing expenses.
  4. For any further relief that court deems just and fit in the circumstances.

2. There were several hearings prior to 9<sup>th</sup> May, 2023, at which time interim orders were made concerning several of the issues prayed in the originating application. These orders were to expire on the making of a final Order, after the matter was fully ventilated and final submissions made.

3. It is relevant to note that a Summons for a Stay of Execution of an Order made by Stewart J. on 18<sup>th</sup> May, 2022 filed by the Respondent on 26<sup>th</sup> July, 2022 was abandoned before the matter proceeded at the final trial.

4. On 16<sup>th</sup> July, 2023 trial of the matter proceeded and upon the commencement of the hearing both counsel represented that their client's had reached consensus on all of the issues in which relief was being sought by the applicant except for the issue of the amount of money the Applicant should pay to the Respondent for the general maintenance of the minor child. The child is eleven (11) years old at the date of the hearing and attends St. Thomas Moore, Catholic Primary School (a private, fee paying school) here in the Bahamas at the date of the hearing.

5. The agreed position of the parties are herein mentioned as I consider the terms agreed to be pertinent and influential to the court in arriving at what is fair, reasonable and in the best interest of the minor child, in making a final decision on the issue of the general maintenance of the said child. To summarize, the agreed terms included the following:

- (i) Joint custody of the child to the Applicant and the Respondent, care and control to the Respondent with liberal access to the Applicant.
- (ii) Applicant and Respondent to share equally all school fees for the minor child.
- (iii) Applicant to pay health insurance for the said child.
- (iv) Arrangements for travel to be discussed before travel times and agreed between the parties.
- (v) All moneys for the child's maintenance and upkeep to be paid into the Respondent's bank account.

These agreed terms were found to be satisfactory by the court and I now direct that these agreed terms be incorporated into the final Order. This left only the issue of how much should be paid to the Respondent on a regular basis for the **general maintenance** (day to day care) of the child.

6. Aside from the Affidavit in support of the Originating Summons mentioned above the Applicant also filed Affidavits as follows;

- (i) Supplemental Affidavit filed 17<sup>th</sup> February, 2021
- (ii) Second Supplemental Affidavit filed 9<sup>th</sup> March, 2022
- (iii) Third Supplemental Affidavit filed 6<sup>th</sup> July, 2022
- (iv) Fourth Supplemental Affidavit filed 26<sup>th</sup> July, 2022

7. In addition to the affidavit evidence the Applicant testified as to his financial capacity, which included the fact that he now earns a salary of Seventy Five Thousand dollars (\$75,000.00) per year, an improvement on the Sixty-eight Thousand dollars (\$68,000.00) which he was earning when he first commenced this action. This salary works out to Six Thousand Two Hundred and Fifty dollars (\$6,250.00) per month. (He further states that since the child's birth his financial responsibilities increased as he got married, had recently had another child and had experienced a time of unemployment when bills had accumulated. These bills now had to be caught up, in effect rendering nugatory the gains of the salary increase. He further insisted that during the times when he was gainfully employed he maintained the child as best he could by paying school fees, and other expenses.

8. The pertinent information from the Applicant as to his means also lists his outgoing expenses at Six Thousand Six Hundred Forty-nine dollars and thirty-four cents (\$6,649.34), the net effect of which is that he is operating in deficit each month.

9. An inescapable assertion in the Applicants break down of his expenditure are the amounts dedicated to the care and upkeep and/or assistance of certain individuals as follows:

- i. BPL (mother) - \$100.00
- ii. Contribution to  
Mother's care and wellbeing - \$300.00
- iii. Infant Daughter's care - \$200.00
- iv. Infant Daughter's Day Care - \$300.00

Together these amount to Nine Hundred Dollars (\$900.00). The Respondent lists his contribution to the said minor child only as school fees in the amount of \$200.00. Among the sums already agreed for maintenance he has consistently restated the amount of Two Hundred dollars \$200.00 (or there about) as his offer for general maintenance.

10. The Respondent pursuant to the Applicants affidavits on the other hand filed affidavits pertinent to the matter as follows:

- i. 10<sup>th</sup> November, 2021
- ii. 3<sup>rd</sup> March, 2022

11. In the November Affidavit the Respondent does not set out her income or the child's expenses. However she does ask the court to order the Applicant to do the following:

- (i) pay \$150.00 per week towards the general maintenance of the child;
- (ii) To pay all educational expenses, inclusive of but not limited to tuition, tutoring, uniforms, school books and supplies until she reaches the age of 18 years or completes tertiary education
- (iii) Half of all extracurricular activities ( which are not outlined)
- (iv) Medical coverage inclusive of dental, and optical expenses until the child reaches the age of 18 years or completes tertiary education;
- (v) Contribute Five Hundred (\$500.00) every May and November towards general clothing for the child.

**12.** In her 3<sup>rd</sup> March, 2022 Affidavit the Respondent sets out the minor child's monthly expenses as follows:

(i)	Tuition (\$1,132 per Semester)	-	\$377.34
(ii)	Extracurricular Activities		
	a. Gymnastics (\$120.00) per week	-	\$480.00
	b. Swimming (\$350.00) per semester	-	\$117.00
	c. Tutoring Classes (\$175.00 per week)	-	\$700.00
(iii)	Food (\$150.00 bi-weekly)	-	\$300.00
(iv)	Clothing (\$2,000.00 per year)	-	\$167.00
(v)	Transportation expenses	-	\$100.00
(vi)	Living expenses / Hair/ entertainment	-	\$200.00

The total of these expenses worked out to \$2,441.34. Her initial requests were for \$500.00 and tuition but that was subsumed in the agreement made between her and the Applicant, however she is now insisting on payment of Three Hundred dollars (\$300.00) by way of general maintenance. In cross-examination the Applicant admitted that he had initially agreed to pay the sum of Three Hundred dollars (\$300.00) based on a 50/50 % split of all of the other expenses in relation to the child.

**13.** It is a travesty that counsel for the parties could not successfully convince the parties to settle what is arguably a negligible difference and which must now be resolved by this ruling.

**14.** While giving evidence in court the Respondent said school fees were One Thousand Two Hundred and Thirty dollars (\$1,230.00) per term. This was now Ninety Eight dollars (\$98.00) more than initially claimed in the affidavit 3<sup>rd</sup> March, 2022.

**15.** The Respondent testified further that she gives her daughter Eight (\$8.00) a day for breakfast and lunch at school, pays insurance of (\$177.00) despite the child being covered by the Applicant's insurance together with all medical co-pay, pays for a summer school program at \$150.00 per week, although she never asked the applicant to assist with

this charge. She also admits that she and the applicant did not agree for the child to attend the extra-curricular activities such as gymnastics and swimming.

16. The Respondent puts her current salary at Forty-three Thousand Seven Hundred and Seventy-two dollars (\$43,772.00) and also admits that she has an extra source of income as a beautician offering services such as application of eye lashes, hair and micro blading. She also spoke to income derived from a cookie making business established for the said child through her godparents. While this evidence came out under cross examination, the sum she earned from this enterprise was not solicited nor was it offered. The court is left to conclude only that there is additional money to be factored into the Respondent's earnings. The Respondent also admitted in cross examination that the Applicant pays for the child to have her hair done regularly to help her to build her confidence from the effects of bullying which she was being subjected to at school.

17. Something that became apparent from both the Applicant and the Respondent's Affidavits and evidence is that the Applicant has always assisted with the maintenance of the said child except during the period of unemployment. The evidence is also clear that the applicant assisted with the day to day care of the child through pick-ups from school and weekend visits.

18. In deciding this issue of the sum of general maintenance which the Applicant should pay towards the said child the court must have regard to the provisions of The Child Protection Act, Chapter 132, Statute Laws of the Bahamas;

*s.3. (1) Whenever a determination has to be made with respect to-*

- (a) the upbringing of a child; or*
- b) the administration of a child's property or the application of any income arising from it,*

*The child's welfare shall be the paramount consideration.*

*(2) In all matters relating to a child, whether before a court of law or before any other person regard shall be had to the guiding principle mentioned on subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.*

*(3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any person shall have regard in particular to –*

- (a) the ascertainable wishes and feelings of the child concerned in the light of his or her age and understanding;*

- (b) *the child's physical, emotional and educational needs;*
- (c) *the likely effects of any changes in the child's circumstances;*
- (d) *the child's age, sex, background and any other circumstances relevant in the matter;*
- (e) *any harm that a child has suffered or is at the risk of suffering;*
- (f) *where relevant, the capacity of the child's parents, guardians or the*

*persons involved in the care of the child in meeting his or her needs.*

**s. 4.** *A child shall have the right –*

- (a) *of leisure which is not normally harmful, and the right to participate in sports and positive cultural and artistic activities;*
- (b) *to a just call on any social amenities or other resources available in any situation of armed conflict or natural or manmade disasters;*
- (c) *to exercise, in addition to all rights stated in this Act, all rights set out in the United Nations Convention on the rights of the child (the Convention) subject to any reservations that apply to The Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws.*

**s. 6. (5)** *The fact that a person has, or does not have, parental responsibility for a child shall not affect –*

- (a) *any obligation which he may have in relation to the child (such as a statutory duty to maintain the child);*

*(6) Where more than one person has a parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing shall be taken as affecting the operation of any enactment requiring the consent of more than one person in a matter affecting the child or the need to have meaningful consultation between them where the result of the decision of one would impact upon the financial obligation of the other.*

*s. 33. Subject to other provisions of this Act, every man is hereby required to maintain his own children and also every child, whether born in wedlock or not, which his wife may have living with her at the time of marriage to him so long as such children are unable to maintain themselves.*

*s. 34. Every widow and unmarried woman is hereby required to maintain her own children, and every woman having children to whom any man is primarily bound under section 33 to maintain, is hereby required to maintain those children in the event of his failing to perform his obligation.*

*s. 36. For the purposes of this Act, every child under sixteen years of age shall be presumed unable to maintain himself by reason of tender age, unless the contrary is shown.*

**19.** In satisfaction of the obligations placed by the provisions of S. 33 and S. 34 of the Child Protection Act the parties herein in evidence and their submissions have demonstrated a willingness to cooperate and to put their past acrimonious behavior towards each other behind them by crafting an agreement to take care of the majority of the matters as it relates to the child. This is a demonstration of working in the child's best interest, satisfying the mandate to make her welfare paramount to every other consideration by the child protection provisions.

**20.** Accepting that the Applicant has indicated to the court that his financial position has improved since this matter began and given that he has demonstrated that he willingly provides Five Hundred dollars (\$500.00) each month towards his mother's expenses and Five Hundred dollars (\$500.00) towards the expenses of baby care for his infant daughter, the contributions are capable of a degree of measurement. The total for these individuals is therefore some Twelve Thousand dollars (\$12,000.00) per year.

**21.** The Respondent has a 19 year old son from a previous relationship. While the impression given by the Respondent was that her son was her sole financial responsibility, no clear evidence was given as to whether his father contributes toward his welfare and in what amount.

**22.** I accept the Applicant's assertions that school tuition fees have increased to One Thousand Two Hundred and Thirty dollars (\$1,230.00) per term (confirmed by the Respondent in cross examination) and calculations are based on that premise. There are Three (3) terms in the school year, making the total school tuition he will pay (\$153.75) per month when shared equally between the Applicant and the Respondent. This amount



is already covered in the agreement between the parties that school expenses will be shared by the parties on a 50/50 % basis.

23. Using the figures articulated by the Respondent in her Affidavit of 3<sup>rd</sup> March, 2023 as expenses exclusive to the child, the Applicants contribution on a 50/50% basis weekly would be; food Thirty-seven dollars and fifty cents (\$37.50), clothing Eighty-four dollars (\$84.00), transportation Twelve dollars and fifty cents (\$12.50) and living expenses Twenty-five dollars (\$25.00). The total of the Applicants responsibility to these expenses would therefore amount to **One Hundred and Fifty-nine Dollars (\$159.00) per week or Six Hundred and thirty-six (\$636.00) per month.**

24. Again using the Respondent's estimates of expenses for the child articulated in her affidavit extracurricular activities when calculated on the 50/50% sharing basis, comes up to each party having to pay **Six Hundred and Forty-eight dollars and fifty cents (\$648.50) monthly.**

25. The sum total of these expenses would therefore cause the Applicant to have to pay **One Thousand Four Hundred and Thirty-eight dollars and twenty five cents (\$1,438.25) per month** outside of the costs of health insurance and other expenses like school supplies not listed by the Respondent in her affidavit.

26. I do not accept that these expenses listed by the Respondent give a true picture of what is usual for the child but rather the Respondent is using this opportunity to extract as much as possible from the applicant to punish him for the time when he became unemployed and was unable to continue the payments towards the child that he was making all along. The Respondent's demands for contribution towards extra-curricular activities goes beyond the pale as to what is reasonable in all of the circumstances, items which are unnecessary and not crucial to the overall welfare of the child. It defies logic why the Respondent would enroll the child in extra-curricular activities at a cost in excess of Fourteen Hundred dollars (\$1,400.00) per month which she admits were not approved by the Applicant and which she contends that she paid solely up to this time.

27. Notwithstanding the provisions of the Child Protection Act as outlined above and in particular for these purposes S. 4 (a), (b) & (c). In **Thurston v McKenzie [2012] 1 BHS J. No. 53** Barnett C.J. quoted **Hall CJ in K v O [2008] 3 BHS J.No.5** when discussing the obligation of one parent to pay school fees that he did not agree to pay but which can be aligned with the Respondent's request for payment of extra-curricular activities said:

*“Accordingly, the court cannot compel a parent to contribute to the payment of 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 to re-order priorities following the breakdown of the marriage. More so, when the custodial parent, as does K in this case, include items such as “piano”*

*lessons and "vacation", in calculating the maintenance needs of the children, the court would regard these as extraordinary expenses, luxuries, which if the parent is able to afford them, so be it, but to which the other parent should not be compelled to contribute."*

28. Justice Barnett explained that "All the learned Chief Justice pointed out was that the circumstances in which that jurisdiction should be exercised was restricted and had to take into account the resources of the parents and the needs of the child. Then further on in his judgment per Barnett CJ;

*"Then the non-custodian, as an aspect of the welfare and maintenance of the child, is required to contribute to the extent that he or she has a reasonable financial capacity to do so. However, the mere fact that a non-custodian can afford to pay fees, or indeed if he or she is a wealthy person, is not in itself a reason for imposing that liability."*

29. There is little evidence before me (other than the Respondent's blanket statement that these are expenses in relation to the child) that any of these extra-curricular activities stated are critical to the child or her welfare. The case also demonstrates the application of S. 6 (6) of the Child Protection Act above which mandates that the court consider the impact of its' decision upon the financial obligation of the paying party. I am therefore excluding these extra-curricular activities as having been exaggerated or exorbitant in all of the circumstances of the case.

30. I also consider the yearly amount Two Thousand dollars (\$2,000.00) for clothing to be exorbitant and would allow half of that amount to be shared on a 50/50% basis between the parties A contribution of Forty dollars (\$40.00) per month from the Respondent seems a more reasonable and fair contribution to this item. A recalculation taking that into consideration would put the total expenses (minus the agreed sums) at Four Hundred and Sixty-Eight dollars (\$468.00) per month.

31. In reviewing the Applicant's stated financial position, regard is being had to his having outstanding financial obligations, his commitment to assist his mother, the fact that he has a new family including a young baby. Consideration is also given to the fact that his mortgage is being paid by his wife and that he has additional income from apartments (albeit unspecified). He has offered to pay the sum of Two Hundred dollars (\$200.00) general maintenance. The Respondent's admission that she has additional income (albeit unquantified) is also of import. The Respondent has requested the sum of Three Hundred dollars (\$300.00) from the Applicant for general maintenance, to be paid in addition to the agreed matters of school fees and health insurance premiums inclusive of

medical, dental and optical expenses. According to the figures calculated above this really amounts to a discount.

32. The obligations under S. 33 (the father) and S.34 (unmarried mother) infra cannot be ignored that equality may well be striven for in every circumstance but may not always be achievable given the inequality of the parties and their circumstances. Neither, the Applicant or the Respondent seemed stretched to the point financially that they are incapable of meeting their financial obligations toward the child's maintenance and upkeep. Under cross examination the Applicant said -

*"The \$300.00 (discussion) came when we agreed to split custody."*

*"I accept that \$10.00 per day is not astronomical. Yes, I can afford to pay \$10.00 per day towards maintenance of the minor child."*

33. The Respondent said *"I try to be reasonable, I was asking for \$300.00." I am willing to accept \$300.00."*

34. "Aside from the emotional upheaval spoken of with regards to the bullying (which the applicant is voluntarily addressing) there is no suggestion that the child has been negatively impacted by the disparate situation existing between the parties. Therefore, given the fact that the child is an eleven (11) year old, a girl child, close to becoming a teen; "transitioning and maturing" is the description used by the Respondent, and who has through the Applicant and the Respondent been afforded a relatively comfortable lifestyle, I am of the view that stability is key to her welfare. The likely peer pressures are already manifesting through the bullying.

35. I do find it commendable that the Applicant volunteered and followed through with a plan to take the child to and pay for her to have her hair done to assist the child in overcoming the bullying focused on the quality of her hair. This degree of participation in the psychological well-being of the child should be encouraged. It is likely an unplanned for and unexpected expense which, not contemplated in the ordinary scheme of things but which is vital to the child's overall development and welfare. It is hoped that the applicant and the Respondent appreciate that the expenses associated with the rearing of this child are incapable of a precise numerical quantification but will be capricious and unexpected through the remaining years of her minority.

36. In this regard and in consideration of the overriding consideration that the welfare of this child is of paramount consideration I find that it is in her best interest that the Applicant in addition to his already agreed obligations towards school fees, health insurance and the like, pay the sum of Three Hundred dollars (\$300.00) per month towards

the general maintenance of the minor child commencing on or before the 30<sup>th</sup> day of September, 2023 and continuing on or before the last day of each month until the child attains the age of Eighteen (18) years or completes a first degree of Tertiary education whichever comes first.

37. Each Party is to bear their own costs incurred by this application.

Dated the 12<sup>th</sup> day of September, 2023.

A handwritten signature in black ink, appearing to read 'C.V. Hope Strachan J.', is written above a horizontal line.

**C.V. Hope Strachan J.**