

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2024/FAM/div/N0. 00065

B E T W E E N:

B.W. (nee A)

Petitioner

AND

M.W.

Respondent

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

Appearances: Tony P. Scriven Attorney for The Petitioner
Nicholette Burrows Attorney for The Respondent

Hearing Dates:

Divorce proceedings, considerations mandated by s.29 M.C.A., tertiary education for the child of the marriage, should party be compelled to pay private tuition for adult child, equality is fairness, and property adjustment

RULING

C.V.H. STRACHAN, J

BACKGROUND FACTS

- [1.] The parties were married in 2006 and stayed married for Seventeen (17) years. The wife obtained a Decree Nisi on 10th September, 2024, on the basis that the husband has lived separate and apart from her for a continuous period of at least Five (5) years immediately preceding the presentation of the Petition.
- [2.] There are Two (2) children born to the couple, a male, MW, named as a Jr. to his father and who is now Twenty-one (21) years old and a female, RW, who just turned Eighteen (18) years old on 7th July, 2025.
- [3.] Arrangements for the general upkeep of RW were already made on 14th May, 2025 because, although over the age of Eighteen (18), she intends to pursue tertiary education. The wife, however, insists that the husband also pay tuition and educational expenses for RW to attend Fox Valley Technical College abroad. The tuition she quotes is Six Thousand Dollars (\$6,000.00) with room and board of Nine Thousand Eight Hundred Dollars (\$9,800.00) for a total of Seventeen Thousand Eight Hundred Dollars (\$17,800.00). No scholarships have been offered thus far. The husband contends that it is not possible based on his income to afford to educate RW abroad in a tertiary institution, and he could not even afford tertiary education locally. He has urged the wife to explore scholarships and other avenues to assist RW's tertiary educational pursuits. He also suggested that RW should consider the University of the Bahamas ("UB") as a more affordable option to acquire the same qualification, notwithstanding that he can't even afford UB.
- [4.] The issue of property adjustment is yet to be determined between the parties. The couple are joint tenants in the ownership of Lot Number 3393, situated at Sir Lynden Pindling Estates, Eastern District of the Island of New Providence. The husband now resides in the house to the exclusion of the wife. It is common ground that the house is presently mortgaged with First Caribbean International Bank. The Balance owed on the mortgage as at 24th December 2024 was One Hundred and Twenty Thousand Four Hundred and Fifty Dollars (\$120,450.00). The unchallenged appraisal submitted by the wife dated 29th October, 2024 values the subject property at One Hundred and Eighty-five Thousand Eight Hundred Thirty-six Dollars (\$185,836.00). The couple has therefore acquired an equity of Sixty-five Thousand Three Hundred Eighty-six Dollars (\$65,386.00). The wife is claiming entitlement to 50% of this value on the basis that she paid the mortgage from her salary from the time it was obtained for Eight (8) years. The husband says she is not entitled to 50%. He acknowledges that the wife paid the mortgage

from her salary for many years but claims he paid solely from 2017 onwards when the wife left the home. Therefore, he paid a larger portion of the mortgage.

[5.] In considering the issue of the affordability of tertiary educational expenses, an examination of the income and resources of the parties is necessary.

[6.] **THE WIFE**

The wife states that her only source of income comes from her salary as a Custodian. From the salary slip, she exhibited her gross monthly earnings are **\$1,648.00**, while her monthly expenses are listed at **\$1,228.32**. Demonstrating that her disposable income is only **\$419.68** per month. She also lists additional expenses for RW that she pays totaling **\$246.66**, and back-to-school expenses which, if paid once per year, adds (\$93.33) to her monthly expenses. This reduces her disposable income to **\$80.35**. Receiving the **\$250.00** from the husband based on the Consent order in these proceedings, her disposable income increases to **\$330.35**. It is also important to note that there are other expenses in relation to RW, including medical, dental, and optical expenses, and other educational expenses like books, school supplies, exam fees, clothing, and footwear that the husband and wife agreed should be equally shared.

[7.] **THE HUSBAND**

The husband provides that he is a self-employed plumber and his income is inconsistent, but may range up to **\$3,000.00** per month. He states that his monthly expenses total **\$2,360.00**. This does not take into account the agreed maintenance payment for the daughter of **\$250.00** per month. This would mean monthly expenses of **\$2,610.00**. The husband's monthly disposable income, therefore, is **\$390.00**. Here again, the husband has also agreed to pay half of the medical, dental, and optical expenses and other educational expenses like books, school supplies, exam fees, clothing footwear. This would, of necessity, be payable from the disposable income.

[8.] The Court is empowered to consider this issue notwithstanding that the Notice of Application to Proceed with Ancillary Relief filed by the wife on 18th November, 2024, did not specifically mention this was a matter that she was seeking the court to decide upon. Neither was it mentioned in the Petition itself. Such applications have their foundation in the financial provision orders under the Matrimonial Causes Act, Chapter 125 Statute Laws of the Commonwealth of the Bahamas ("the Act" or "the MCA") specifically Ss. 25, 27, and 33. The court was invoked to consider this matter at the hearing where the general maintenance for RW was being considered. Reliance has been placed by the wife on her Amended Affidavit filed on 25th November, 2024 and one filed on 13th June, 2025. The husband relies on an affidavit filed on his behalf 18th June 2025.

[9.] As indicated before the issues are as follows:

1. Whether the husband should be compelled to make financial provision for Eighteen-year-old RW to attend University?
2. Whether the parties have an equal share in the matrimonial home determining that the equity should be distributed according to that equal interest?

THE RELEVANT STATUTE LAW

[10.] By insisting that the husband pay University fees for RW the wife is seeking financial provision as defined in s25. (1) of the Matrimonial Causes Act, as orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 27 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separationthat is to say —(a) any order for periodical payments in favour of a party to a marriage under section 27(1)(a) or 31(6)(a) or in favour of a child of the family.

[11.] s. 27. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say — (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order; (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified; (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified; (d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be so specified; subject, however, in the case of an order under paragraph (d), (e) or (f) to the restrictions imposed by section 33(1) and (3) on the making of financial provision order in favour of children who have attained the age of eighteen.

Since RW has attained the age of 18 years S.33 must be referenced.

[12.] s. 33. (1) Subject to subsection (3) no financial provision order and no order for a transfer of property under section 28(1)(a) shall be made in favour of a child who has attained the age of eighteen. (2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question but shall not in any event, subject to

subsection (3) extend beyond the date of the child's eighteenth birthday. (3) Subsection (1) and subsection (2), shall not apply in the case of a child, if it appears to the court that — (a) the child is, or will be, or if an order were made without complying with either or both of those provisions would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment.

[13.] Clearly, the wife has standing to bring the application under s. 25 (1)(a), s.27 (1)(a) and s.33 (1)(a) provisions. However, the couple's circumstances are pivotal to the court's decision to impose the obligation upon the husband to pay the university fees. I feel compelled to mention here that, notwithstanding the wife's determination for RW to attend University abroad, the picture painted by her own financial position belies the fact that she can afford to pay even half of the tuition and room and board being charged by the university. However, she must know how she intends to meet that demand, and it must be by some income not disclosed to the court.

[14.] The husband's position that he cannot afford to pay such fees is subject to s. 29 MCA considerations, which must be taken into consideration when making an order in relation to any child of the marriage. Given that this child is 18 years old, is sui juris, but nevertheless, is considering a tertiary degree, the court is mandated to consider the manner in which the parties intended or expected this child to be educated.

[15.] While neither the husband nor wife intimated that there was any neglect of the husband to maintain RW throughout her minority, which he has agreed to continue notwithstanding that she has attained the age of majority, clearly there was and is no agreement by the husband that he would pay for tertiary education. In the absence of evidence that the husband has the financial wherewithal to pay or that private tertiary education was planned or expected due to the circumstances of the parties, many authorities do not favour the wife. [Emphasis Mine]

[16.] In **Thurston v McKenzie** [2012] BS SC 57 *Barnett J*, as he then referenced *Hall J* in **K v O** [2008] 3 BHS J. No. 5 where he said:

"When considering the reasonable maintenance of children, the court can never assume the correctitude of the view common in this society that schooling at a private, fee paying school is superior to that offered by the publicly funded institutions. It would be impossible for the court, the judicial arm of state authority, to presume the inadequacy of the educational system which the state, in another manifestation, sustains from the taxes which support other institutions of state, including the courts. The adequacy, or otherwise, of a particular school – public or private would have to be established by evidence in any case in which the issue became relevant. Moreover, experience does not support the popular fallacy of the inherent superiority of fee paying fees. Accordingly, the court cannot compel a parent to contribute to the payment of school fees in the absence of evidence that such a parent can afford to do so and that it is unreasonable for him not to contribute having regard to the needs of children, notwithstanding the necessity to re-order

priorities following the breakdown of the marriage, more so when the custodial parent, as does K in this case, include items such as “piano lessons” and “vacations,” in calculating the maintenance needs of children, the court would regard these as extraordinary expenses, luxuries, which, if the parent is able to afford, them, so be it, but to which the other parent should not be compelled to contribute.

[17.] Then in adopting *Hall J*’s position in **K v. O Barnett J** expressed his findings in **McKenzie v Thurston** in the following manner:

“I accept the court cannot compel a parent to contribute to the payment of school fees in the absence of evidence that the parent can afford to do so. In the instant case, it would be unreasonable to order that the Respondent should contribute to the payment of the private school fees as he is not in a financial position to do so. Additionally, it was not the status quo prior to the breakdown of the marriage.

[18.] I adopt Barnett J’s articulation for the purposes of determining this matter and find that neither the wife nor the husband has demonstrated that the husband could afford those fees. He is not being unreasonable in his protestations. The husband should not be compelled to pay the university fees of the adult daughter. In the premises, the wife’s application for the husband to pay for RW’s tertiary education in a university abroad or here in The Bahamas is dismissed.

PROPERTY ADJUSTMENT

[19.] s.28. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say — (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion; (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them; (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or post nuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage; (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement; [Emphasis Mine].

[20.] The request made by the husband and wife invokes the operation of either s. 28(1)(a) or s.28(1)(d) whereby this court is empowered to determine whether to extinguish or reduce either of the parties’ interest in the matrimonial home and then to

determine whether to order the transfer of the property from one of the parties to the other. I do so against the backdrop that the wife has indicated that she is prepared to transfer her interest to the husband upon receiving the cash equivalent of half of the equity they hold in the property.

s. 29 of the MCA has established guidelines for determining the parties' respective interests in the matrimonial property. Those guidelines include the following:

s29 (1) - It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say — (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; (c) the standard of living enjoyed by the family before the breakdown of the marriage; (d) the age of each party to the marriage and the duration of the marriage; (e) any physical or mental disability of either of the parties to the marriage; (f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring; and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her finances.

DISCUSSION AND ANALYSIS

[21.] Taking into consideration the pertinent factors referable to s. 29 in relation to this couple I have observed the following facts in no particular order;

- (i) This couple were your typical working class couple whose incomes were modest and consistently so over the years of their marriage. There is no indication that any appreciable change in a more positive direction is on the horizon.

- (ii) As to their needs and obligations, aside from the wife volunteering to pay the daughter's university expenses no change in their respective needs or obligations were foreshadowed in their affidavits. It is obvious that whoever retains the matrimonial home will most likely have a mortgage to pay and satisfy moving forward, increased by the amount added to pay off the other party for their interest while the other party will have to obtain or maintain the cost of housing. Again the information concerning the alternative to the matrimonial home is nebulous.
- (iii) There is a Two (2) year age difference between the husband and wife. The wife is now aged 41 years, and the husband is 43 years old. The age factor, among other things, may be relevant to the parties, where either may be close to retirement and the possibility of losing an income and/or either of them contemplates obtaining a mortgage or some other type of financing to provide housing for themselves or for some other financial need which might require a long term financial arrangement. Neither party has alluded to age being of particular concern to them.
- (iv) What emerged from the husband's affidavit was some bitterness towards the wife that he was forced to pay the mortgage and maintain the matrimonial home when she left in 2017. What emerged from his narrative was concern for maintaining his lifestyle, albeit the lifestyle that he and his wife enjoyed when they were together in the home, sharing the financial responsibilities. The wife on the other hand, did not seem particularly concerned about the status quo. I have previously indicated that the husband being a self-employed plumber, has the ability to control his income to a greater degree than the wife. Given this and the wife's lack of concern regarding this factor, I am of the view that the parties are both capable of maintaining their lifestyles.
- (v) Neither party has indicated any health concerns.
- (vi) Neither party has alluded to any potential loss of pension due to the divorce.
- (vii) The husband, in particular, has been alleged to have contributed more to the welfare of the family than the wife.
- (viii) The couple's 18 years of marriage should be characterized as "long," so this influences the treatment of the division of property in the direction of equality.
- (ix) Deciding the issue of the respective interests of the parties in the matrimonial property is greatly influenced by their respective contributions to the welfare of the family. This is, of course, contemplated by s. 29 (i)(f). In fact, these parties have made this their main bone of

contention by all accounts. According to the wife's evidence, she paid the mortgage instalments at the bank for seven (7) years of the marriage. This would've begun immediately when the mortgage was acquired in 2006. It is common ground between her and the husband that the bank granted the mortgage because she had a more reliable source of income from which the mortgage instalments could be deducted once her salary was received from her employer at the bank. Mathematically, this means that the wife paid the mortgage until 2014.

- (x) There is no dispute between the husband and wife that she left home in 2017.
- (xi) The husband states that the wife stopped paying the mortgage when the marriage broke down and she moved out in 2017. Clearly there is a discrepancy of some Two (2) to Three (3) years, depending on the month when the wife stopped paying. Neither party has given that information. The husband complains that once the wife left home, he was forced to pay the mortgage, maintain, and upkeep the house and property. But neither he nor the wife indicated who, if not both of them maintained and upkept the property when the wife was living in the home. Moreover, the husband equivocated when he discussed the wife's contributions to the utilities and other family bills when she was living in the house. In one case he said;

"In addition to reimbursing the Petitioner for her mortgage deductions, I assumed full responsibility for all household expenses, as well as the ongoing financial needs and care of the children. The Petitioner's salary alone could not sustain the full mortgage payments and support the family's day-to-day living expenses." **[Emphasis Mine]**

- (xii) One paragraph down the husband says:

"I acknowledge that the Petitioner contributed to the mortgage and family during the marriage." **[Emphasis Mine]**.

[22.] The husband emphasized that he has had the full responsibility for the mortgage and upkeep of the house after the wife left. There is no dispute that the wife left in 2017. The Petition was filed in 2024, Seven (7) years after. The husband and wife have both paid the mortgage for seven years when the calculation occurs as at the date the wife left. Even if the calculation were taken as at the time of this ruling, the husband would have only paid for eight (8) years.

THE RELATIVE PRINCIPLES

[23.] This court must do what is mandated to achieve fairness between the parties when determining issues relative to property adjustment. The law is settled in this area and the foremost authorities which will be referred to from our British counterparts and from the more superior courts in that jurisdiction are **White v White** [2001] 1 All ER 1 at 8-9, [2001] 1 AC 596 at 605, **Charman v Charman** [2007] 1FLR 1246 and **Miller v Miller, McFarlane v McFarlane** [2006] 1 UKHL 24. Adherence to the established principles was expressed locally in **A v. B** [2010] 2 BHS JNo. 18, Bahamas Supreme Court, Family Division, 2008/FAM/DIV/132, by *Barnett, C J*

*"The objective of the court is to be fair. In my judgment, the modern day approach to a division of property in a marriage is that fairness is, an equal sharing of property unless there is a compelling reason to depart from that equality. The law is perhaps best summarized in the judgment of the English Court of Appeal in **Charman v Charman** [2007] 1 FLR 1246.*

*"The yardstick of equality of division", first identified by Lord Nicholls in **White** at p. 605G, filled the vacuum which resulted from the abandonment in that decision of the criterion of "reasonable requirements". The origins of the yardstick lay in s. 25(2) of the Act, specifically in s.25(2)(f), which refers to the parties' contributions: see the preceding argument of Lord Nicholls at p. 605D-E. The yardstick reflected a modern, non-discriminatory conclusion that the proper evaluation under s.25 (2)(f) of the parties' different contributions to the welfare of the family should generally lead to an equal division of their property unless there was good reason for the division to be unequal. It also tallied with the overarching objective: a fair result.....*

Although in **White** the majority of the House agreed with the speech of *Lord Nicholls* and thus with his description of equality as a "yardstick" against which tentative views should be "checked", *Lord Cooke*, at p. 615D, doubted whether use of the words "yardstick" or "check" would produce a result different from that of the words "guideline" or "starting point". In **Miller**, the House clearly moved towards the position of *Lord Cooke*. Thus, *Lord Nicholls*, at [20] and [29], referred to the "equal sharing principle" and to the "sharing entitlement"; those phrases describe more than a yardstick for use as a check. *Baroness Hale* put the matter beyond doubt when, referring to remarks by *Lord Nicholls* at [29], she said, at [144],

"I agree that there cannot be a hard and fast rule about whether one starts with equal sharing and departs if need or compensation supply a reason to

do so, or whether one starts with need and compensation and shares the balance."

It is clear that the court's consideration of the sharing principle is no longer required to be postponed until the end of the statutory exercise. We should add that, since we take "the sharing principle" to mean that property should be shared in equal proportions unless there is good reason to depart from such proportions, departure is not from the principle but takes place within the principle. [Emphasis Mine]

N.B. S 25 (2) (f) of the U.K. provisions discussed in **Charman, White and Miller** supra mirror our S. 29 (1)(f).

[24.] In achieving fairness between these parties I am of the view that to resolve the problem of the Two (2) to Three (3) years mentioned earlier that neither the husband or the wife has accounted for as it relates to the payment of the mortgage, is to split the difference between the parties. The husband's protestations that he reimbursed the wife mortgage payments when the wife was living home he purported to support with receipts he exhibited. He failed in his attempt as the receipts were all dated 2017 the same year the wife left the matrimonial home. Doing so puts them exactly on equal footing as to the mortgage payments and emphasizes that there should be no discriminating between them. *Lord Nicholls of Birkenhead* in **White v White** [2001] 1 All ER 1 at 8-9, [2001] 1 AC 596 at 605, expressed that it was important not to discriminate when he said:

'But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. [Emphasis Mine].

[25.] As it relates to the other family financial obligations, I accept the husband's statement that the wife contributed while they lived together in the matrimonial home. I also accept the view that when she left the home he had to assume payment of all of those bills. However, I believe that the fact that the husband then had exclusive possession of the home, the wife would not have been consuming utilities and certainly would not have imposed any wear and tear on the home, which would have required her to maintain it. Another factor which was really not emphasized by the wife but occurs to this court is the fact that when the wife left the matrimonial home in 2017, she must have taken up residence somewhere and most likely would've incurred financial responsibilities wherever that happened to be.

[26.] This is why there is clear authority for the premise that the calculation for establishing the interest in the property is the date that the marriage ended. In this case, it was in 2024 when the wife filed the Petition and obtained the Decree Nisi.

[27.] In all of the circumstances of this case I find no reason to depart from the equal sharing principle. I see nothing in the circumstances of the husband or the wife that indicates that either one has a greater need than the other. In considering compensation, I find that no reason exists to prioritize compensating one party over the other. However in all the circumstances of the case I find that an "equal sharing," or to put it another way, each party's 'sharing entitlement' for their respective contributions to the welfare of their family is fulfilled by a 50/50 ratio, for as *Baroness Hale* distinctly put it in **Miller** supra:

"there is no hard and fast rule about whether one starts with equal sharing and departs if need or compensation supply a reason to do so, or whether one starts with need and compensation and shares the balance."

[28.] **CONCLUSION AND DISPOSITION:**

1. The interest in the matrimonial home situated Lot Number 3393 Situated at Sir Lynden Pindling Estates, Eastern District of the Island of New Providence is established to be equal, 50% to the husband and 50% to the wife.
2. The husband shall pay to the wife the equivalent of the Fifty (50%) percent interest in the equity of the said matrimonial home, calculated on the appraised value, and after subtracting the amount due and owing on the mortgage. The sum is to be paid within Ninety (90) days of the date hereof, whereupon the wife shall transfer her interest in the said home to the husband. Upon the said transfer, the husband shall hold the wife harmless and shall indemnify the wife against all costs, claims, and demands on the property.
3. Should the husband fail to purchase the wife's interest within Ninety (90) days, the wife shall purchase the husband's interest in the said home within Ninety (90) days after the expiration of the term for the husband to purchase her interest. The sum shall be the equivalent of Fifty (50%) percent in the equity of the said matrimonial home, calculated on the appraised value and after subtracting the amount due and owing on the mortgage. The sum is to be paid within the wife's Ninety (90) day period, whereupon the husband shall transfer all his rights, titles, and interests to the wife. Upon the said transfer, the wife shall hold the husband harmless and shall indemnify the husband against all costs, claims, and demands on the property.

4. If after One Hundred and Eighty (**180**) days neither party has purchased the other's interest, then the home shall be sold at market value and the net proceeds divided between the husband and the wife on a 50%/50% basis.
5. Should either party fail to execute the necessary documents to effect the transfer of the said property, then the Registrar of the Supreme Court shall execute the transfer document.
6. A Declaration is granted pursuant to s. 73 (1)(b)(i) of the Matrimonial Causes Act, Chapter 125 that arrangements have been made for the child of the marriage and those arrangements are satisfactory.
7. Each party shall pay their own costs in relation to the transfer of the said property.
8. Each party shall bear their own costs of these proceedings.

Dated the

18th

day of August, A.D., 2025



The Honourable Justice C.V. Hope Strachan

