

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**2023/FAM/div/No. 00256**

**BETWEEN:**

**P. A. D. T.**

**Petitioner**

**AND**

**B. G. T.**

**Respondent**

**AND**

**UNKNOWN WOMEN**

**Co-Respondent**

**DECISION**

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

**Appearances:** Marylee Braynen-Symonette for the Applicant/Petitioner

Nicholette Burrows for the Respondent

*Matrimonial Proceedings Act, Domestic Violence (Protection Orders) Act, Application for party to marriage to vacate home,*

## THE APPLICATION:

[1] By a Notice of Proceedings and Summons to the Respondent (“the Husband”), filed 29<sup>th</sup> January, 2025, the Petitioner (“the Wife”) applied to the court under Section 4 of the Domestic Violence (Protection Orders) Act for a protection order. An urgent hearing was requested by the filing of a Certificate of Urgency on the same day. Unfortunately, due to calendar conflicts between counsels and the courts, the matter did not come on for hearing until 25<sup>th</sup> February, 2025.

[2] The Notice and Summons was supported by the Wife’s Affidavit filed 30<sup>th</sup> January, 2025. The Husband responded to defend the application by filing an Affidavit on 20<sup>th</sup> February, 2025.

[3] It is important to note that the Wife had obtained a Decree Nisi since 23<sup>rd</sup> October 2023 on the grounds of the Husband’s cruelty. She has already made application to have ancillary matters in the divorce proceedings determined which application is scheduled to be heard on 16<sup>th</sup> April 2025.

## FACTUAL BACKGROUND

[4] Notwithstanding the Decree Nisi granted in October 2023 the Husband and wife continue to reside in the matrimonial home situated in Winton Heights together, and along with the Three (3) minor children of the marriage, BAD age 12yrs, ACJT age 12years and BAAT age 7 years. The Wife alleges that the Husband is guilty of physical, financial and mental abuse.

## THE WIFE’S ALLEGATIONS OF DOMESTIC VIOLENCE AGAINST THE HUSBAND SUMMARIZED;

[5]

- i. The treatment in the home has deteriorated.
- ii. There is physical violence and aggressive bullying.
- iii. She was locked out of her bedroom from retrieving her personal items.
- iv. Refusal to assist with paying the housekeeper.
- v. No assistance with purchasing groceries for the family.
- vi. Yells at the minor child

vii. During an incident on 2nd October, 2023 the Husband flew into a rage and punched the Wife about the body.

viii. On 30th June 2024 he pinched their son ACJT.

ix. On 10th December, 2024 yelled at ACJT, yelled at wife, threatened to strike the Wife and the housekeeper had to intervene to stop the incident.

x. Wife says wants husband out of the matrimonial home and that she has nowhere else to go if she had to be the party to move.

xi. The Husband can be adequately accommodated at his parents Five (5) bedroom house, there being three free bedrooms.

xii. Wife willing to forego the Husband making his usual payment on the mortgage of \$1,548.67 per month so he can use it to pay rent somewhere outside the matrimonial home.

xiii. Husband still not filed his Affidavit of Means for the hearing of the ancillary matters scheduled for April but has until 17th March to file.

[6] The Husband in vigorously defends the Wife's allegations. He counter's that the alleged physical altercations and arguments were instigated by the Wife. He further submits that the Wife has contributed to the volatility in the home.

#### THE HUSBAND'S RESPONSE AND DEFENCE TO THE WIFE'S APPLICATION

[7]

- i. The Wife's application is an attempt to have him ousted from the matrimonial home precipitously.
- ii. Her Affidavit contains untruths.
- iii. He denies allegations of aggression, domineering, bullish, physical violence and or creating a toxic environment.
- iv. The parties currently reside in separate bedrooms.
- v. Although the Wife has repeatedly requested that he vacate the home he has declined to do so but still fulfills his financial obligations. He's not willing to leave his home.

- vi. It's the Wife who often descends into tirades that she "fucking hates" the Husband and he needs to go live with his hoes. He does not respond.
- vii. He denies ever having bullied the Wife.
- viii. The Wife monitors his activities with the children whenever he is with them by "lurking."
- ix. He was physically attacked by the Wife in 2023, 2024 and again in 2025 which resulted in him experiencing swelling, scratching and bruising from one of those incidents.
- x. Denies that the incident described by the Wife involving being refused entry into the master bedroom to obtain her menstruation feminine products, occurred as told by the Wife. Explains that both parties lock their respective bedroom doors. That wife enters his bedroom without knocking and gaining permission to enter.
- xi. It's the Petitioner's behaviour, shouting and swearing that is startling to the children.
- xii. He denies that he harassed the Wife about the housekeeper.
- xiii. He denies that he yells at the children or that he subjects them to trauma through physical and verbal attacks. He says he has a good relationship with them. He and the Wife just have different parenting styles.
- xiv. It was the Wife who grabbed him and shoved him over the incident with their son AJCT.
- xv. The Wife has infringed his privacy. She installed a tracking device in his vehicle. She has a potential to stalk.
- xvi. The Wife's allegations are not supported by any police or medical report.
- xvii. Notwithstanding that the Wife earns considerably more than him he pays the entire mortgage for the home.
- xviii. The Wife owns a duplex and her parents have adequate accommodation for her to be the one to leave the matrimonial home. Moreover her offer to forego the mortgage payment so that he can utilize it for rent demonstrates that the Wife has the means to afford other accommodation.
- xix. There is no justification for him to be ordered to leave the matrimonial home when the Wife has offered to the court Two (2) incidents in 2023 and Dec 2024. This is insufficient to warrant a Protection order.
- xx. He does not find the current living arrangements intolerable.

- xxi. On 17<sup>th</sup> February, 2025 the Wife attacked him. She pointed her finger in his face and said in an aggressively low tone (so that the children would not hear her) “You are evil.... you cheated on me and lost your marriage...”
- xxii. The application is a means of bullying him out of the home.

THE ISSUES:

[8]

- i. Does the actions of the Husband meet the threshold and definition of domestic violence as prescribed by the act?
- ii. Has the Husband perpetrated acts of domestic violence against the Wife and children? Or;
- iii. Is it the Wife who is culpable for the volatility/violence in the matrimonial home by instigating arguments and altercations in the matrimonial home?
- iv. Should the Husband be ordered to vacate the matrimonial home?
- v. Alternatively, should the Wife be made to vacate the matrimonial home?

THE LAW

[9] The relevant statute for this application is the Domestic Violence (Protection Orders) Act, Ch. 99A Statute Laws of the Commonwealth of The Bahamas. (“the Act”).

DISCUSSION AND ANALYSIS

[10] The ability to address abuse within the marital construct is the rationale behind the Act. It empowers victims of domestic abuse to approach the Magistrates Court or Supreme Court in divorce proceedings, as is the case here, for relief;

S. 6 (1) -Subject to subsection (3) no application shall be made by a person to a magistrate for a protection order against his or her spouse or partner if there are pending in the Supreme Court proceedings by either of them in respect of their relationship or of any child of that relationship save however that application may be made in the Supreme Court as if the same were an application made to a magistrates court and for that purpose the provisions of this Act regarding the powers of that court on such an application including the Forms set out in the Second Schedule shall mutatis mutandis apply.[Emphasis mine]

[11] The Wife is a person entitled within the Act:

- S. 4. (1) An application for a protection order in accordance with Form 1 in the Second Schedule may be made by way of complaint by —
- (a) the spouse or partner of the person against whom the order is sought where the domestic violence was committed or the harassment conducted against that spouse, partner or a child of the household;
  - (b) -;
  - (c) -
  - (d) -
  - (e) -

[12] The Wife alleges that the Husband has engaged in or has threatened to engage in conduct that is capable of constituting domestic violence or an attempt to commit domestic violence against her and their son.

S. 3. (1) provides 'Where on an application made in accordance with section 4 in respect of a person and without prejudice to section 5(6) the court is satisfied on the balance of probabilities that a person —

(a) has engaged in or has threatened to engage in conduct that is capable of constituting domestic violence or an attempt to commit domestic violence against the spouse, partner or child of that person or some other member of the household;  
or

(b) without prejudice to paragraph (a), has engaged in conduct that may reasonably be regarded as harassment of the spouse, partner or child, or other member of the household, and unless that person is restrained, is likely to engage in further conduct that would constitute conduct referred to in paragraph (a) or (b), it may make an order, in this Act referred to as a protection order, restraining the person from engaging in that conduct or in similar conduct.

(2) -

(3) -

(4) Subject to sections 18(1) and 20(2), a protection order made by the court under subsection (1) may be for such period of time as the court considers necessary, but may, on the application of the complainant or the respondent, be varied or revoked.

[13]. The Wife's account of the incidents in 2023 and 2024 (if believed and accepted) fits precisely within the framework of behaviour which the Act defines as domestic violence. Allegations of flying into a rage, punching her, pinching their son would satisfy the definition of physical violence. Allegations of yelling and threatening her and the children would satisfy the definition of intimidation. Allegations of taking her cell phone could be categorized as psychological abuse. Allegations of the refusal to buy groceries and to assist with paying the housekeeper could be financial abuse while refusing her entry into the bedroom to retrieve her feminine products is a classic example of deprivation of use of property. Reference can be had to s. 2 of the act for the definitions;

S 2. of the act provides:

“domestic violence” includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, partner, child, any other person who is a member of the household or dependent;

“emotional or psychological abuse” means a pattern of behaviour of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including:

- (a) persistent intimidation by the use of abusive or threatening language;
- (b) depriving that person of the use of his property;
- (c) interfering with or damaging the property of the person;
- (d) the forced confinement of the person;
- (e) making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person;

“physical abuse” means any act or omission which causes physical injury to a complainant or his child and includes the commission of or an attempt to commit any of the offences of the nature listed in the First Schedule in relation to the complainant or his child;

“financial abuse” means a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person’s access to financial resources so as to ensure financial dependance;

“harassment” includes —

(a) the intimidation of a person by —

(i) persistent verbal abuse;

(ii) threats of physical violence;

(iii) the malicious damage of the property of a person; or

(iv) any unwanted physical, verbal or visual sexual advances, requests for sexual favours, and other sexually oriented conduct which is offensive or objectionable to the recipient, including, but not limited to: epithets derogatory or suggestive comments, slurs or gestures and offensive posters, cartoons, pictures, emails, telephone calls or drawings but not being an occasional compliment of a socially acceptable nature.

(b) stalking;

(c) the hiding of any clothes or other property owned by or used by a person or the depriving of a person of the use thereof or the hindering of a person in the use thereof; or

(d) the indulgence or engagement in a pattern of behaviour by a person that would or likely have the effect of undermining the emotional or well-being of another;

[14] This situation is typical of matrimonial cases where oft times the only witnesses to the events complained of are the parties themselves. Moreover, it is also typical that the parties would have diametrically opposed descriptions of events complained of. The circumstances here do not disappoint those expectations. As mentioned before the Husband either denies the Wife’s account of events or has an opposing view as to who instigated the altercation. The case falls to the credibility of the parties. This must be gleaned from their respective Affidavits.

[15] The Wife is insistent that she would have no peace unless the Husband is made to vacate the matrimonial home (“an ouster order”). The Court is empowered to grant her wishes pursuant to S. 8 of the act, which pertinent sections are set out below;



s. 8. (1) Subject to this Act, a protection order may include provisions restraining the respondent —

(a) from being on premises on which the complainant for the protection order or the child or member of the household in respect of whom the order was made, resides;

(b) -

(c) - from being in a specified locality, being a locality in which premises as mentioned in paragraph (a) or (b) or any other premises the court deems it necessary to specify, are situated;

(d) - from approaching within a specified distance of the complainant or the child or member of the household in respect of whom the order was made;

(e) -

(f) -

s. 8 (2) A protection order may —

(a) require the respondent to —

(i) leave the premises referred to under paragraph (a) of subsection (1);

(ii) continue any legal or other obligation the respondent may have to pay the rent, mortgage, utilities or taxes of the premises referred to in that subparagraph where the respondent is asked to leave under sub-paragraph (i);

(iii) allow the complainant to enter and remain on the premises referred to in paragraph (c) of subsection (1); or

(b) specify conditions subject to which the respondent may be on premises or in a locality specified in the order.

(3) A protection order that includes a provision mentioned in paragraph (a) of subsection (1) may also include a provision —

(a) restraining the respondent from taking possession of personal property of either the complainant or the respondent, being property that is reasonably needed by a member of the complainant's household;

(b) directing the respondent to give possession of such of that property as is specified in the order, to a specified member of the respondent's household;

(c) -

(d) requiring the respondent to pay interim monetary relief to the complainant for the benefit of the complainant and any child where there is no existing order relating to maintenance until such time as an obligation for support is determined pursuant to any other written law;

(e) requiring the respondent to relinquish to the police any firearm licence, firearm or other weapon which may or may not have been used but which the court considers just to order;

(f) prohibiting the respondent from damaging property of the complainant or a child of the complainant or respondent; or

(g) -

- (4) Notwithstanding section 2 in paragraphs (b), (c) and (d) "complainant" means a person against whom the offence was committed or who was harassed.

[16] To decide whether the Wife is entitled to such an order the court exercises its discretion but is constrained by attention to certain considerations set forth in S. 9(1) of the act.

s. 9. (1) In determining an application for a protection order, the court shall have regard to the following —

(a) the need to ensure that persons are protected from violence and harassment;

(b) the welfare of any child who is a member of the respondent's household;

(c) the need to preserve and protect the institution of marriage and to give protection and assistance to the family as a natural and fundamental group unit of society;

(d) the accommodation needs of the members of the household;

(e) any hardship that will be caused to the respondent or to any other person as a result of the making of the order; and (f) any other matter that in the circumstances of the case, the court considers relevant.

Each consideration is referred to in turn.

#### ENSURING PROTECTION FROM VIOLENCE

[17] Does the Wife need protection from violence and harassment? The Wife's counsel suggested that in addition to the allegations in the Wife's affidavit sworn in support of this application the fact that the Wife's Decree Nisi was obtained on the basis of the Husband's cruelty towards her should influence the court's decision. I have scrutinized the allegations in the Divorce Petition and am satisfied that none of the allegations in the Petition supports a finding of domestic violence as those allegations speak almost exclusively to the allegation of the Husband's adultery and his surrounding and resultant behaviour. I also note that the Wife's Petition was filed on 29<sup>th</sup> November, 2023 yet the allegation now made of an incident on 2<sup>nd</sup> October, 2023 did not form part of the Petition. It is unlikely that an altercation, if as violent as the Wife alleges would have been left out of the divorce petition. I do not doubt that there was an altercation on 2<sup>nd</sup> October 2023 however I do not accept that the Husband was necessarily the aggressor. The Wife's explanation as to how the altercation began, continued and then ended leaves much to be desired. I prefer the Husband's evidence of what precipitated the altercation and what transpired thereafter.

[18] The Wife's allegations with respect to the incident on 30<sup>th</sup> June 2024 where she claims that the Husband "violently" pinched their son, does not provide this court with justification for an ouster order. Pivotal to this is the fact that the Wife was not present in the room when the alleged pinching occurred. It appears to me that the Wife herself attributed the word "violent" to the interaction between the Husband and the son. The Wife in describing the event says;

"I left the bedroom and went downstairs, only to hear our second son Ashton, scream out in pain, I ran back upstairs to his bedroom to find Ashton crying uncontrollably with the respondent in an angry rage screaming at Ashton. I asked the Respondent what happened but he violently pushed me aside and left. I calmed Ashton down then attempted to speak calmly to the Respondent telling him that it was not fair to the children for him to take out his frustrations on them."[Emphasis mine]

[19] The Wife's account of this incident tells demonstrates that she is unafraid to challenge her husband and is prone to say things that hurt and provoke negative responses. I am of the view that the Wife's assumption that the Husband was taking out his frustrations on the children was intended to further goad the Husband to continue the altercation.

[20] The Husband's offered explanation as to the difference in parenting styles may well account for the ensuing yelling between the parties He tried to get away and leave the home but the Wife prevented him leaving. This suggests that the Wife was fully engaged in the altercation negating her claims that she is in such fear of her husband that the only way to achieve peace and make her life bearable, is for him to vacate the matrimonial home. Again, I am not convinced that this altercation was an unprovoked attack by the Husband.

[21] The incident which occurred on 10<sup>th</sup> December, 2024 could have been avoided in my view. There are divergences between the Husband and wife in the account of who instigated the altercation. What clearly emerges from opposite accounts is a lack of parenting skills on the part of both the Husband and wife. The bickering in the presence of the child, over who the child should contact in the event of an emergency at school demonstrated a lack of self-control by both the Husband and the Wife. In my view both are engaged in a battle for supremacy in the eyes of this child and are both prepared to engage in aggressive behaviour in the child's presence. But for the intervention of the housekeeper both seemed prepared to resolve the issue physically in the presence of the child. In any event the Husband seems to have come out on the worst end of the altercation. He apparently suffered swelling, scratches and bruising about the face and body as a result of the altercation.

[22] The Incident regarding the Wife and her attempts to retrieve her feminine products from the room where the Husband is residing begs the question; if these alleged altercations with the Husband are so detrimental to her and the children's well-being, why would she keep those very personal items in the bedroom where the Husband is residing. The Wife admitted that she forced her way into the bedroom door. The Husband expands on her account of the incident that when she forced her way into the bedroom, she damaged the "strike plate and edge bore" on the bedroom door. The description of the damage is very telling of the manner in which the Wife sought entrance to that room. I prefer the Husband's account of the incident.

[23] The Husband's account of an incident which occurred on 17<sup>th</sup> February, 2025 was not refuted by the Wife instead her counsel offered that the Wife was simply stating the obvious of what she saw as causing the demise of the marriage. However the language used by the Wife and the manner in which she approached the Husband; "fuck you, fuck you" while pointing her middle finger up, then accusing the Husband "*you are evil, you cheated on me and lost your marriage, as described by the Husband*", tells me that the Wife's approach was aggressive and reckless as to the possible reactions of the Husband.

#### THE WELFARE OF THE CHILDREN

[24] Notwithstanding the Wife's allegations of violent behaviour on the part of the Husband I do not hold the view that the welfare of ACJT or the other children of the marriage is negatively impacted by the presence of the Husband in the matrimonial home. As stated earlier what I have gleaned from the incidents involving ACJT the parties are involved in a clash of parenting styles. This is a situation that will extend beyond any determination this court will make concerning the living arrangements of the parties, provided no parent is deprived of their right to custody and/or access of the children. It occurs to me that the parties could benefit from counselling particularly as it relates to their co-parenting and where the court issues a protection order there is provision for such counselling to occur:

s. (5)(1) - Upon the appearance before the magistrate of a respondent the magistrate may if he considers, having regard to the particulars of the complaint and any representations made, that the subject matter of the complaint may be ameliorated through counselling or parenting sessions carried out or arranged by officers of the Department the Magistrate may adjourn further hearing of the application and refer the parties to the Department for that purpose.

s.8 (5) - A protection order shall, in each case, provide that the parties to the order or any child in respect of whom the order was made, attend the Family Services Division of the Department or such other agency as the court specifies, for appropriate professional counselling and therapy, due regard being had to the business or employment responsibilities of the parties.

s.8 (6) Where a protection order has been made in accordance with subsection (5), the Family Services Division of the Department or any other agency specified by the court

under subsection (5) shall forward to the court a report setting out the dates on which counselling took place, the nature of the counselling and therapy carried out and the response given to the counselling and therapy by the parties to the order and any child in respect of whom the order was made not later than one month before the expiration of the order or at such time as the court specifies.

THE NEED TO PRESERVE AND PROTECT THE INSTITUTION OF MARRIAGE AND TO GIVE PROTECTION AND ASSISTANCE TO THE FAMILY AS A NATURAL AND FUNDAMENTAL GROUP UNIT

[25] This couples' contribution to the institution of marriage has ended. The Wife has already obtained a Decree Nisi since 2023 and has demonstrated every intention to complete the proceedings to a Decree Absolute. She has already applied for the hearing of the ancillary matters and obtained a hearing date. Consequently, the parties will be entitled to a declaration pursuant to s. 73 of the Matrimonial Causes Act and a Decree Absolute.

THE ACCOMODATION NEEDS OF THE MEMBERS OF THE HOUSEHOLD

[26] ]The Wife has indicated her intention that the children should remain in her custody care and control and that they together should remain in the matrimonial home. The Husband has not dismissed the possibility of himself having custody care and control of the children and remaining in the matrimonial home with them while the Wife vacates. Both contend that they have available to them relatives with extra rooms who can accommodate them. Additionally, the Husband says that the Wife owns a triplex where accommodation is available to her. It is obvious that neither of the parties are without resources that can be accessed should an ouster order be made by the court.

ANY HARDSHIP THAT WILL BE CAUSED TO THE RESPONDENT OR TO ANY OTHER PERSON AS A RESULT OF THE MAKING OF THIS ORDER

[27] The Husband has not demonstrated that if he were made to vacate the matrimonial home he would suffer hardship. The Wife makes Three (3) times his salary but he states that nevertheless he pays the mortgage on the matrimonial home. His suggestion that the Wife be made to vacate instead of him was not made pursuant to any perceived hardship in the event he had to vacate rather it is just a desire to stay in the home with the children. The Wife's counsel submitted that the Husband should be made to vacate as aside from the possible rights and interest he acquired

under the Matrimonial Causes Act the Husband has no legal title to the home, since his name is absent from the Conveyance. The Act speaks to precisely this situation.;

s. 21(1) Where one party to a marriage is entitled to occupy the matrimonial home by virtue of a beneficial estate or interest or contract or by virtue of any written law giving that party the right to remain in occupation, and the other party to the marriage is not so entitled, then, subject to the provisions of this Act, the party not so entitled shall have the following rights (in this section referred to as “rights of occupation”) —

(a) if in occupation, a right not to be evicted or excluded from the matrimonial home or any part thereof by the other party except with the leave of the court given by an order under this section; and

(b) if not in occupation, a right with the leave of the court so given to enter into and occupy the matrimonial home.

s. 21 (2) So long as one party to a marriage has rights of occupation, either party to the marriage may apply to the Supreme Court for an order —

(a) declaring, enforcing, restricting or terminating those rights;

(b) prohibiting, suspending or restricting the exercise by either party of the right to occupy the matrimonial home; or

(c) requiring either party to permit the exercise by the other party of that right.

s. 21(3) On an application for an order under this section, the court may make such order as it thinks just and reasonable having regard to the conduct of the parties to the marriage in relation to each other and otherwise, their respective needs and financial resources, to the needs of any children and to all the circumstances of the case, and, without prejudice to the generality of the foregoing provision —

(a) may exclude part of the matrimonial home from a party's right of occupation (and, in particular, a part used wholly or mainly for or in connection with the trade, business or profession of the other party);

(b) —

(c) -

s.21 (4) Orders under this section may, in so far as they have a continuing effect, be limited so as to have effect for a period specified in the order or until further ordered.

s. 21(6) The rights of occupation of a party to a marriage shall continue only so long as the marriage subsists and the other party is entitled as mentioned in subsection (1) to occupy the dwelling house.

s. 22 (1) Where each of two parties to a marriage is entitled, by virtue of a legal estate vested in them jointly, to occupy a dwelling in which they have or at any time have had a matrimonial home, either of them may apply to the Supreme Court, with respect to the exercise during the subsistence of the marriage of the right to occupy the dwelling, for an order prohibiting, suspending or restricting its exercise by the other or requiring the other to permit its exercise by the applicant.

s. 22 (2) In relation to orders under this section, subsections (3) and (4) of section 21 shall apply as they apply in relation to orders under that section.

s.22 (3) Where each of two parties to a marriage is entitled to occupy a dwelling by virtue of a contract, or by virtue of any written law giving them the right to remain in occupation, this section shall apply as it applies where they are entitled by virtue of a legal estate vested in them jointly

[28] The Wife contends that the Husband made no contribution to the purchase of the vacant land upon which the matrimonial home is built but that a mortgage was obtained to cover the Husband's half of the mortgage to build the home. It was at this time that she allowed the Husband to be joined in the mortgage to the bank. The title deed still remains in the Wife's sole name. This was not controverted by the Husband. He made the point in his affidavit that he is solely responsible for paying the mortgage. That mortgage payment totals \$1,548.67 which the Wife says she is willing to take over to have the Husband ousted, if this would facilitate him paying for alternative accommodation. This arrangement would not prejudice either party in the final analysis of their respective interest' as provision is made in the act for this scenario:

s. 21 (5) Where a party is entitled under this section to occupy a matrimonial home or any part thereof and makes any payment in or towards satisfaction of any liability of the other party in respect of mortgage payments affecting the matrimonial home, the person to whom



the payment is made may treat it as having been made by that other party, but the fact that that person has treated any such payment as having been so made shall not affect any claim of the first-mentioned party against the other to an interest in the matrimonial home by virtue of the payment.

[29] The Wife's salary is just shy of Three (3) times the Husbands'. Notwithstanding the Wife's seemingly generous offer the Husband is vehemently resisting the ouster order "until the court determines the apportionment of [his] interest."

[30] I accept that the Husband has a right not to be evicted .S.21 (1). I also accept that the Wife has a right to seek his eviction.S.21 (2). There is no complaint by the Wife that the Husband has been delinquent in any way with the payment of the mortgage. Moreover, the Husband does not appear to want to entertain the Wife's offer to pay his mortgage payment. I agree with the Wife's counsel that the Husband does not have legal title to the property, and that the Wife is the sole beneficial owner, however at the substantive hearing of the property adjustment proceedings it will be incumbent upon the Husband to establish the shared intention that he should have a beneficial interest and what that beneficial interest is. It would then be open to the court to find that a constructive trust was thereby created in his favour. The House of Lords in **Stack v Dowden** Fam Law 37 (924), decided that in the absence of an express declaration of trust, in the case of a shared home the proper approach is through the common intention constructive trust. As *Baroness Hale* observed:

'The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.

[31] The Husband has not formally applied for a protection order against the Wife but has suggested in his defence that the court might oust the Wife instead from the home based on his allegations against her. The factual circumstances of this case are antithetical to the raft of authorities, where the onus fell on the court to protect wives who were not legal owners of property and in;

*Silverstone v. Silverstone* (1953) 1 All E.R. 556 it was contended for the Husband that there was no case in which a husband had been excluded from premises of which he was the owner and no case in which a wife who had no definite legal or equitable interest in the

premises had been able to exclude the Husband. *Pearce, J.* held in that case that the Wife "(had) a right to be in the matrimonial home while a petition is pending and this court is entitled to protect that right and ensure that pressure is not put on a wife to abandon her petition by evicting her from the home."

In reaching his conclusion *Pearce, J.* was influenced by the need to protect the Wife pending suit to "prevent her being bullied out of her remedy or deterred by pressure from seeking the help of the court". It was clear that reconciliation was not possible and that contact between the parties was undesirable.

The basis of this jurisdiction was stated in **Richards v. Richards** (1983) 2 All E.R. 807, to be the jurisdiction conferred by the Supreme Court of Judicature (Consolidation) Act, s.37 on the Supreme Court to grant injunctions in all cases in which it appeared to the Court to be convenient to do so. An identical jurisdiction is vested in this Court by virtue of s.29 (1) of the Supreme Court Act, Chapter 35, which confers on the Supreme Court here all jurisdiction vested in and capable of being exercised by the High Court of Justice in England.

[32] In **Ritchie v. Ritchie** [1984] BHS J. No. 57 Georges CJ, Quoting -**Richards v. Richards** (*supra*), p. 813(a) Lord Hailsham, L.C. stated -

"Being in general terms, the section is silent as to the criteria to be followed, and since the section applies to all divisions, such criteria had before 1967 been the subject of case law jurisprudence of a wide and multifarious kind."

Lord Brandon pointed out at p.827 that the exercise of the jurisdiction to grant injunctions was always dependent on the existence of some legal or equitable right requiring protection. Most wives in former times did not have any legal or equitable rights in the matrimonial home. The Courts, however, held that a wife, against whom no disqualifying matrimonial offence had been proved had a common law right to be provided by her husband with a home in which to live and this right was made the basis for the exercise of the power to grant an injunction which could, in effect, oust the Husband from the matrimonial home, the legal and equitable title of which was vested in him.

[33] Obviously this wife's circumstances are opposite to the wives in *Silverstone, Richards and Ritchie*. However, the theme of the authorities suggest that particular considerations are conferred

upon wives when the question arises as to which party should be ousted from the matrimonial home. It would seem also that where the Wife will have the responsibility of caring for young children the ante rises in her favour. In any event I do not consider that the Wife's conduct extends to an ouster order against her and the fact that she holds the legal title to the property militates against such an event.

[34] The authorities however beg the question as to whether the same considerations are applicable to a husband without legal title. My position is that, notwithstanding the Wife's primacy of title, I am not convinced that the circumstances presented are so dire that the Husbands' right of occupation should be curtailed prior to assessment of his interest.

#### CONCLUSION

[35] Having, therefore reviewed and considered the aforementioned affidavits, and having heard Counsel on behalf of the Wife and the Husband, and having read and considered the submissions of Counsel for the Wife and Counsel for the Husband, and the authorities referred to in this ruling, and in all the circumstances of the case, I find that the acts complained of by the Wife as deliberate acts perpetrated by the Husband against her and the children of the marriage were largely instigated or provoked by her and she willingly participated in those altercations once they began. The Wife contributed to the volatility in the home and as such the Husband is not entirely culpable for the altercations which occurred in the home. Of the three incidents complained of:

- i. I find the Husband's account of the cellphone incident more credible.
- ii. I find that the Wife was the aggressor in the June 30<sup>th</sup> 2024 pinching incident with ACJT she admitted that she "ran upstairs and confronted the Husband.
- ii The menstrual product incident was also provoked by the Wife who entered the room occupied exclusively by the Husband without permission. It is obvious that the present living arrangement requires that they reside in separate bedrooms it is incumbent that each respect the space exclusively occupied.
- iii. In the 10<sup>th</sup> December 2024 incident the Husband admits to entering the bathroom to speak with their son ACJT but I prefer the Husband's evidence that the Wife reacted to his scolding the child resulting in the physical altercation between them.

iii. The February 2025 incident it was the Wife who pointed her finger in the Husband's face and cussed him that he is "evil."

iv. Given the Wife's superior earning to the Husband I do not consider it financial abuse that he chooses not to pay for a housekeeper.

In all the circumstances of the case and doing what is just and fair between the parties the Wife's application for the Husband to vacate the matrimonial home is refused.

#### COMMENTARY

[36] I am of the view that these parties can be helped by counselling and the provisions of s. 5 (1), 8(5) and 8(6) makes provision for intervention from the Department of social Services. s.5 (2) provides that the court may adjourn further hearing of the application and refer the parties to the Department [of Social Services] for that purpose. However, I will not adjourn these proceedings given the imminent date for the hearing of the property adjustment application. Such an order is likely to delay the resolution of the entire matter. However, I admonish that parties to consider co-parenting counselling on a voluntary basis.

#### DISPOSITION:

1. It is hereby ordered that the Wife's application dated 29<sup>th</sup> January, 2025 seeking an order for the Husband to vacate the matrimonial home situate Winton Heights is dismissed.
2. Both parties are entitled to remain in the matrimonial home until the final determination of the property adjustment application.
3. Costs of the application to the Husband to be fixed by the court after hearing from counsel.

Dated the 26th day of March, A.D. 2025



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The Honourable Madam Justice C.V. Hope Strachan  
Justice of the Supreme Court of The Commonwealth of The Bahamas