

COMMONWEALTH OF THE BAHAMAS

2022

IN THE SUPREME COURT

FAM/div/No. 00411

Family Division

BETWEEN

Angeleana Myrtle Miller (nee Virgo)

Petitioner

AND

Ronrick Ian Miller

Respondent

JUDGEMENT

Before: **The Hon. Madame Justice J. Denise Lewis-Johnson MBE**

Appearances: Ranard Henfield of Counsel for the Petitioner

W.E Oleander of Counsel for the Respondent

Hearing Date: 16th March 2022, 18th January 2023, 14th September 2023, 22nd January 2024, 29th February 2024, 1st March 2024,

14th March 2024, 16th March 2024

Family Law-Matrimonial Causes Act-Divorce-Ancillary Relief-Matrimonial Property-Division of Assets-Maintenance of Minor Children-Custody of Minor Children

Introduction

1. By a Notice of Intention to Proceed with Ancillary Relief filed 29 September 2023, the Petitioner sought a Property Adjustment, in relation to the matrimonial property, located on Fire Trail Road, being Lot #39 of the Gladstone Road Crown Allotment,

N.P. along with a Maintenance and Custody Order with respect to the minor children.

2. By Affidavits of Means filed 16th November 2023, 29th September 2023 and a Supplemental Affidavit filed 19th January 2024 the Petitioner and Respondent outlined their position as to interest in the property, maintenance and custody of the minor children.

The Petitioner's Evidence

3. That she is currently unemployed due to the domestic violence acts against her by the Respondent. She maintained that on the 27th July 2023 the Respondent had her charged with assault after defending herself in an argument with him.
4. That when she and the Respondent lived together as man and wife, they collected in excess of \$2,000.00 monthly in rent, which assisted with the family living cost. That all the mortgage payments on the matrimonial home were deducted from her salary monthly in the sum of \$1,335.29.
5. That since losing her job, the rent partially covered the family expenses and that the Respondent evicted all the tenants despite the Protection Order which was put in place by the Court.
6. That her monthly expenses amounts to the sum of \$3,869.40.
7. That the Respondent is employed in a family business making the sum of \$2,400.00 per month and has the capacity to supplement his income.
8. That when the parties acquired the matrimonial home she solely paid the deposit in the sum of \$24,000.00, all bank, legal and government fees amounting to \$40,000.00. The appraised value on the home at 2021 was \$470,000.00.

The Respondents Evidence

9. That the Petitioner was ordered to move into the matrimonial home with the minor children upon eviction of the tenant and should the Petitioner not relocate to the Matrimonial home within six (6) weeks from the 14th September, 2023 he was to relocate to the matrimonial home. That due to the tenants still residing in the matrimonial home, he has not relocated to the home.
10. That he wants to move into the matrimonial home with the two boys and be responsible for the maintenance and the mortgage of the property.
11. That, as at the 14th September 2023 the mortgage was current. The mortgage is in both parties name. That on the 18th October 2023 he was contacted by First Caribbean Bank indicating that the mortgage was in arrears and asserts that the Real Property Tax on the property is also in arrears.
12. That before the Protection Order he was making mortgage payments and that the payments were current.
13. That the matrimonial home has fallen into disrepair.
14. That he makes a monthly income of \$1,200.00 and has monthly expenses of \$1,017.00 and if he is granted access to reside in the matrimonial home he would be responsible for the minor children expenses from the rentals.
15. That the Petitioner moved out of the matrimonial home and into another home. Shortly thereafter that the Petitioner's boyfriend moved in with the Petitioner and the minor children.
16. That R.I.M. II, one of the minor children, indicated that he was abused by the mother's boyfriend and that the Petitioner ignores the children or does minimal to assist the minor children in this regard.

17. As a result of this the Respondent stated that he made a complaint to the Carmichael Road Police Station.
18. That on the 8th January 2024 he got another call from First Caribbean International Bank indicating that the mortgage was in arrears and the last payment was made on 6th November 2023.
19. That he is not responsible for the Petitioner resigning from her job and that he withdrew his complaint against the Petitioner in the Magistrate Court on the 3rd October 2023.
20. That on the 12th December 2023 he received a phone call from Insurance Management (Bahamas) Limited indicating that the home insurance which was in both the parties name was cancelled in February 2023 and that the life insurance with BF & M Life Insurance Company Limited lapsed on or before June 2023.
21. That he and the Petitioner hold a joint account at First Caribbean Bank and that prior to the parties acquiring the matrimonial property, he deposited \$20,000.00 into the account. That on the 14th September 2018, the Petitioner withdrew \$35,000.00 from the said account and deposited it into an account which is solely in her name.
22. That all mortgage payments are derived from the account solely in the Petitioner's name and that on the 10th May 2021, the Respondent's mother deposited \$5,000.00 into the joint account.

The Issue

23. The issues to be determined by this Court are:
 - a. Whether each party is entitled to an interest in the matrimonial home, and if so, at what percentage.

- b. Whether the Petitioner or the Respondent is entitled to sole or joint custody of the minor children;
- c. What is the amount of maintenance required for the minor children's upkeep.

The Law

24. The **Matrimonial Causes Act** "the MCA" S.29. states:-

(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.

25. **S. 40. (1)** of the MCA states:-

The court, on granting a decree of divorce, if it is satisfied that both parties to the marriage have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever), may, if it thinks fit, on the application of either party made before the decree of divorce is made, make in lieu of any order under section 25(3) affecting the matrimonial home an order —

1. *(a) subject to subsection (2) directing the sale of the home (including the land on which it is situated and such other land appurtenant thereto as the court directs) and the division of the proceeds, after the payment of the expenses of the sale, between the parties in such proportions as the court thinks fit; or*
2. *(b) directing that either party pay to the other such sum, either in one sum or in instalments and either forthwith or at a future date and either with or without security, as the court thinks fair and reasonable in return for the contributions made by that other party.*

3. **Section 74** of the MCA states:-

(1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen — **(a)** in any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);

(b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal; and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of the court.

(2) Where the court makes an order under section 31 the court shall also have power to make such order as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this subsection and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.

(3) Where the court grants or makes absolute a decree of divorce or grants a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.

(4) Where a decree of divorce or of judicial separation contains such a declaration as mentioned in subsection (3) then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.

(5) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.

(6) The power of the court under subsection (1)(a) or (2) to make an order with respect to a child shall be exercisable from time to time; and where the court makes an order under subsection (1)(b) with respect to a child it may from time to time

until that child attains the age of eighteen make a further order with respect to his custody and education.

(7) The court shall have power to vary or discharge an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

26. The Child Protection Act s.3 states:-

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 in 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 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.

27. The Petitioner relied on the cases of **Jupp v Jupp SCCrAPP No. 37 of 2011** submitting that the court must have regard to the evidence that's before it while adhering to the needs of both parties in the matter. The Petitioners further relied on **MML v NAT (2022) FAM/div/00334** and **A v B (2010) BHS J No 18** submitting that there are times when the Court must depart from the equal sharing principle based on the circumstances presented unless evidence to the contrary is provided.

28. The Respondent relied on the case of **L and N FAM/div/588/2004** in reliance on what the court must consider when granting custody of minor children.

Decision

Custody and Maintenance

29. The Court's paramount consideration as mandated by the **Child Protection Act** is what is in the best interest of the child. The children of the marriage are ages 7 and 11 and are enrolled in Xavier's Lower school. Currently, the Petitioner has primary care custody and control of the minor children with access to the Respondent.

30. While the Respondent states that he and the minor children spend the most time together and that they have communicated to him their desire to reside with him, the Court finds this evidence self-serving.

31. The Respondent relies on the case of **L and N FAM/div/588/2004** where the court granted primary care, custody and control to a father, who lived in Canada, of a

minor child and access to the mother. The court has also taken note of the case **W v W and C 1968 3All ER 408** where it was held:

“It is a general principle, in question of custody, that it is better for a boy of eight years of age other things being equal to be with his father rather than his mother, even if he has lived with his mother up to that age.”

32. The Court is of the view that both cases can be distinguished from the present case, particularly as in this case where there has been much violence between the parents. By the Respondent's evidence, he earns an income of \$300 from which, he asserts the ability to pay the mortgage, maintain the children, himself, maintain the home, educate the children, provide medical, dental and optical care (albeit he wants the rental income to assist). In the previous cases the father was clearly able to provide financially for the children.

33. In this case there is a Protection Order made against the father and he was ordered by the Magistrate's Court to vacate the matrimonial home. I am satisfied that this is not a case where the father is to be preferred to the mother. The perpetuation of “accepted violence” by the father in front of his sons, the risk of the father teaching his sons that violence against their mother or anyone is acceptable must be prevented. Lord Denning in **W v W and C** quoted the welfare officer who said **“a boy of this age, he leans more towards the father because of his need now of male guidance and companionship.”** In ideal circumstances that may be persuasive, however, when the father does not exhibit the appropriate character traits it must be resisted, this is such a case.

34. The Court is guided by the Matrimonial Causes Act and the Child Protection Act along with the considerations listed by the House of Lords in **J.V.C. 1969 1All ER 788** being:-

- a) **“Maintaining the status quo (the maintenance of the existing situation if it is working satisfactorily);**
- b) **The need to protect children from abuse or harm;**
- c) **The parents’ behaviour towards the child;**
- d) **The financial position of the parent;**
- e) **The emotional well-being of the child;**
- f) **The emotional well-being of the parent;**
- g) **The other partner of the parent;**
- h) **The wishes of the child and the desirability of keeping siblings together;**
- i) **The willingness of the parent to facilitate an access order;**
- j) **Other relevant factors (religion, educational opportunities).”**

35. The Court must do what is just and fair in all the circumstances of the case having regard to the law, as such the Petitioner would be allowed to move into the matrimonial home with the children.

36. The Court finds that the minor children’s expenses are maintained through income from the rentals attached to the matrimonial home along with some contribution from the Respondent.

Property Adjustment

37. The Court when making property adjustment orders must have regard to the considerations as outlined in Section 29 of the MCA while taking into account other factors such as the contributions made by both parties towards the property and the equal sharing principle.

38. It must also consider the financial and non-financial contributions of the parties, made towards the matrimonial home during the course of marriage.

39. The Petitioner is presently unemployed and earns a living from the rental apartments attached to the matrimonial property. She was previously employed and alleges to have made contributions to the purchase and development of the home.
40. The Respondent is currently employed with Ronnet's Development and Heavy Equipment, a family owned company, earning a salary of Three Hundred Dollars (\$300.00) per week.
41. The Petitioner and Respondent purchased the matrimonial property located Fire Trail Road, for the sum of Eighty-One Thousand Dollars (\$81,000.00) in 2010. The appraised value of the property is Four Hundred and Seven Thousand Dollars (\$407,000.00), and the remaining mortgage on the property is One Hundred and Ninety Two Thousand Four Hundred and Ninety Four Dollars and Four Cents (\$192,494.04).
42. The Court does not find the Respondent to be a truthful witness. I do not accept that he earns \$300.00 weekly in salary from his employment with his father. Based on the Respondent's Affidavit evidence, his income is \$1,200.00 monthly and his expenses are \$1,017.70 which leaves a significant short fall to meet the above parental obligation.
43. It is further unreasonable based on the Respondent's evidence for the Court to grant him the matrimonial home or for the home to be sold. The minor children require a home, at their young age the risk of making them homeless is not in their best interest.
44. The evidence also reflect that the parties at some point faced financial difficulties resulting in the Petitioner having to put a payment plan in place to ensure that the minor children were able to have continued access to private education.

45. While the Petitioner is unemployed, the Court is of the view that she has earning capacity despite her averments, that the acts of the Respondent towards her forced her to resign her job. It is the Court's view that this does not affect the Petitioner's marketability and is but a hurdle which must be overcome, so that she can provide continued financial support to the minor children and herself.
46. There is no evidence that either party has a disability or lacks earning capacity. The Petitioner is encouraged to find employment as I am not satisfied that she is prevented or is unable to find employment. She has an obligation to contribute to the care and maintain the children.
47. The Petitioner states that she paid \$124,000.00 for the deposit, legal fees, and governmental fees on the matrimonial home and that the mortgage payments came out of her salary.
48. The Court notes that the parties were married in 2013 and the matrimonial home, which is a triplex, was acquired in 2021, some eight (8) years after marriage via a mortgage. The parties divorced at the tenth year of their marriage. It is usual for both parties after the breakdown of the marriage to assert a greater contribution to the acquisition of the home, and diminish the contribution of the other party. Factually, these assertions are impossible when one considers their income, their expenses and what the court is being asked to accept as their contribution.
49. The assertions by the parties are mathematically impossible. For example, one cannot earn a salary of \$2,000 monthly, pay bills of \$3,000 and save \$20,000 to deposit on the purchase of the home. Both parties' income combined allowed for the qualification of the mortgage, and through joint efforts were able to qualify, obtain the mortgage and acquire the home.
50. The law is clear, the person paying the mortgage or going out to work is not in a more favorable or preferential position than the homemaker, taking care of the

children, cooking, cleaning and equally contributing to mental and physical well-being of the family. Their contribution to the family may very well be equal.

51. Justice Anita Allen in **Jupp v Jupp SCCrApp No.37 of 2011** stated:

“It must be remembered that authorities from the United Kingdom cannot trump what the statute laws of the Bahamas says. It is only if these cases are consistent with the statute law can they apply. Section 29 is very 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 requires 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 reasons for the same.”

52. The Respondent states that the triplex is in a state of disrepair. He was responsible for evicting tenants and creating the state of disrepair. You cannot create a problem, then complain and plead that a problem exists, while requesting to be allowed to fix the problem at the disadvantage of the other party.

53. The Court having considered the evidence before it finds the Respondent's evidence less than truthful. The Affidavit put forward by the Office Manager of Ronet Development & Heavy Equipment Ltd., De'Sha Hanchell is equally concerning and is not accepted by this court as truthful and accurate.

54. The Affidavit provides no corroborating evidence such as pay slips, National Insurance records showing deductions at the salary scale, no salary cheques or bank transfers, nothing but the Affiant's word. While the Respondent's father, who is the owner of the business, through his Affidavit sought to provide an explanation for the reduction in salary, he likewise provided no documentary evidence to support and prove his assertions. This documentary evidence was within his business, his reach, and would be readily available to him. I find, he was similarly seeking to assist his son, the Respondent, in limiting or reducing his responsibility to his children and the family as a whole.

55. The court accepts that while at this stage each party seeks to diminish the contribution of the other. It is our task to make a determination based on the facts and evidence guided by Section 27 of the MCA, while giving consideration to what is fair and just in all the circumstances of this case.

56. The court accepts that the mortgage payment came from the Petitioner's salary, I also accept that the Respondent's salary allowed for other family expenses to be paid.

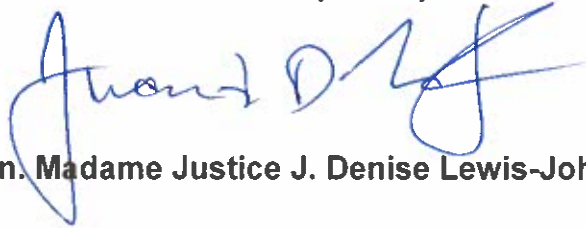
57. For all of the reasons stated above, the Court having heard the evidence, having observed the demeanor of the witnesses and having considered the relevant law finds as follows:-

1. The Parties to have joint custody of the minor children of the marriage namely **R.I.M. born 31 October 2013**, and **C.R.M. born 29 November 2017**. Primary care, custody and control to the Petitioner and access to the Respondent as follows:
 - i. Alternative weekends from Fridays at 4:00p.m. to Sundays at 7:00p.m. commencing 23rd August 2024 and continuing until each child attains the age of 18;
 - ii. Parties to alternate Christmas and New Years;

- iii. Parties to alternate the children's birthday with the Petitioner having them in 2024;
 - iv. The weeks the Respondent does not have weekend access, the Respondent is to have access from Wednesday 3:00p.m.to Friday 8:30a.m. by picking up the children from school and returning them to school at the requisite times;
 - v. The Respondent is to have access for the first half of every summer break, commencing on the last day of school, and return the children to the Petitioner by noon on August 1st 2025;
 - vi. The Petitioner is to have access every Mother's Day weekend and the Respondent is to have access every Father's Day weekend;
 - vii. The Parties are to alternate mid-term breaks, starting with the Respondent having access for the mid-term break in October 2024, by picking up the children from school, and returning them to school on the requisite dates and times.
2. The Petitioner to have possession of the matrimonial home and the rental units until the last child attains the age of 18.
 3. The Rental income is to contribute to maintenance of the children, pay the mortgage and expenses associated with the home maintenance.
 4. As to the mortgage payments which presently stand at \$1,335.00 per month, the Respondent is to contribute 25% of that sum (being \$333.75) for the next six (6) months commencing August 2024 and ending February 2025
 5. Once the last child attains the age of 18 or, if he continues to tertiary education at age 23, the matrimonial property is to be determined as follows:
 - a. The Petitioner would have a 60% interest in the property and the Respondent 40% interest.

- b. The Petitioner to purchase the Respondent's interest within six months, failing which the Respondent is at liberty to purchase the Petitioner's interest within six months thereafter.
 - c. If the parties are unable or unwilling to purchase the other's interest, the property is to be sold and the net proceeds divided in the percentages stated above.
6. The parties are to share equally all medical, dental and optical expenses of the children.
 7. The parties are to share equally all educational expenses of the children, including but not limited to tuition, books, uniform, external exam fees etc.
 8. The Respondent is to contribute the sum of \$400.00 monthly toward the maintenance of the children.
 9. Each party is to bear their own cost.

Dated this 12th day of July A.D., 2024



The Hon. Madame Justice J. Denise Lewis-Johnson MBE