

Family Division

BETWEEN

D.A.A (nee B)

Petitioner

AND

J.K.A

Respondent

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

**APPEARANCES:** Monique Gomez for the Petitioner  
Ellsworth Johnson for the Respondent

**HEARING DATE:** 6<sup>th</sup> December 2023

*Family law — Application for Ancillary Relief— Maintenance for minor children – Amount of maintenance – Considerations in granting maintenance*

### RULING

C.V.H. Strachan, J;

#### **Background Facts:**

1. The Petitioner, D.A. and the Respondent, J.A were married on 19<sup>th</sup> December 2014. There are two children of the marriage namely, K.M.A born 30<sup>th</sup> November 2010 (13 years old) and K.D.V.A born 8<sup>th</sup> August 2019 (4 years old). A Decree Nisi was granted on 8<sup>th</sup> March 2023, on the ground that since the celebration of the marriage the Respondent had treated the Petitioner with cruelty.

## **The Petitioner's Evidence**

2. On 18<sup>th</sup> October 2023, the Petitioner filed a Notice of Intention to Proceed with Application for Ancillary Relief. This Notice was supported by an Affidavit of Means filed on the same date. The Petitioner sought the following relief in her application:

- (a) That there be joint custody of the child of the marriage with liberal access to the Respondent;
- (b) That the Respondent will pay a reasonable sum towards the maintenance of the children of the marriage; and
- (c) That the Court make a declaration pursuant to Section 73 (1) (b) (i) of the Matrimonial Causes Act that it is satisfied that arrangements for the welfare of the children of the marriage has been made and are satisfactory or are the best that can be devised in the circumstances.

3. Furthermore, the Petitioner's Affidavit of Means filed on 18<sup>th</sup> October 2023, states:

2. That I am a Registered Nurse and am employed with the Public Hospitals Authority.
3. That the Respondent is a Beach Attendant at BahaMar and I am not aware of his salary.
4. That there are two children of the marriage, namely; K.M.A. and K.D.V.A..
5. That the Petitioner earns a monthly salary of approximately Two Thousand Five Hundred and Seventy Dollars and Eighty-three Cents (\$2,570.83).
6. That the Petitioner and the Respondent have agreed that the children of the marriage namely; K.M.A. and K.D.V.A. will continue to reside with the Petitioner.
7. That since the Decree Nisi the Respondent has not given to the Plaintiff \$1.00 to take care of the children. He has stopped paying daycare for K.D.V.A. and has said that no Judge can order him to pay daycare when there is a government free services.
8. The Respondent has told the Petitioner that since the children live with the Petitioner she has to provide food and clothing for them as the Petitioner is the primary parent and the Respondent can do when he can which is to provide snacks on rare occasions he is not consistent.

9. That an estimate of the Petitioner's monthly expenses are as follows:

(i)	Loan	\$ 1,488.00
(ii)	School Fees	\$ 305.00
(iii)	Car Gas	\$ 200.00
(iv)	Insurance (car)	\$ 25.00
(v)	Health Insurance	\$ 120.83
(vi)	Electricity	\$ 200.00
(vii)	Telephone	\$ 30.00
(viii)	Food	\$ 250.00
(ix)	Clothing/ toiletries	\$ 150.00
	<b>Total</b>	<b><u>\$ 2,768.83</u></b>

### **The Respondent's Evidence**

4. The Respondent filed an Affidavit of Means on 6th December 2023. In the Affidavit, he states:

- (2) I was married to D. A. A. (nee B), the Respondent herein on the 19<sup>th</sup> day of December, A.D., 2014.
- (3) The Decree Nisi was granted herein on the 8<sup>th</sup> day of March, A.D., 2014.
- (4) I am employed as a Beach Attendant / Lifeguard/ Waiter at Baha Mar Resorts, Nassau, N.P., The Bahamas, and my average monthly salary is One Thousand two hundred dollars sixty-two dollars and forty cents (\$1,262.40). A copy of a recent pay slip is attached hereto marked as Exhibit "JKA-1".
- (5) There are two (2) children of the marriage namely:-
  - a). K.M.A. (f) born on the 30<sup>th</sup> day of November, A.D., 2010
  - b). K.D.V.A. (f) born on the 8<sup>th</sup> day of August, A.D., 2019,
  - c). That the Petitioner is a Registered Nurse with the Public Hospital Authority, and she also works with Sandals Emerald Bay Resort as a Registered Nurse. I am uncertain of the Petitioner's total monthly income.

(6) That I have the following monthly expenses:-

Car Loan (Commonwealth Bank)	\$ 80.00
Scotiabank (Credit Card)	\$ 183.00
Scotiabank Loan	\$ 156.00
BPL	\$ 140.00
Cable Bahamas	\$ 90.00
WSC (\$1,200.00 p.a.)	\$ 100.00
Dental Plan & Vision	\$ 37.00
Family Guardian Insurance	\$ 20.00
Grooming	\$ 180.00
Groceries	\$ 200.00
<b>Total</b>	<b><u>\$1,286.00</u></b>

- (7) Save and except the aforementioned I have no other source of income.  
(8) Please find attached hereto marked and Exhibit "TVND 2" copies of my bill receipt outlined above.  
(9) The Petitioner and I do not own any real property in The Bahamas or anywhere else  
(10) I am the joint owner of a Nissan Note.  
(11) The Respondent also sought the following Order at Paragraph 11:

- (a) The Petitioner and the Respondent shall have joint custody of the children of the marriage namely K.M.A. (f) born on the 30<sup>th</sup> day of November, A.D., 2010 and K.D.V.A. (f) born on the 8<sup>th</sup> day of August, A.D., 2019 with care and control of the minor children of the marriage to the Petitioner and liberal access to the Respondent;
- (b) The Respondent have access to the children of the marriage every other weekend from Friday at 3:00pm to Sunday at 6:00pm when the children shall be returned to the Petitioner for school;
- (c) The children of the marriage shall alternate all school and public holidays and with the Petitioner and the Respondent including half (1/2) Summer Vacation, Easter Break, Midterm Break, Christmas and New Year's Day until the children have attained 18 years of age.
- (d) The Respondent shall have access for one half of the Summer Vacation specifically that the Petitioner shall have access to the children from the 1<sup>st</sup> of July to the 31<sup>st</sup> July, until the children of the marriage shall have attained the age of 18 years of age;
- (e) The Petitioner and the Respondent shall have equal access to the children of the marriage during the Easter break commencing with the Respondent having access for the first week and the Petitioner having access for the second and there after alternating weeks;
- (f) The Respondent shall have access to the children of the marriage on Christmas Eve from 9:00am until 3:00pm on Christmas Day continuing until

- the children of the marriage shall have attained 18 years of age, with access alternating each year;
- (g) The Petitioner shall have access to the children of the marriage every New Year's Eve from 9:00am until 9:00am New Year's Day when the Respondent shall collect the children from the Petitioner's home on New Year's Day at 9:00am and there after returning the children that following day until the children of the marriage shall have attained that age of 18 years of age, with this access alternating each year;
  - (h) The Petitioner and the Respondent shall be at liberty to travel with the children of the marriage. The travel expenses for the children shall be paid by the accompanying parent and where there is no parent accompanying the children, the Petitioner and the Respondent shall share equally all travel expenses which are agreed as between the parties until the children have attained 18 years of age;
  - (i) The Petitioner and the Respondent shall make each other aware of intended travel with the children of the marriage no less than seven (7) days before travel and shall provide each other with a travel itinerary including but not less than two (2) days before travel;
  - (j) The Petitioner shall provide the Respondent with the children of the marriage's passports to facilitate travel and the Respondent shall return the said passports to the Petitioner when the Respondent return the said children to the Petitioner;
  - (k) The children of the marriage shall spend Father's Day and the Respondent's birthday with the Respondent and Mother's Day and the Petitioner's birthday with the Petitioner;
  - (l) The Petitioner and the Respondent shall share equal access to the children of the marriage on their birthdays until they have attained the age of 18 years;
  - (m) The Respondent shall have access to the children of the marriage at any other time to be agreed by the parties;
  - (n) The Respondent is to pay to the Petitioner that sum of Two Hundred fifty dollars (\$250.00) per month per child for the maintenance of the said children until the last child shall attain the age of 18 years or they complete tertiary education, whichever obtains;
  - (o) The Petitioner and the Respondent shall share equally, the educational expenses of the children of the marriage including but not limited to tuition, extracurricular activities, examination registration, uniforms, books, school shoes and school supplies until the said children attains the age of 18 years or they complete tertiary education, whichever obtains provided that the children of the marriage attend public school;
  - (p) The Petitioner and the Respondent shall share equally the medical, dental and optical expenses of the said children until they attain the age of 18 years or they complete tertiary education, whichever obtains;
  - (q) All payments are to be made into a designated account;
  - (r) Each Party shall bear their own cost of and occasioned by this action;
  - (s) There be liberty to apply;

- (t) The court grants a Declaration pursuant to section 73(1) (b) (i) of the Matrimonial Causes Act, Chapter 12 that the only children of the family to whom this section applies are K.M.A. (f) born on the 30<sup>th</sup> day of November, A.D., 2010 and K.D.V.A. (f) born on the 8<sup>th</sup> day of August, A.D., 2019 and that arrangements have been made for the welfare of the said children and are satisfactory.

5. On 6<sup>th</sup> December 2023, the Court heard the parties on the ancillary matters and both parties agreed paragraphs (a) through (m) and paragraphs (o) through (q) of the Respondent's Affidavit of Means.

6. The parties disagreed paragraph (n) of the Respondent's Affidavit of Means where he offered to pay Two Hundred and fifty dollars (\$250) per month towards the maintenance of each child.

7. Counsel for the Respondent submitted that his client may earn tips occasionally of Thirty dollars (\$30) to Forty dollars (\$40) extra per day.

8. The Petitioner submitted that the Respondent lives with his girlfriend and that they have a S.D. business known as "Amanda Drop Off and Pick Up Services". She also submitted that the Respondent owns other businesses, but she does not know the names of them.

9. Counsel for the Respondent denied that the Respondent owns the S.D. car rental business but that his girlfriend is the sole owner, hence the business name.

10. The Petitioner denied that she works as a nurse at Sandals in Exuma.

### **The Issue**

11. The issue before this Court is whether the amount of Two Hundred and fifty dollars (\$250) per month is reasonable for the Respondent to pay towards the maintenance of each child of the marriage.

### **The Law**

12. In considering an application for maintenance of the children, section 27(1) (d) of The Matrimonial Causes Act ("MCA") 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) ...
- (b) ...
- (c) ...
- (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) ...
- (f) ...

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.”

13. In determining whether the amount is reasonable the Court shall also have regard to s. 29(2) of the MCA which provides:

*“29 (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 is 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.”*

Section 3 of the Child Protection Act provides the guiding principle -

In applications of this nature the court is bound by the guiding principles as provided for in the Child Protection Act.

*Section 3 of the Child Protection Act provides –*

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

*(a) the upbringing of a child;*

*(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."*

*"3 (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 in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.*

*Section 3(3) provides for matters the court must have regard to in determining any question of custody of a child. Section 3 (3) provides -*

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

*(a) the ascertainable wishes and feelings of the child concerned considered 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 the child has suffered or is at the risk of suffering;*

*(f) where relevant, the capacity of the child's parents, guardians or other persons involved in the care of the child in meeting his or her needs.*

14. A further explanation of the rationale behind the guiding principle was offered in;

*In Bromley's Family Law 9<sup>th</sup> Edition the authors defined "welfare" as--  
"Perhaps the best modern statement of the meaning of "welfare" is that made in a New Zealand case by Hardy Boys J. who said*



*"Welfare is an all-encompassing word. It includes material welfare, both in the sense of an adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of any adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place, they are secondary matters. More important are the stability and security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents."*

15. In **R.B (a juvenile) v. Attorney General [2016] 1 BHS J. No. 128 per Allen J**, confirmed this country's adherence to the principles in the Hague Convention for the protection of children which have been legislated in the child protection Act when she said;

*"It is clear that subsections 3(1), 3(2) and 3(3) of the Child Protection Act relate to a determination regarding the upbringing of a child; and the administration of a child's property or the application of any income arising therefrom. In my view the purpose of subsection 3(2) is to clearly state that in deciding these types of matters whether before a court of law or before any person the child's welfare shall be of paramount consideration."*

16. Barnett, J. (Actg) as he then was, in **Black v Black BS 1996 SC 72**, ordered the husband to pay Four Hundred dollars (\$400) per month towards the maintenance of his four minor children. The wife initially asked the court for the husband to pay Fifteen Hundred dollars (\$1,500) per month for maintenance. Barnett, J. considered the husband's occupation as a security guard and fisherman and his income of Three Hundred dollars (\$300) per week and determined that the wife's request could not be met by the husband.

17. Additionally, in **Russell v Russell BS 2003 CA 4**, there was one child of the marriage. Lyons, J. ordered the husband to pay the wife Three Hundred dollars (\$300) per month towards the maintenance of the child. The husband indicated that he earns a monthly salary of One Thousand nine hundred and seventy-four dollars (\$1,974) and that he does odd jobs in the construction business which he may make an additional One Thousand dollars (\$1,000) per month.

18. In the case of **Farrington v Farrington BS 2003 SC 125**, Lyons J, made an interim order that the Respondent pay Four Hundred and fifty dollars (\$450) towards the maintenance of the two children of the marriage Two Hundred and twenty-five dollars (\$225) for each child. The court considered that the husband was a motor mechanic earning approximately Fifteen Hundred dollars (\$1,500) per month with an additional income of Seven Hundred dollars (\$700) per month from the party's rental unit. He noted that the expenses of the husband were questionable and indicated in his judgment that:

*"As in most of these maintenance matters the parties tell the Court that they earn as little as possible and then grossly inflate their expenses to a level that reflects unreality. In nearly every maintenance case that I get the parties are both spending large amounts of money more than they earn. I do wish that*

*in future counsel would go to greater pains that the figures advanced by their clients actually reflect reality.”*

### Analysis

19. The Petitioner submitted in her affidavit that her monthly salary is Two Thousand Five hundred and seventy dollars and eighty-three cents (\$2,570.83). She spends on average Two Thousand seven hundred and sixty-eight dollars and eighty-three cents (\$2,768.83) per month. This indicates a deficit of One Hundred and Ninety-eight dollars (\$198.00) each month. As the children live with her, she takes care of the day to day expenses for each child without help from the Respondent. The Petitioner further submitted in her affidavit “*That since the Decree Nisi the Respondent has not given to the Plaintiff \$1.00 to take care of the children.*” This has not been controverted by the Respondent. I noted that the Petitioner did not provide a pay slip or any bills to support her monthly income and expenses.

20. The Respondent submitted in his affidavit that his average monthly salary is One Thousand two hundred and sixty-two dollars and forty cents (\$1,262.40) per month. He provided a pay slip for the period 6<sup>th</sup> to 19<sup>th</sup> November 2023 confirming his biweekly pay of Seven hundred and twenty-five dollars (\$725) (approximately One Thousand four hundred and fifty dollars (\$1,450) per month). The Respondent also indicated in his affidavit that his monthly expenses are approximately One Thousand two hundred and eighty-six dollars (\$1,286.00). This indicates a deficit of Twenty-three dollars and sixty cents (\$23.60). In calculating his expenses, I determined that his actual expenses, based on the information provided in his affidavit, were One Thousand one hundred and eighty-six dollars (\$1,186.00.) Counsel for the Respondent also submitted that the Respondent earns approximately Thirty dollars (\$30) to Forty dollars (\$40) per day in tips.

21. It is unfortunate that except for the school fees listed in the Petitioner’s Affidavit neither the Petitioner nor the Respondent particularized any spending directly related to the children, of which I am sure there must be. Despite the fact that some of these expenses would have been accounted for in the agreement reached between the parties, the amounts expended by the parties on these expenses would assist the court in determining the amount that should be paid by the Respondent for general maintenance. It is the courts mandate to do what is fair and just between the parties and this can best be achieved by full and frank disclosure from both parties. As it is, this court’s decision will be based on the evidence provided.

22. I take note of the terms already agreed between the parties for expenditure directly on the children. In particular that the Respondent has agreed to pay One Hundred dollars (\$100.00) for school fees for the younger child, aged three (3) years old. I note also that the parties have agreed to share equally the back to school expenses on a 50/50 basis. It is impossible to say what this will amount to for either party at any given time due to the vagaries of the economy; the inevitable increases in the cost of goods, and inflation which influence those prices year after year. The agreed co-pays and deductibles agreed for medical and dental expenses will also likely impact the party’s finances moving forward.

23. In addressing s. 29(1)(a) In my view there is a significant difference in the permanency and stability of employment and the earning potential as it relates to the wife as

opposed to the husband. The Petitioner earns considerably more than the Respondent now, even taking into consideration the tips he receives on an admittedly inconsistent basis. Clearly the party who has more should do more.

24. In reviewing **s. 29 (1) (b)** of the MCA specifically the financial needs, obligations and responsibilities of the parties now or in the foreseeable future, nothing stands out as it relates to either party. Their respective affidavits show no expenses other than the usual day to day living expenses. Neither of them indicate any anticipated change in their financial circumstances such that the court should be influenced one way of the other.

25. There is no significant difference in the standard of living enjoyed by either of the parties. Of particular note is the fact that there is no matrimonial home mentioned by either party nor have either of them mentioned that they are paying rent. This indicates that as far as the provision of a home or staying accommodation for the children they are on equal footing if that is an aspiration of either of them. **s. 29 (1) (c)**.

26. There is only a seven (7) year age difference between the parties and neither of them has suggested that there is any issue in that respect. The parties were married for Nine (9) years, which when considered against the backdrop of marriages deemed to be “long” throughout the case authorities, can only be described as short. **s. 29 (1) (d)** considerations are therefore of no relevant significance.

27. **S. 29 (1) (e)** requires the court to consider any physical or mental disability of either of the parties to the marriage. There are none mentioned by either the Petitioner or the Respondent.

28. The Petitioner’s contention that the Respondent has not paid one penny towards the maintenance of the children and has stopped paying daycare for K.D.V.A.. Her further averment is that the Respondent told her that since the children live with her she is to provide food and clothing for them. This the only insight given into the financial contributions made by each party to the welfare of the family. Since their affidavits are devoid of any information with regard to **s. 29(1)(f)**, that contributions made by each party to the welfare of the family, including any contributions made by looking after the home or caring for the family are to be considered, I am satisfied that these contributions or lack thereof are not of particular significance to the parties. Assuming there is veracity in the Plaintiffs statements about the failure to pay and the intention not to pay, a statement which is uncontroverted by the respondent, the court will determine what is to be paid going forward in the future by the Respondent.

29. There is no evidence at all to suggest that **s. 29(1) (g)** i.e. the value to either party of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring is a relevant consideration.

30. I wish to emphasize at this juncture that although the Petitioner alleged that the Respondent has other businesses, there is no cogent evidence of the existence of those businesses before this Court. Furthermore, the Respondent has denied having any other sources of income other than the tips he may receive on average.

31. Considering this court's obligation to do what is in the best interest of the children, and having regard to the s. 29 considerations, this court relies on the previous cases of *Black v Black (supra)*, where the Court found that it was reasonable for the husband to pay his wife Four Hundred dollars (\$400) per week for the maintenance of his four children based on the husband's income. Similarly, in *Russell v Russell (supra)*, the Court ordered the husband to pay Three Hundred dollars (\$300) because the husband earned more money and was in a position to pay more towards his child's maintenance. This supports my contention that the party who earns more should contribute more. Additionally, in *Farrington v Farrington (supra)*, the Court found that Four Hundred and fifty dollars (\$450) was appropriate for the husband to pay taking into consideration his income and inflated expenses.

32. Having regard to the law and the principles established, my decision is made with the children being the paramount consideration and in light of the above-mentioned cases. The Respondent's previous conduct, in ignoring his obligation will change now that there will be a mandate from this Court for him to pay. The change will be justified. It is this court's effort to place the parties in the financial position they would have been in had the marriage not broken down and they each had discharged their financial obligations to each other. I have determined that One third of the Respondent's income is reasonable in the circumstances. One third of his salary is Four hundred and eighty-three dollars and sixty-seven cents (\$483.67) which does not include tips. Given that tips do fluctuate depending on the season of the year and how busy the resort is, I would not include this in my calculation. While the Court ordered Four Hundred and fifty dollars (\$450) to the wife in *Farrington v Farrington (supra)*, I think that the Two Hundred and fifty dollars (\$250) offered by the Respondent for each child is reasonable and in their best interest; s. 29.

### **Conclusion**

Provided the provisions made by the parties in the agreed consent order remain the same as presented to the court and the parties initial a draft of the said order for presentation to this court in the exact terms;

33. I order the Respondent to pay Two Hundred fifty dollars (\$250) per month per child towards the maintenance of each child of the marriage until the last child attains the age of 18 years or completes tertiary education, whichever is the later.

34. The first payment is to be made on or before the last day of this month, February 2024 and thereafter on or before the last day of each month.

35. The Court grants a Declaration pursuant to s.73(1)(b)(i) of the Matrimonial Cause Act, Chapter 125 Statute Laws of The Commonwealth of The Bahamas that the only children of the marriage are K.M.A. and K.D.V.A. and that arrangements have been made for their welfare and those arrangements are the best that can be devised in the circumstances.

**Dated this 27<sup>th</sup> day of February, A.D. 2024**



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

