

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division

2016
FAM/div/00216/

BETWEEN

CASSIUS CUNNINGHAM

Petitioner

V

JONI ANASTACIA CUNNINGHAM

Respondent

**BEFORE: The Honourable Madam Justice Donna
 Newton**

**APPEARANCES: Mrs. Romona Farquharson- Counsel for the
 Petitioner**

**Ms. Cyd Ferguson- Counsel for the
Respondent**

HEARING DATES: 21st March, 2022

DECISION: 28th February, 2025

***Divorce - Ancillary Relief – Maintenance for Adult Child - Property
Adjustment - Equal Sharing Principle - Division of Assets -
Matrimonial Causes Act- Section 29 considerations.***

RULING

NEWTON J:

1. The Petitioner (Husband) and Respondent (Wife) were married on the 30th day of August 2000. There are two children of the marriage 19 years and 14 years respectively.
2. A Decree Nisi was granted in January, 2017 on the ground that the Wife treated the Husband with cruelty.
3. Both parties entered the marriage with their own properties. The Husband owned a triplex and received rental income from it. The Wife owned a single-unit property, which served as the matrimonial home and was later expanded into a triplex following the breakdown of the marriage.
4. According to the evidence the Husband is employed as a Customs Officer and earns \$6,705 per month. The Wife is an employee of Scotiabank Bahamas Limited and earns \$7,000) per month.

Issues

5. The issues in this matter are:
 - i. Whether the Petitioner should pay maintenance for the children?
 - ii. Whether the vacant parcel of purchased by the parties should be divided equally?

The Law

6. The authority to make orders for financial provision and property adjustment is conferred by **Sections 27 and 28 of the Matrimonial Causes Act, Chapter 125 of The Statute Laws of The Bahamas (“MCA”)**, respectively.
7. However, before the court exercises its inherent jurisdiction bestowed upon it by Section 27 and 28 of the MCA, it must first regard the factors outlined in **Section 29 (1) of the MCA**, which states that:-

“29. (1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;**
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;**
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;**
- (d) the age of each party to the marriage and the duration of the marriage;**
- (e) any physical or mental disability of either of the parties to the marriage;**
- (f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;**
- (g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit**

(for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.”

Maintenance of the Minor Child

8. At the commencement of these proceedings there were two minor children of the marriage. However, it is noted that one child has attained the age of majority.
9. Regarding the issue of maintenance, the Wife submitted that the Husband should be made to pay \$800 per month as maintenance for both children. According to the evidence she is responsible for the day-to-day well-being of each child which includes, transportation, clothing, electricity, water, food, partial payment school tuition. The Husband on the other hand contributes \$400 per month together with payment of one half of the school's tuition.
10. Although the elder child has attained the age of majority, the evidence shows that she is attending university. **Section 33(1) of the MCA** prohibits any party to be ordered to make financial payments to a child who has attained the age of majority. However **Section 33(2)** provides an exception, that if the child is receiving instructions from an educational establishment, whether the child is employed or not, then **Section 33(1)** shall not apply. Thus, relying on this provision, a maintenance order may be made for the older while she is undertaking tertiary level studies.

11. Based on the Husband's Affidavit of Means, he has the financial means to contribute more than \$400 per month toward maintenance, considering his income and resources.
12. In the interests of fairness and the children's well-being, the Husband should be ordered to pay an increased sum that reflects his ability to provide adequate support.
13. Taking into consideration the above, together with the fact that the elder child is undertaking tertiary studies, the Husband is ordered to pay the sum \$700 per month as maintenance for the children, in the case of the elder child, until she completes tertiary education. Additionally he is ordered to pay half of the educational, medical, optical and dental expenses of the minor child. In the case of the minor child this Order remains in place until she attains the age of 18 years or completes tertiary education. In the case of the elder child he will continue to make the partial payment towards the university tuition.
14. The Parties are to have joint custody of the minor child with the day care and control to the Respondent and reasonable access to the Petitioner. With liberty to apply.

The Matrimonial Property

15. Lord Denning in the case of *Wachtel v Wachtel [1973] 1 All ER 829* described "matrimonial assets" in the following terms:

"...It refers to those things which are acquired by one or other or both of the parties, with the intention that there should be continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole."

16. The term Matrimonial Property was also defined by Lord Nicholls of Birkenhead in *Miller v. Miller; McFarlane v. McFarlane* [2006] UKHL 24, where he stated that:

“Matrimonial property means the matrimonial home plus property acquired during the marriage otherwise than by gift or inheritance.”

17. Having reviewed the evidence, I find that the vacant lot in Hillside Park Estate Subdivision, was in fact acquired for the purpose and benefit of the marriage. In fact the parties have agreed that it was purchased through their joint efforts and for the benefit of the family. As a result of this, the property falls in the definition of matrimonial property as outlined in the cases of *Wachtel v Wachtel* (*supra*) and *Miller v. Miller; McFarlane v. McFarlane* (*supra*).

18. When it comes to the division of matrimonial property Sir Michael Barnett CJ explained in the case of *A v B* 2010 2 BHS No.19 that:

“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”

19. The overriding objective in these matters is to be fair. In *Miller v Miller, McFarlane v McFarlane* 2006 2 AC 618 Lord Nicholls in considering the fairness approach stated:-

“This element of fairness reflects the fact that to a greater or lesser extent every relationship of marriage give rise to a relationship of interdependence. The parties share the role of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness require that the assets of the parties should be divided primarily as to make provision for the parties' housing and financial needs, taking into account a wide range of matter such as the parties' age, their future earning capacity, the family's standard of living and any disability of either party.”

- 20.Regarding the vacant lot, the Wife contends that the Court should not depart from the equal sharing principle, while the Husband submits that the Court should award him the entire property. He contends that he is solely entitled to the interest in the vacant lot due to the fact that he was responsible for the purchase as only his name appears on the conveyance. However, in applying the approach used in **A v. B (supra)**, this is not sufficient reason to compel the Court to depart from the equal sharing principle.
- 21.According to the Wife's Supplemental Affidavit of Means (filed the 24th of January 2020) as an employee of Scotiabank she located the vacant lot in the Bank's distressed listings. The Parties agreed that the property would be purchased in the Husband's name in order to avoid a potential conflict of interest between the Wife and the Bank.
- 22.Taking all of this into consideration, the Court finds that justice demands that the equal sharing principle should apply.

Conclusion

23.The Court hereby finds:

- i. That the Husband shall pay the sum of \$700 per month as maintenance for the children of the marriage together with half of the educational, medial, optical and dental expenses of the minor child. In the case of the minor child this Order remains in place until she attains the age of 18 years or completes tertiary education. In the case of the elder child it continues until she completes tertiary education.
- ii. That the Husband is to continue to contribute to the payment of the elder child's university tuition.

- iii. That the interest in the vacant lot in Hillside Park Estates Subdivision shall be divided equally between the parties. The lot to be valued at the joint expense of the Parties. The Husband is to pay the Wife one half the value of the property within 90 days of the filing of this order failing which the property is to be sold and after expenses of sale the proceeds are to be divided equally.
- iv. Each party to bear its own costs.

Dated this 28th day of February 2025

A handwritten signature in black ink, appearing to read 'D. Newton', is written above a horizontal line.

The Honourable Justice Donna D. Newton