

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
FAMILY DIVISION
Case Number: 2023/FAM/div/FP/00034**

B E T W E E N

N T P

Petitioner

AND

B B P

Respondent

Before: The Honourable Justice Constance Delancy

Appearances: Joyce Cooper-Bowe for the Petitioner
Rengin Johnson for the Respondent

Hearing date(s): 19 March 2025

DECISION

DELANCY, J.

[1.] The Petitioner filed a Notice of Application for Ancillary Relief on 27 November, 2023 and the Respondent filed a Notice of Application for Ancillary Relief on 25 July, 2024.

Background

[2.] The parties were married on 29 March, 2008. At the time of the marriage, the Petitioner was a spinster age 32 years and the Respondent was a divorcee age 32 years. There are no children of the marriage, the Respondent has a child from a previous marriage.

[3.] The current assets listed by the parties consist of the following:-

- i. matrimonial home situate at Lot 7 Block F Woodes Rodgers Drive, South Bahamia, Grand Bahama held jointly by the parties subject to mortgage with FirstCaribbean International Bank (FCIB); and
- ii. 2016 Range Rover Evoque registered to the Petitioner subject to a loan.
- iii. 2016 Land Rover Discovery Sport registered to the Respondent.
- iv. Motorcycles (2) owned by the parties.

[4.] The parties also have a joint loan with Commonwealth Bank Limited and there are outstanding credit card debts.

Evidence

[5.] Both parties filed Affidavits in which they identified assets which they regard as the matrimonial assets and were both cross-examined by Counsel for the respective parties.

[6.] The Petitioner's evidence is found in her Affidavit of Means filed 17 November, 2023; Affidavit in Response to Respondent's Affidavit sworn 13 August, 2024; and Supplemental Affidavit filed 18 February, 2025. The Petitioner's evidence may be summarized as follows:

1. an Accountant with an Insurance Company and earns a monthly salary of \$4,116.67;
2. a Police Reserve Inspector and earns \$7.80 per hour while performing such duties;
3. the parties own 2 vehicles:
 - a. 2016 Range Rover Evoque driven by the Petitioner which is subject to a loan which she pays \$501.00 per month; and
 - b. 2016 Range Rover Discovery Sport driven by the Respondent which she avers that she contributed the sum of \$7,000 towards the purchase thereof;
4. Annual expenses includes the payment of life insurance for the parties; licensing, insurance and servicing of both vehicles; house insurance for the matrimonial home; motorcycle insurance; property service charge;
5. Monthly expenses includes electricity; water & garbage fees; cable & internet fees; Netflix subscription; groceries; landline telephone; cell phone service; gardener fees; pension; home improvement loan with FCIBC; loan on Range Rover Evoque and security alarm;
6. That between 2008 to 2018 she paid \$150 per month at the request of the Respondent towards child support for the Respondent's son;
7. Paid \$12,700 towards the Respondent's son's Associate Degree and \$3,925 towards his Bachelor's Degree;
8. That between 2008 to 2011 she paid \$208 per month to make up the shortfall in the mortgage payments for matrimonial home;
9. Paid \$2,330.00 towards the storage shed renovation being the difference not covered by insurance;
10. Paid \$18,000 towards the mortgage principle funds derived from sale of her Palm Club Condominium;
11. Paid 50% of the mortgage on the matrimonial home for the first 2 years of marriage.

[7.] The Respondent's evidence is found in his Affidavit of Means sworn 12 July, 2024 (and re-filed 26 July, 2024); Affidavit filed 25 July, 2024; Affidavit in Response filed 16 August, 2024; and Reply to Supplemental Affidavit filed 13 February, 2025. The Respondent's evidence may be summarized as follows:

1. That he is a Civil Servant and earns a monthly salary of \$2,725.00;
2. That the mortgage on the matrimonial home via salary deduction \$1,288.97 monthly;

3. That the Commonwealth Bank Loan (joint loan) in the amount of \$903.00 is deducted monthly;
4. That he has a Bahamas Law Enforcement Credit Union Loan deduction in the amount of \$300 monthly;
5. That he has a monthly National Insurance contribution in the amount of \$106.28;
6. Monthly Barber expenses of \$40;
7. That groceries expenses is \$500 monthly;
8. Gas expenses in the amount of \$250, monthly and;
9. That he managed the Petitioner's salary to pay the family's bills

[8.] On cross-examination, most of the evidence of the parties were either a complete reiteration of the evidence in their respective affidavits or the evidence was irrelevant to the issue of property adjustment. Therefore, the Court does not seek to set out the evidence made out on cross-examination of the parties.

[9.] Both parties obtained an Appraisal Reports having not being able to agree on an appraiser. The Court notes that the appraisers adopted a similar approach and criteria with a difference of approximately \$36,000.00:

- (i) The Petitioner produced an appraisal report dated 24 September, 2024 prepared by William Duncombe of the matrimonial home assigned the market value of the house at \$240,000.00.
- (ii) The Respondent produced an appraisal report dated 7 October, 2024 prepared by Bert E. Lightbourne of the matrimonial home assigned the market value of the house at \$276,000.00.

[10.] The Court read and fully considered the submissions forwarded by the parties' Counsel.

Law and Discussion

[11.] The Court may make an order for the settlement of the matrimonial property for the benefit of the parties under Section 28 of the Matrimonial Causes Act, Chapter 125 ("the MCA") having regard to the factors set out in Section 29 MCA:

- (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 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 towards the other...." [Emphasis added]

[12.] Counsel for parties submitted that the relevant law for consideration by this Court is Sections 28 and 29 of the Matrimonial Cause Act. Further they also referred the Court to the following authorities on the issues before the Court: **Charman v. Charman (2007)** 1 FLR 1246, **Miller v. Miller; McFarlane v. McFarlane** (2006) UKHL24, **Collie v Collie** SCCivApp No. 19 of 2015.

[13.] In the Court of Appeal case of **Collie v. Collie** SCCivApp. No. 19 of 2015 as per *Crane-Scott, JA* at paras. 58, 59 and 65-67 thereof:

58. It now appears from the decision of the English Court of Appeal in **Charman v. Charman** [2007] 1 FLR 1246 that where a court elects to adopt the “yardstick of equality of division” first identified in **White v. White** [2001] 1 AC 596 or the “equitable sharing principle” coined by *Lord Nicholls of Birkenhead* in **Miller v. Miller; McFarlane v. McFarlane** [2006] UKHL 24, the equal sharing principle is not restricted only to matrimonial assets, but applies to all the parties’ property unless there is good reason to depart from those proportions.

59. Delivering the Court’s decision in **Charman**, *Sir Mark Potter P* explained the approach to the statutory exercise required by section 25(2)(a) of the English Act [corresponding to our section 29(1)(a)] in the following terms:

[65]...It is clear that the court’s consideration of the sharing principle is no longer 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.

[66] To what property does the sharing principle apply?....We consider...the answer to be that, subject to the exceptions identified in **Miller** to which we turn in para [83]-[86], below, the principle applies to all the parties’ property but, to the extent that their property is non-matrimonial, there is likely to be better reason for departure from equality. It is clear that both in **White**, at 605 F-G and 989 respectively, and in **Miller**, at paras [24] and [26], *Lord Nicholls of Birkenhead* approached the matter in that way; and there was no express suggestion in **Miller**, even on the part of *Baroness Hale of Richmond*, that in **White** the House had set too widely the general application of what was then a yardstick.

[67] Even if, however, a court elects to adopt the sharing principle as its ‘starting point’, it is important to put that phrase in context. For it cannot strictly, be its starting point at all....The inquiry is always in two stages, namely computation and distribution; logically the former precedes the latter. Although it may well be convenient for the court to consider some of the matters set out in s. 25(2)(a)...a court should first consider, with whatever degree of detail is apt to the case, the matters set out in s. 25(2)(a), namely the property, income (including earning capacity) and other financial resources which the parties have and are likely to have in the foreseeable future....” [Emphasis added]

[14.] The Court when exercising its powers under Section 28 must consider the factors in Section 29 of the MCA. In the instant case the Court considered:

- i. That the parties are 50 years of age and were married for over 15 years prior to the granting of the Decree Nisi and the marriage is, therefore, not a short marriage;
- ii. That there is evidence to suggest that the Respondent suffers from seizures which he manages with medication;
- iii. That evidence, which has not been disputed, the Petitioner earns a higher salary than the Respondent but both parties are heavily indebted;
- v. That there is no dispute that the South Bahamia property, motor vehicles and the motorcycles are matrimonial assets;
- vi. That the parties enjoyed a modest standard of living kept afloat by loans;
- vii. The parties have a very acrimonious relationship which is borned out by their respective affidavits and conduct at the hearing of this application.

[15.] The Court having considered the affidavit evidence filed herein, the parties viva voce evidence on cross-examination and submissions of Counsel adopts the equitable sharing principle approach in **Miller v. Miller; McFarlane v. McFarlane** as to the division of matrimonial assets. Neither party has demonstrated any compelling reason for the Court to depart from applying this principle to all the parties’ assets.

Disposition

[16.] The Court determines as follows:

1. The market value of the matrimonial is set at \$258,000 being the average of the appraisal reports provided by the parties;
2. The Petitioner and the Respondent shall have equal shares to the matrimonial home, 50% to the Petitioner and 50% to the Respondent;
3. The Petitioner and the Respondent shall have equal shares in the motorcycles;
4. The Petitioner shall retain ownership of the 2016 Range Rover Evoque and be responsible for any loans and maintenance related to the said vehicle;
5. The Respondent shall retain ownership of the 2016 Land Rover Discovery Sport and be responsible for any loans and maintenance related to the said vehicle.

6. The Parties shall be responsible for the payment of any other customer loans in their respective names;
7. The Petitioner shall purchase the Respondent's interest in the matrimonial home based on the value assessed within 60 days hereof this order. In the event that the Petitioner is unable or unwilling to do so the matrimonial home to be sold and the outstanding mortgage on the be satisfied from the proceeds of the sale and all other related charges are settled; thereafter the remaining funds are to be shared equally by the parties;
7. That in the event that either the Petitioner or Respondent is unwilling or unable to execute the necessary conveyances for the transfer or sale of the property, a Deputy Registrar of the Supreme Court is authorized upon application being made to execute the relevant transfer/conveyance.
8. That each party is to bear their own costs.

Dated the 26th day of September, 2025

[Original Signed and Sealed]

Constance A. Delancy
Justice