

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2025/FAM/div/00152

IN THE MATTER OF Sections 4 (1) a, 6 (1) & 8 (3) of The Domestic Violence (Protection Orders) Act, Statute Laws of The Bahamas, Chapter 99A.

B E T W E E N

S.F.P

Petitioner

AND

R.M.P

Respondent

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

Appearances: Regina Bonaby for the Petitioner
Ramona Farquharson, Samuel Taylor and Laquel McPhee for the
Respondent

Hearing date: 13th May 2025; 21st May 2025; 27th May 2025

domestic violence protection orders, conduct within the definition, burden of proof, standard of proof, blanket denial defense, effect of failure to cross examine, ouster order, continuation of ouster order.

RULING

C.V.H. STRACHAN, J

BACKGROUND FACTS

[1.] The Petitioner, S.F.P. (nee D) (“the wife”) has brought an application against the Respondent, R.M.P. (“the husband”) for a domestic violence protection order pursuant to Ss. 4 (1) a, 6(1) and 8 (3) of the Domestic Violence (Protection Orders) Act, Chapter 99 A (“the DVPO”). The Ex-parte Summons upon which the application is predicated was filed 17th April, 2025, together with an Affidavit and a Certificate of Urgency filed even date.

[2] The Ex-Parte Summons prayed for the several reliefs enumerated i-viii verbatim from the said Summons;

- i. That the husband be restrained from being on premises in which the wife resides and works at the home situated at No. 10 Millar’s Heights East Avenue in the Southern District of the Island of Nassau.
- ii. That the wife be allowed to remain in the matrimonial home with the minor children of the marriage situated at No. 10 Millar’s Heights East Avenue in the Southern District of Nassau.
- iii. That the husband leave the matrimonial home situated at No. 10 Millar’s Heights East Avenue in the Southern District of Nassau.
- iv. That the husband continues any and all legal obligations for the matrimonial home except that the wife shall be responsible for all utilities in the said home while she occupies the same to the exclusion of the husband.
- v. That the husband is restrained from taking any personal property from the matrimonial home that is needed for the household, inclusive but not limited to any furniture and appliances.
- vi. That the husband is restrained from harassing or interfering with the wife in any way.
- vii. That the order is to remain in place pending hearing of the substantive application inter partes.
- iii. That the costs of this application be provided for.

THE EVIDENCE

[3] The Wife's Affidavit contains the allegations of violence which are for the most part particularized in paragraphs 4-29 but which for these purposes have been largely summarized, they include;

1. For most of the marriage the husband worked at Stanial Cay Yacht Club in the Exumas but when he either quit or was terminated from his job, he returned home to Nassau to live in the matrimonial home with the wife and began to mentally, verbally, spiritually and financially abuse her.
2. That the husband never physically abused her but has broken into her locked bedroom with a large knife and threatened her that this is his house and no door will be locked.
3. The husband drank so much on 6th July, 2024 he forgot to collect the children. That the husband told her he "ga fuck her up." that the conversation occurred on WhatsApp which she exhibited to her Affidavit.
4. The husband persistently calls her derogatory names in front of the children and others, by calling her "sissy", "bitch" and "fat".
5. The husband and she often exchange words during arguments and she often advises him of informing the police.
6. The husband alienates her from others even if she is being provided a service. She gave an example of the husband telling her not to let the mobile car cleaner back in his yard unless he will do something to her and the man.
7. That the husband unreasonably demands that she stop working and cook dinner daily.
8. That the husband refuses to do household chores and reminds her of her duties as a wife according to the bible.
9. The husband monitors her business and clients and demands money from her but becomes verbally abusive if she refuses.
10. That due to the husband's refusal to wear a condom during intimacy or to obtain a blood test for the lesions he has on his body, she has stopped residing with him in the same bedroom.
11. In the middle of the night the husband picked the lock to the daughter's bedroom where the wife was sleeping and threatened her "that he is the man of the house and no door supposed to be locked in his house." It was only after she asked him if he wants her to call the police that the husband left the room. This put her in fear and she was unable to get back to sleep.
12. The husband removed the doorknob from the bedroom door next day.
13. The husband refused to collect the children's Report Cards even though he knows that the wife, a clothing designer, had a deadline for several events including, Junkanoo choreograph groups, christening, funeral and clothing for balls.

14. On 29th December 2024 the husband placed five (5) cement blocks in the hallway of the matrimonial home and told her not to cross the blocks or he will do something to her.
15. Husband failed to pay the mortgage or the children's school fees.
16. The husband misuses his money then makes financial demands on her.
17. On 31st March, 2025 husband threatened to "Fuck" her and her son "up", if her son gave her money instead of him.
18. She made report to the Carmichael Road Police Station about her husband's behavior.
19. After taking out the domestic violence protection order application in the Magistrate's Court on 1st April, 2025, and after filing for divorce on 4th April, 2025, she put a lock on the bedroom door where she was staying and when she returned home she met the door swung wide open.
20. She is afraid to serve the husband with the petition as his behaviour will escalate.
21. She is fearful, terrified for herself and her children. She worries about any obligation the husband has in relation to the marriage.

[4] Pursuant to the Ex-Parte Summons, the contents of the Affidavit sworn and confirmed in court and the Certificate of Urgency which accompanied the application the Court granted to the wife an Interim Domestic Violence Protection Order on 13th May, 2025 restraining the husband from being on premises that the wife resides in. It was also ordered that the husband not interfere with the wife until further order, and that the husband not come within Fifty (50) yards of the wife until further order. The matter was then adjourned for an inter partes hearing to 21st May 2025 at 10 a.m. The husband was to be served with all of the mentioned filed documents inclusive of the Notice and Affidavit containing the allegations against the husband for him to appear at the hearing on the 21st May, 2025 and the Interim order.

[5] The husband, was afforded the opportunity as mandated by the Act, to defend against the wife's allegations, and to state his case to the court, filed an Affidavit in Response to the wife's on 19th May, 2025 together with a Notice to Cross-examine the wife at the hearing on 20th May, 2025. The husband's defense, in summary, consisted of the following:

- i. In the said Affidavit he gives a blanket denial of the wife's allegations when he said that paragraphs 4-29 are denied and the Wife is put to strict proof of each and every allegation herein.
- ii. That the wife is the aggressor and antagonist in the marriage being loud, boisterous and often using profanity and vulgar language.
- iii. He is not aggressive; he is non-confrontational despite sharing a space with the wife since the breakdown of the marriage for the last Two (2) to Three (3) years.

- iv. The wife has always displayed a dominating and un-submissive behaviour toward him which has caused him to feel rejected, lonely and unloved.
- v. That the wife has denied him conjugal relationship, love and affection, making him feel unloved and rejected.
- vi. That the wife lives a lackluster and carefree life without any regard for his feelings; coming and going without advising him of her whereabouts or being accountable to him. This he finds embarrassing.
- vii. That the wife vacations abroad with the children without his permission or notification, causing him to be emotionally stressed about his children.
- viii. That the wife, in recent times, has entertained her lesbian friends in the family home and in the presence of the minor children despite his objections. He feels ashamed, hopeless and rejected.
- ix. That the wife has discontinued wearing his wedding ring. This is frustrating for him and he sees it as a lack of respect for their marital vows.
- x. That he has had sight of a video in which the wife is captured in a compromising position with a female dressed as a male. The content of the video made him emotionally stressed, ashamed and embarrassed.
- xi. That the aforementioned video was sent to his phone by an individual who was at the party and is aware that he opposes the gay and lesbian life style.
- xii. That he has never offered violence or aggression towards the wife but rather it is the wife and her friend who are the aggressors and are confrontational toward him.
- xiii. He denies the allegations advanced by the wife that she is mentally, psychologically and spiritually used; and that the wife has hatched the allegations as she is aware that her lifestyle has been exposed.
- xiv. Husband says further that he has been denied access to his trade tools for his business, R.T. T/A 100 Percent Landscaping, which are kept in the shed house at the homestead, which has caused him financial hardship from the Interim Order served on him.

[6.] THE APPLICABLE LEGISLATION – THE DOMESTIC VIOLENCE (PROTECTION ORDERS) ACT – Chpt. 99 A – An Act to provide for the granting of protection orders in circumstances surrounding domestic violence and related and consequential matters. (“the DVPOA”) or alternatively (“the Act”)

S.2 – Definitions

“domestic violence” includes physical, sexual, emotional, 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;

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

“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 favors, 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 a person of the use thereof or the hindering of a person in the use thereof;
- (d) Or 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;

“stalking” includes —

- (a) persistent following of a person from place to place;
- (b) the watching or besetting of the place where a person resides, works, carries on business or happens to be;
- (c) persistent telephoning or other attempts at communicating with a spouse, partner or child or other member of that spouse's household and knowing that such course of conduct would likely cause annoyance to that spouse, partner or member:

Provided nothing in paragraphs (a), (b) or (c) applies to conduct on the part of a person acting in the performance of his duties in providing security for the benefit of another.

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;

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 magistrate's court and for that purpose the provisions of this Duplication of proceedings.

Act regarding the powers of that court on such an application including the Forms set out in the Second Schedule shall mutatis mutandis apply.

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) from being on premises that are the place of work of the complainant or the place of education or work of the child or member of the household in respect of whom the order was made;

S. 8 (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) requiring the respondent to pay compensation for monetary loss incurred by a complainant as a direct result of conduct that amounted to domestic violence;

[7.] THE ISSUES

- i. Does the allegations made by the wife amount to domestic violence as defined by the Act?
- i. Has the wife established sufficient grounds for a Domestic Violence Protection order to be granted to her?
- ii. Is the wife entitled to an order for the husband to be ousted from the matrimonial home?
- iii. Should the Interim Order granted to the wife be continued and for what period of time?

CONDUCT OF THE CASE

[8.] The Court being satisfied that as the complaint is brought by a married woman against her spouse where divorce proceedings have already commenced and are pending the wife has standing pursuant to s. 4 (1) and 6 (1) of the Act.

[9.] At the trial of this matter the court, with the agreement of counsel proceeded by having the Affidavits of both parties stand as evidence in chief. The opportunity to cross-examine and re-examine the opposing party was offered to both sides. The husband through his counsel cross-examined the wife. She was re-examined by her counsel. The wife's counsel chose not to cross-examine the husband.

[10.] Counsel being invited to make oral submissions relative to the trial did so on 27th May, 2025, via Zoom.

SUBMISSIONS ON BEHALF OF THE HUSBAND

[11.] The salient submissions made by Counsel Farquharson on behalf of the husband were as follows;

- (i.) That the husband's denial of the wife's allegations went unchallenged by the failure of the wife's counsel to cross-examine the husband on his blanket denial. In essence the husband was never confronted with the wife's allegations in the witness box. His counsel viewed this as fatal to the wife's case. She alluded to the fact that in the circumstances the husband's denial must now be accepted by the court as uncontroverted. In furthering that argument counsel stated that the sworn affidavit by the husband is just a statement but that viva voce evidence under sworn testimony in the witness box at trial takes precedence over such a document.
- (ii.) Counsel Farquharson also advanced the argument that even if the wife's allegations were to be believed they do not rise to the level of imminent danger, for the court to continue the ouster order previously made as an Interim Order.
- (iii.) That the wife has failed to produce any medical (from a doctor) or counselling report (from her pastor, who she said she consulted) that she is under emotional abuse or strain. The case is weak, has no strength, there is really no issue for the court.

- (iv.) That it is not for her client to prove that he did not do the acts complained of rather i.e.: prove a negative. Counsel reiterated that the wife has been put to strict proof by the husband and so she must prove. Her failure to put the case to the husband causes her case to fail.

SUBMISSIONS ON BEHALF OF THE WIFE

[12.] The salient submissions made by Counsel Bonaby on behalf of the wife were as follows;

- (i.) The husband failed to do more than just a blanket denial. This was not an adequate enough answer to the allegations of abuse.
- (ii.) That under the definition of domestic violence in the Act the threshold has been met.
- (iii.) That the husband has demonstrated a pattern of behaviour consistent with the definition.
- (iv.) That the facts show that the husband subjected the wife to harassment through his suggestive comments, and slurs as well as financial abuse. The husband telling the wife he will “Fuck her up,” putting the blocks in the home and telling the wife she must not cross that line, the threats to the wife and her son, picking the locks on her daughter’s bedroom where she slept, preventing the wife from having her car cleaned, refusing to collect their child’s report card when he knew the wife was busy with her business, even calling the home after 12 at night attempting to speak to the wife after the Interim Order was granted. A sexual assault perpetrated against the wife after she filed for divorce. The husband’s refusal to test himself despite the wife’s request and concern that his body was covered with lesions.
- (v.) It was further submitted by the wife’s counsel that the woman that he accuses her of having a lesbian relationship with is also his friend whom he himself has invited to the home even at times when the wife was off the island.
- (vi.) That the husband is relying on a video that he claims to have confronted the wife with in recent times, however, the wife contends that the first time she saw the video was here in court. She explained that she had previously seen a photo with a similar depiction. She suggested that by showing the video (which she was seeing for the first time) the husband was seeking to take her and the court by surprise. She further alluded that the husband’s failure to mention it in his own affidavit, filed to defend this action helped to prove her point. The story behind the video of the wife being involved in a lesbian affair she says was concocted to destroy her character.

(vii.) Counsel relies on the case **CAH nee S v DPH Sr.** 2023/FAM/div/384 to support the view that the husband's behaviour meets the threshold for the order to be granted.

DISCUSSION AND ANALYSIS

[13.] The DVPOA is specific in its intent which is to protect, or in other words, save or safeguard persons from harm or violence when in a household environment.

[14.] The wife asserts that the husband was never physically violent with her. That her complaint centered around emotional, psychological and/or financial violence

(i) Emotional or Psychological Violence:

Her allegations of her husband's name calling such as "sissy" "bitch" and "fat" alleged are within the ambit of epithets, derogatory or suggestive comments, slurs or gestures as contained in the definitions in the Act. The threats of harm "I ga fuck you up", pointing a knife at the wife after picking her bedroom door's lock and saying to her that he "is the man of the house and no door supposed to be locked" would tend to intimidate, hurt feelings and cause a negative emotional or psychological reaction. Such actions and verbalizations are intended to cause fear and to evoke negative or harmful emotional responses and are, in my view, violent. As intended, it undermines the emotional wellbeing of the spouse consistent with one of the pillars of the definition.

(ii) Financial Violence:

Financial abuse might well be perpetrated by refusing to contribute to bills and forcing a spouse to assume all of the financial responsibilities for the family.

In many circumstances, this is illustrative of mental abuse and is considered domestic violence. While testifying in court, the wife reiterated her complaint that she has been forced to assume all of the financial responsibility for the family. This went unchallenged by the husband. The wife made it clear that she considered this to be a particular burden forced upon her by the husband's failure to assume any of the responsibility himself.

While the failure in and of itself may not meet the criteria of financial violence when accompanied by the policing of the wife's income, then demanding some of that income for himself and then expressing anger when refused, to my view, is conduct consistent with abuse and a clear perpetration of violence.

[15.] A Pattern of or Persistent Behaviour

The frequency of such incidents is important in establishing "a pattern of behaviour" or "persistent behaviour" as per the definitions of emotional or psychological violence and of financial abuse. To demonstrate the wife has exhibited the email where the husband

threatened to 'fuck her up', she exhibited the photograph of the blocks the husband placed in the hallway telling her not to cross over them. She exhibited the door from which the husband removed the handle and lock and a report from the police which shows that the wife went to the police station to report a domestic complaint against the husband. Notwithstanding that the wife did not request action from the police, the husband did not refute the wife had in fact made the complaint nor did he refute that it was warranted or that he was the perpetrator against the wife. [Emphasis Mine].

[16.] Counsel for the husband further submitted that the husband's behaviour does not rise to the level of imminent danger. This argument is rejected. An escalation in the husband's abusive behaviour is very apparent. Verbal slurs have evolved into threats of physical harm, into removing locks from the bedroom door and into placing cement blocks in the hallway of the home to prevent the wife's use of certain sections of the home.

[17.] Notwithstanding, the lack of a medical report concerning the lesions on the husband's body I believe the wife as to the existence of the lesions, when during the trial the husband's counsel intimated through cross-examining the wife, that the husband had in fact undergone testing and could, if called upon to do so, produce a medical report of the testing. The husband's apparent reluctance to even satisfy the wife about his health status is at the very least cruel since he had returned from a stint of employment on another island. He also knew the wife was put off from intimacy with him until she knew his status. This was another version of the infliction of domestic violence deliberately perpetrated by the husband.

[18.] EFFECT OF A BLANKET DENIAL

The wife has clearly established a *prima facie* case, sufficient to put the husband to his defense. A blanket denial as that offered by the husband in his Affidavit in response did not advance his defense and might well be considered an actual *failure to defend* the allegations when confronted. There is a distinct possibility that this might prove to be detrimental to his case. **Halsbury Stair Memorial Encyclopaedia Civil Procedure** (Reissue)³ Defences¹²¹ puts it thus:

It is the duty of the defender to answer the pursuer's averments fully and with candour (1). The defender must state his line of defense and the main facts upon which it is based. (2) If he fails to do so then the court may, at the stage of procedure roll or upon a motion for summary decree hold that his position is both exiguous and evasive and that he has no proper response to the case against him. In these circumstances the court will grant decree against him. (3) However, in certain, albeit rare, circumstances a general denial of the whole of the pursuer's condescendence on the merits of a case may be appropriate. The defender may, for example, deny any factual relationship at all with a pursuer. In such circumstances, a general denial on its own may well be relevant. (4) However, if

such a denial is followed by averments which effectively admit such a relationship and thereby contradict the denial then a different result could be reached (5). [Emphasis Mine]

Attribution of the stated principles in the Halsbury referenced above are as follows;

1. **Ellon Castle Estates Co Ltd v Macdonald** 1975 SLT (Notes) 66, OH; **Foxley v Dunn** 1978 SLT (Notes) 35, OH; **EFT Finance Ltd v Hawkins** 1994 SC 34, 1994 SLT 902, OH; **Cook v UIE Shipbuilding (Scotland) Ltd** 1989 SCLR 156 at 157, OH, per *Lord Morison*. (The report sub nom Docherty's Curator Bonis 1989 SLT 197 (Notes) omits the relevant dicta).
2. **Neilson v Househill Coal and Iron Co** (1842) 4 D 1187 at 1193, per *Lord Justice-Clerk Hope*.
3. **Ellon Castle Estates Co Ltd v Macdonald** 1975 SLT (Notes) 66, OH; **Foxley v Dunn** 1978 SLT (Notes) 35, OH; **EFT Finance Ltd v Hawkins** 1994 SC 34, 1994 SLT 902, OH.
4. **Gray v Boyd** 1995 SCLR 1075, 1996 SLT 60; **Park Lane Motors Ltd v Malcolm** 1996 GWD 2-120; **Ganley v Scottish Boat Owners Mutual Insurance Association** 1967 SLT (Notes) 45 at 46, OH, per *Lord Thomson*.
5. **Gray v Boyd** 1995 SCLR 1075, 1996 SLT 60.

[19.] In his defense the husband focused largely on allegations of the wife engaging in a lesbian relationship. The emphasis the husband placed on the video with the wife being embraced by a female, who seemed to be dressed as a man, while they were at an outdoor concert was used by him to support his contention that the wife instigated the altercations in the home and the present proceedings to assist her efforts to oust the husband from the matrimonial home leaving her to carry on her lesbian affair there. The discrepancy as to the time the video was taken is pertinent. The husband alleges that it was taken recently and brought to the wife's attention only recently. The wife admits to the images in the video and the possible connotations of disrepute, but denies that it is of recent vintage. The timing of the video is material in that the husband alleges that the reason for the altercations between the wife and him in recent times is due to the lesbian relationship the wife has with the woman and the wife only being confronted with it recently. The whole line of questioning of the wife seemed focused on embarrassing the wife and her making the case that she was the provocateur of domestic violence to justify ridding herself of the husband to take up with her lesbian lover. Notwithstanding that this was the impression that the husband was trying to give the court, it does not escape me that by focusing on the wife's

purported exploits with this woman, the husband, was also quite probably, offering an *excuse* for his actions against the wife. However, I am of the view that though valiant the husband's effort there is never an acceptable excuse for domestic violence.

[20.] Notwithstanding, the rigorous cross examination of the wife by the husband's counsel, no alternative scenario for each of the respective allegations were put to the wife except her purported motive for bringing the application to the court.

[21.] Counsel for the husband submitted that the husband's behaviour does not rise to the level of imminent danger. I reject that submission. The danger in the slow escalation of the husband's conduct is very apparent. The verbal slurs evolved into threats of physical harm, then into removing locks from the bedroom door and into placing cement blocks in the hallway of the home to prevent the wife's use of a certain section of the home. Moreover, notwithstanding, the lack of a medical report concerning the lesions on the husband's body, I believe the wife concerning the existence of the lesions, when during the trial the husband's counsel intimated that the husband had in fact undergone testing and could, if called upon to do so, produce a medical report of the testing. Clearly, a general blanket defense carries less weight in deliberations than a defense traversed seriatim. The court cannot ignore the fact that in his affidavit the husband failed to give any direct answer to the wife's allegations that he used epithets such as "sissy" "bitch" and "fat. That the husband gave no direct response to the allegation by the wife that the husband told her and her son "I ga fuck you up." No direct response was given to the allegation that the husband pointed a knife at the wife, or that he picked her bedroom door's lock and said to her "I am the man of the house and no door supposed to be locked." The husband did not directly respond to the wife's allegation that the husband monitored her earnings and if she refused or was unable to give him money when he demanded this would result in insults and abusive language. The husband also did not address directly the allegations that he failed or refused to contribute to bills and forced his wife to assume all of the financial responsibilities for the family. The failure, through cross examination of the wife of the husband's counsel to set up any defense to the specific allegations beyond the blanket denial I find exiguous and evasive and that he apparently has no proper response to the case against him. Moreover, the detailed cross-examination of the wife by the husband's counsel with its' focus on the purported lesbian affair of the wife failed to cast any doubt that the incidents happened as the wife alleged or to discredit or impeach her testimony.

[22.] As I consider the husbands blanket denial, and his failure to directly confront the wife's allegations of a possible fatal mistake, so too is the wife's counsel failure to cross-examine the husband. Counsel for the husband seized on the possible fatal error and made it the focal point of her submissions. She offered that by failing to cross examine the husband, the opportunity to put the wife's case to the husband and to elicit his responses to the wife' allegations was fatal for the wife's case.

[23.] There is no doubt that cross-examination is a critical tool for use in trial, it is a well-established principle for hundreds of years and the ramifications for a failure to cross-examine a critical witness is well recognized by this court for many reasons a few of which come immediately to mind. Firstly, it undermines the cogency of any information that could in all the circumstances prove decisive of the allegations. Secondly, the court is deprived of the opportunity to test the veracity of what the witness answers in the witness box in comparison to the contents of the filed affidavit and thirdly the court is deprived of the opportunity to observe the demeanor of the witness under pressure of cross examination. The rationale behind cross-examination is explained in; **Halsbury's Laws of England Civil Procedure** (Volume 11 (2020), paras 1–496; Volume 12 (2020), paras 497–1206; Volume 12A (2020), paras 1207–1740)¹⁸. Evidence (9) Witnesses (vii) Oral Examination of Witnesses at or Prior to Trial C. Cross-examination 838. Purpose of cross-examination.

Cross-examination is directed to (1) the credibility of the witness; (2) the facts to which he has deposed in chief, including the cross-examiner's version of them; and (3) the facts to which the witness has not deposed but to which the cross-examiner thinks he is able to depose². Where the court is to be asked to disbelieve a witness, the witness should be cross-examined³; and failure to cross-examine a witness on some material part of his evidence, or at all, may be treated as an acceptance of the truth of that part or the whole of his evidence⁴. see *Browne v Dunn* (1893) 6 R 67, HL; *R v Hart* (1932) 23 Cr App Rep 202, CCA.

[24] Here the wife is asking the court to disbelieve the husband when he in his affidavit denied that he had perpetrated the acts of violence against her. The result of which is that this court should accept the blanket denial as true and there are ramifications also for a failure to cross-examine a witness. The consequences are set forth in Halsbury's Stair Memorial Encyclopaedia as follows.

Effects of failure to cross-examine:

Stair Memorial Encyclopaedia Evidence (2nd Reissue)². The Means of Proof (2) Oral Evidence (c) The Examination of Witnesses in Court 83. Effect of failure to cross-examine.

In civil cases, whether failure to cross-examine a witness (1) on any matter implies that the cross-examiner accepts the witness's evidence as credible and reliable on that point appears to depend on the tenor of the cross-examination on other matters and on considerations of fairness (2) Failure to cross-examine a witness on a material point has been said to preclude the cross-examiner from leading evidence to contradict the witness (3) but that drastic rule does not appear

to be followed in modern practice, no doubt because the court is able to prevent prejudice to the other party by such means as recalling the witness for cross-examination and awarding expenses (4) or allowing proof in replication (5) or admitting the evidence subject to comment (6) Failure to cross-examine on a material point does not prevent the cross-examination of subsequent witnesses on the same point(7) Before the abolition by the Civil Evidence (Scotland) Act 1988 of the corroboration rule, failure to cross-examine a single witness on an essential point did not supersede any necessity for corroboration of their evidence on that point(8)

In both civil and criminal cases, any failure by a party to cross-examine which is not satisfactorily explained may lead the court to draw inferences averse to that party, especially where it appears that the failure has caused prejudice or unfairness to the other party. The court is unlikely to attach any weight to submissions on the issues which are based on facts or inferences which have not been put to witnesses who could apparently have dealt with them, or to criticisms of the credibility or reliability of a witness which have not been put to that witness. Where a party or an accused gives evidence about a matter which has not been put in cross-examination to a witness who might reasonably have been expected to be able to speak to it, they are likely to be asked in cross-examination why they are giving evidence about a matter which was not put to that witness. Unless the failure to cross-examine can be satisfactorily explained, they may be further asked whether they have not fabricated or tailored their own evidence on the matter after hearing the evidence of the witness, and the court may be invited to draw that inference. [Emphasis Mine]

Attribution is given to:

Walker and Walker: The Law of Evidence in Scotland (5th edn, 2020).

1. **Keenan v Scottish Wholesale Co-operative Society Ltd** 1914 SC 959, 1914 2 SLT 213; **Jordan v Court Line Ltd** 1947 SC 29, 1947 SLT 134; **Stewart v Glasgow Corp** 1958 SC 28, 1958 SLT 137; **Walker v McGruther and Marshall Ltd** 1982 SLT 345, OH.
2. **HM Advocate v Robertson** (1842) 1 Broun 152 at 177; **Stewart v Glasgow Corp** 1958 SC 28 at 38, 1958 SLT 137 at 140, per *Lord President Clyde*; W J Lewis **A Manual of the Law of Evidence in Scotland** (1925) p 226.
3. **Bishop v Bryce** 1910 SC 426 at 431, 1910 1 SLT 196 at 200, per *Lord President Dunedin*
4. **Wilson v Thomas Usher & Son Ltd** 1934 SC 332 at 338, 1934 SLT 307 at 309, per *Lord Justice-Clerk Aitchison*; J A Maclaren *Court of Session Practice*

(1916) pp 562, 611; D Maxwell The Practice of the Court of Session (1980) pp 308, 337; W J Dobie **Law and Practice of the Sheriff Courts in Scotland** (1948, reprinted 1952) p 222; **Walker and Walker**. As to proof in replication, see para 88 below.

5. **Dawson v Dawson** 1956 SLT (Notes) 58, OH; **Bryce v British Railways Board** 1996 SLT 1378 (Note).

6. **The Law of Evidence** (Scot Law Com Consultative Memorandum no. 46) (1980) para G.24

7. **Moore v Harland and Wolff Ltd** 1937 SC 707, 1937 SLT 603; **Stewart v Glasgow Corp** 1958 SC 28, 1958 SLT 137; **Dingwall v J Wharton** (Shipping) Ltd [1961] 2 Lloyd's Rep 213 at 219, HL, per *Lord Keith of Avonholm*; **Prangnell-O'Neill v Lady Skiffington** 1984 SLT 282.

[25.] **Browne v Dunn** supra is the locus classicus of the rules surrounding cross-examination and as such is followed in courts here in the Bahamas as in the United Kingdom. In **Carla Anita Cecilia Braynen Turnquest v Water and Sewage Corporation** [2022] 1 BHS J. No. 113, *Stewart J* as she then was demonstrated the consistency across jurisdictions when she articulated and applied the principle;

“The Plaintiff also relied on the rule in **Browne v Dunn** (1893) 6 R. 67 which states: -

“If, on a crucial part of the case, a party intended to ask the jury to disbelieve the evidence of a witness, that party should cross-examine that witness or at any rate make it plain, while the witness was in the box, that the evidence was not accepted. This case is the basis for the term “rule in Brown v Dunn” adopted in many common law jurisdictions.”

This rule has been consistently followed in numerous authorities. In **Markem Corp and another v Zipher Ltd; Markem Technologies Ltd and others v Buckby and other** [2005] EWCA Civ 267, the Court stated: -

“[57] Prior to the hearing before us we drew the attention of the parties to the decisions of the House of Lords in **Browne v Dunn** (1893) 6 R 67.....

[58] **Browne v Dunn** is only reported in a very obscure set of reports. Probably for that reason it is not as well known to practitioners here as it should be although it is cited in **Halsbury's Laws of England** para 1024 for the following proposition:

‘Where the courts it to be asked to disbelieve a witness, the witness should be cross-examined; and failure to cross-examine a witness on some material part of his evidence, or at all, may be treated as an acceptance of the truth of that part of the whole of his evidence.’

[80] The Court in *Markem Corp* and another also referred to the judgment of Lord Herschell in **Allied Pastoral Holdings Pty Ltd v Federal Commr of Taxation** [1983] 1 NSWLR 1 which also followed the rule in **Browne v Dunn**: -

“Now my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intended to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. [Emphasis added.]

[26.] The tool of cross-examination of a witness is not only practical for the purposes of trial methodology but there are ethical principles attendant upon this tool with the objective of doing justice on the merits of the case. *Lyon’s J (as he then was) in Colco Electric Co. v. Gold Circle Co.* [2003] *BHS J.* No. 53, in affirming the rule in **Browne v Dunn** as applicable to Bahamian jurisprudence said: -

“There is one very important rule of evidence relevant in particular in civil trials where the normal circumstance is that both parties’ cases go into evidence. It is called the Rule in *Browne v Dunn* (1894) 6 R 67 (HL). The rule is as much an ethical requirement as it is practical. It is observed by counsel because in its observance it assists the court to do justice on the merits”.

Lyon’s J then concluded “In many instances, the Plaintiff’s evidence was not challenged by the Defendant on cross-examination nor was any contrary proposition put to the Plaintiff’s witnesses while they were in the witness box. It was not open to the Defendant to invite the Court to accept such contrary propositions”

[27.] The failures of both parties illustrated above is problematic. The possibility exists for the dismissal of the application and the purported defense but the possibility also exists for the continuation of the Interim Ouster Order. I am of the view that inherent in the concept of the matrimonial union between a husband and a wife is a prerequisite that they should treat each other with "conjugal kindness." Any actions which could negate that obligation could well constitute grounds for dissolution of the marriage. This is clearly demonstrated in the Matrimonial Causes Act where cruelty is defined as;

"cruelty" includes voluntary conduct reprehensible in nature or which is a departure from the normal standards of conjugal kindness on the part of one party to a marriage thereby occasioning injury to the health of the other spouse or a reasonable apprehension of it on the part of that other spouse and being conduct which, after taking due account of all the circumstances of the case, would be considered to be so grave and weighty a nature that should such other spouse be called upon to continue to endure it, would be detrimental to his or her health;

While these are not the proceedings for the issuance of a Decree Nisi of divorce it does not escape me that this wife's petition is grounded in cruelty, of which many of the allegations are the same. Violence often resides in cruel acts in many instances. It may be tempting to say that the wife should move to progress the substantive issue of obtaining the decree nisi but I am cognizant of the husband's escalation of his actions towards the wife into violence, through the verbal slurs, the removal of the door handle from her bedroom and the placement of concrete blocks in the matrimonial home to limit her access to certain rooms in the home, not to mention the coercion which accompanies his demands for money. There is an obligation not to ignore the obvious escalation or, to in the circumstances, anticipate that it is likely to continue or increase if the parties remain in close proximity to one another. The question of whether the husband's behaviour meets the definition of violence is also measured on the civil standard on a balance of probability:

The standard of proof is set out in the leading authority of *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563, [1996] 1 FLR 80. *Lord Nicholls of Birkenhead* in his speech said:

"Where the matters in issue are facts the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability. This is the established general principle. There are exceptions such as contempt of court applications, but I can see no reason for thinking that family proceedings are, or should be, an exception. By family proceedings I mean proceedings so described in the Act of 1989, ss 105 and 8(3). Despite their special features, family proceedings remain essentially a form of civil proceedings. Family proceedings often raise very serious issues, but so do other forms of civil proceedings."

[Emphasis Mine]

The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind as a factor, to whatever extent is

appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. ...Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.'

In short:

'The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it. ['Emphasis mine']

To this end the photographs exhibited by the wife provided evidence of the husband's antics and the fact that the husband failed to refute them or in any way discredit the wife's explanation for the images they provoked, made her evidence even more credible.

Lord Birkenhead's expose further confirmed the position taken by the judge in issue of the burden of proof **Smith v Smith** [1991] 2 FLR 55, Court of Appeal, **Neill and Balcombe LJ** and thus I myself am committed to the finding of where that burden lies. However, "Smith" plays another role in demonstrating that in the final analysis a judge is entitled to decide the case on whom is believed;

The parties married in April 1989. They last lived together at the beginning of December 1989 when the wife left the matrimonial home to live with her mother. In January 1990, in proceedings brought under the Domestic Violence and Matrimonial Proceedings Act 1976, the wife was granted an order restraining the husband from molesting her and also from calling at, entering or attempting to enter or approach within Fifty (50) yards of her mother's address. The order contained a power of arrest. On that occasion the husband did not attend court, though it was proved that he had been served with notice of the proceedings. In March 1990 the husband was arrested following allegations by the wife that the violence had continued, and he was brought back before the judge. The judge made no adjudication because the husband categorically denied the allegations which were made against him and because he had not been served, so it seemed, with the original order made in January 1990. The judge continued the order which had been made. Three days later the husband was arrested again, the wife having made further allegations of violence following the court hearing in March 1990. Committal proceedings were brought, the husband denying that he had ever been violent or made threats towards his wife. At the committal hearing, the judge made an order that he was satisfied that the allegations made by the wife, which he specified in the order, had been made out, that that constituted a contempt of the order of March 1990 and he made a

suspended order of imprisonment for 2 months. The following day, the wife alleged that she had received threatening telephone calls from the husband and an application was made for his committal. Having heard evidence on the new matters, the judge decided that the husband should be sent to prison for a period of 12 months, and that the period of 2 months' imprisonment which had been imposed and suspended the previous week, should be implemented. Accordingly, the husband was sent to prison for a total period of 14 months. The husband appealed contending that: (1) the judge had misdirected himself as to the party upon whom the burden of proof in the case rests, namely the wife; (2) the judge had misdirected himself as to the proper standard of proof; (3) the judge had misdirected himself by not giving himself a Turnbull direction on the issue of identification; and (4) the wife's case depended very largely, if not exclusively, on her own evidence and the judge had been wrong in rejecting the detailed alibi evidence given by witnesses on behalf of the husband.

Held – allowing the appeal in part –

(1) It was quite plain from the number of occasions when the judge said either that he was satisfied something had happened, or said that he accepted certain evidence, that he recognized, as he was bound to do, that the burden of proof in this matter rested upon the wife to establish the allegation she was making. The judge had nowhere, in the course of his judgment, reminded himself, as he might well have done, that this being a matter which had to be proved to a criminal or, as is sometimes said, a quasi-criminal standard, he had to deal with it not on the balance of probabilities, but on the basis that he had to be sure of any allegation that was made before he could express himself as being satisfied. In a case of this seriousness it is better if a judge, when making a decision on specific allegations, does in the course of the judgment use words that put it beyond doubt that the criminal standard of proof is being applied. However, it is clear that the judge was expressing himself in such a way that, though he made no reference to the criminal standard, he was applying a high standard as to what he had to be satisfied about. Following Dillon LJ in *Dean v Dean* [1987] 1 FLR 517 at p. 522 that, even where a judge misdirects himself in referring to the correct standard of proof as being the civil standard, this has no effect whatsoever on the outcome of the case where it appears, from the rest of his judgment, that the views which the judge has formed on the facts are expressed in terms that satisfy the criminal and correct standard of proof. A Turnbull direction is not necessary in a civil case and there was nothing in that point. Where the wife's case depended very largely on her own evidence, the fact that the husband called detailed alibi evidence on his behalf is a strong thing when the criminal burden of proof had to be satisfied. The judge had a full opportunity of judging for himself the quality of the evidence which had been called on behalf of the husband, and a full opportunity of coming to the conclusion that he had to reject it, despite the fact that a number of people swore to it, and of preferring the wife's evidence. The judge was entitled to come to the conclusion that he believed the wife's account. Accordingly, on the matter of liability the appeal was dismissed. [Emphasis mine]

[28.] In all the circumstances, I find the husband's blanket denial and failure to directly respond to the several allegations made by the wife pivotal and more egregious, in the circumstances, than the failure of the wife's attorney to cross-examine the husband. Notwithstanding the failure of the wife's attorney to cross-examine the husband, I am satisfied that the wife has discharged the burden of proving that the husband has perpetrated domestic violence upon her and on a balance of probabilities I accept the veracity of the wife's allegations as more likely than not. I find the wife to be a credible witness, who was unimpeached and unshaken in cross-examination. I find that she has been abused emotionally and psychologically at the hands of the husband. The husband's focused allusion to the wife's alleged lesbian behaviour, I view as a prevarication from the focal issues. The husband's attempt to characterize the wife as motivated by a lesbian relationship, devising a concrete plan, then falsifying a legal complaint, to move this court to obtain a DVPO to oust him from the matrimonial home, I find is without merit. Even if it were found to be so, which I repeat I have not found, whatever the circumstances between the parties, the husband is required to exercise self-control and not be tempted into violent behaviour in circumstances where he can simply walk away. I totally reject his theory.

[29.] I am also satisfied that the husband has available to him alternative accommodation at his family home where he currently stays under the interim ouster order until the finalization of the divorce proceedings. During trial it was revealed that the wife is a designer and her work shop is located as an attachment to the matrimonial home. This creates a situation that must of necessity be addressed in the determination of this matter and provision is made in the Act for orders that concern places of work as is demonstrated hereunder.

[30.] The reliefs sought pursuant to S. 8 (3) (a), and (b) that the husband be restrained from taking the personal property of either the complainant or the respondent, being property that is reasonably needed by the member of the complainant's household or that the respondent be directed to give possession of such property as specified in the order to a specified member of the respondent's household, fails as there is nothing in the pleadings to support the need for the particular relief.

[31.] The relief sought in S.8 (d) of the Act although supported by the wife's allegations of financial abuse and the husband's failure to assist with the payment of the bills and financial obligations in the home is not particularized. I therefore reserve a final determination pending presentation of particulars of those expenses relative to the household and the family. Recognizing that an application for a Decree Nisi is imminent, it is appropriate, expedient and cost-saving to reserve the application for the hearing of the ancillary matters.

CONCLUSION AND DISPOSITION

1. The allegations made by the wife against the husband does amount to domestic violence as defined by the Act.
2. The wife has established sufficient grounds for a Domestic Violence Protection order against the husband pursuant to S. 8 (1) of the DVPOA.
3. The Interim order granted to the wife on 13th May, 2025 is continued until further order or alternatively for the statutory period allowable under the DVPO Act whichever is sooner and the husband is therefore restrained from being on premises on which the wife resides being the matrimonial home situate No. 10 Millar's Heights.
4. The Interim order granted to the wife on 13th May, 2025 is now made final to continue until further order or alternatively for the statutory period allowable under the DVPO Act whichever is sooner and the husband is therefore restrained from being on premises on which the wife works being an extension to the matrimonial home situate No. 10 Millar's Heights.
5. The husband is restrained from approaching the wife within Fifty (50) feet.
6. The costs of the application are granted to the wife to be taxed if not agreed.

Dated the 16th day of June, A.D., 2025



The Honourable Justice C.V. Hope Strachan