

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division**

Case: 2022/FAM/div/FP/00094

B E T W E E N

MAM

Petitioner

AND

MMM

Respondent

Before: The Honourable Madam Justice Constance Delancy

Appearances: Cassietta McIntosh-Pelecanos for the Petitioner

Constance McDonald, KC for the Respondent

Hearing date(s): 9 May, 2025

Submissions: 10 June 2025 (for the Petitioner)
17 June 2025 (for the Respondent)

Ancillary proceedings – Custody/maintenance of children – Sections 73, 74, 27 and 29 of the Matrimonial Causes Act – property adjustment – Sections 25 and 28 of the Matrimonial Causes Act

JUDGMENT

DELANCY, J

[1.] This is the Court’s decision on the application for ancillary relief in this action.

Background

[2.] The parties were married on 31 January, 1998 and are the parents of five (5) children. All of the children are now *sui juris* save and except for IMAM born 7 November, 2013 (11 years old).

[3.] The Petitioner is currently age 45 years, self-employed and resides in Freeport. The Respondent is currently age 44 years, a temporary month to month general service worker and resides in Freeport. The parties were married for 23 years prior to the pronouncement of the Decree Nisi on 30 November, 2022.

[4.] The current asset held by the parties, which is subject to mortgage with The Bahamas Mortgage Corporation, is the matrimonial home situate in Wellington Pinder Heights, Freeport, Grand Bahama (held as joint tenants).

Issues

[5.] The issues to be determined by the Court are:

- (a) Custody care and control of the minor child of the marriage;
- (b) Maintenance for the minor child of the marriage; and
- (c) Adjustment of the matrimonial asset.

Evidence

[6.] The evidence of the parties is contained in their respective Affidavits and upon cross-examination.

Petitioner's evidence

- (a) the Petitioner is a self-employed construction worker and earns approximately \$2,100 per month and his monthly expenses (inclusive of his contribution towards the maintenance of the minor) amounts to \$3,643 and annual expenses of \$1,475 (licensing and insurance of vehicle);
- (b) That he contributes the sum of \$800 per month (weekly payments of \$200) towards the maintenance of the child as per his undertaking made in the Magistrate's Court since 6 May 2022;
- (c) The Petitioner solely bears the financial responsibility for the minor child's school shoes, athletic footwear, and all necessary school supplies. These essential items are not shared or reimbursed by the Respondent; however, she listed such items as a part of her expenses;
- (d) The minor child who is 11 years old currently enrolled in the sixth grade of a government primary school;
- (e) He states that payments of the maintenance were made to the Respondent via wire bank transfers and via the eldest daughter;
- (f) The Petitioner, under cross-examination, also admitted being the owner of business and produced income statement which were lodged with Department of Inland Revenue showing income as of December 2024 of \$319,679.00 and a net income of \$573.00. Under cross-examination he stated that the majority of the income went to purchase equipment, workers' salaries and professional fees;
- (g) He admitted that the mortgage on the home is currently in arrears but that he does not reside in the home which occupied by the Respondent, the minor child and two other adults;
- (h) He proposes the following with reference to the minor child:
 - i. Contribute \$200 per week towards the maintenance of the minor child until age of majority;
 - ii. Access to the minor child alternate weeks during the Christmas break, one week of Easter, and one month of the Summer break;
 - iii. Parties share the costs of school uniforms, books, accessories of the minor

- until age of majority;
 - iv. Both parties provide clothing for the minor child at least twice per year, specifically Summer and Winter clothes, until age of majority;
 - v. Parties to equally share the costs of medical, dental and optical expenses for the minor child until age of majority.
- (i) He will transfer his interest in the matrimonial home to the Respondent and he be released from the mortgage and the Respondent to indemnify him against any claims under the mortgage.

Respondent's evidence

- (a) The Respondent is a General Service Worker and earns \$260 per week or \$1,126.67 per month;
- (b) The Respondent states that the Petitioner is not consistent with the payment of maintenance for the minor child and alleges that the Petitioner is in arrears of \$38,400;
- (c) Under cross-examination, she accepted that the Magistrate did not issue a maintenance order and that the Petitioner gave an undertaking as stated on the certified copy of the record;
- (d) She states that the parties moved into the matrimonial home in 2009 and the Petitioner left the home in 2018 having never contributed to the mortgage which is in arrears \$165,144.94 as of 13 January 2025. Further that she has struggled to pay the mortgage;
- (e) Under cross-examination the Respondent admitted that she occupies the home with the minor child, her adult daughter, son-in-law and their children;
- (f) The Respondent presented a list of projected healthcare, dental, and insurance related expenses in the amount of \$665.00 monthly that are not currently being incurred for the minor child. She included future hypothetical costs as current financial obligations for the minor child. She admitted on cross-examination that these projected expenses were not discussed with the Petitioner nor did he consent to the same;
- (g) The Respondent included tuition costs for private school and registration school fees; however, the minor child is not, and has never been, enrolled in private school;
- (h) The Respondent requests that the Petitioner pay the sum of \$400 per month as housing expenses for the minor child and conceded on cross-examination that the mortgage is \$680 per month;
- (i) She proposes the following with reference to the minor child:
 - i. The Petitioner to make a lump sum payment for the arrears of child support in the amount of \$38,400;
 - ii. The Petitioner pays costs of the school uniforms, books, accessories, medical, dental and optical expenses for the minor child access to the minor child;
 - iii. Parties share the costs of school uniforms, books, accessories of the minor until age of majority projected at \$12,566.62;
 - iv. Additionally, that the Petitioner to pay \$200 per week towards the maintenance of the minor child and pay \$600 in June and December to provide clothing for the minor child.
- (j) The Respondent requests that the Petitioner pay \$50,000 towards the mortgage arrears and then transfer his interest to her.

Law & Discussion

The Child

[7.] Section 74 of the Matrimonial Causes Act (“the Act”) empowers the Court to make orders for “*the custody and education of any child of the family who is under the age of eighteen*”.

[8.] Section 73 of the Act provides that the Court must be satisfied that the arrangements have been made for the “*welfare*” of any child of the family prior to the issuance of a Decree Absolute:

73. (1) The court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, **has declared that it is satisfied-**

... (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that —

(i) **arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or**

(5) This section applies to the following children of the family, that is to say —

(a) **any minor child of the family** who at the date of the order under subsection (1) is —

(i) **under the age of sixteen,** or

(ii) **receiving instruction at an educational establishment,** or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and....

(6) In this section “**welfare**”, **in relation to a child, includes the custody and education of the child and financial provision for him.**

[Emphasis added]

[9.] Section 27(1)(d)(e) and (f) of the Act and Section 28 empowers the Court to make one or more of the following financial provision orders for any child of the family:

(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;**

(e) **an order that a party to the marriage shall secure to such person as may be so specified for the benefit of such a child, or to such a child, to the satisfaction of the court, such periodical payments, for such term, as may be so specified;**

(f) **an order that a party to the marriage shall pay to such person as may be so specified for the benefit of such a child, or to such a child, such lump sum as may be so specified;**

[Emphasis added]

[10.] The Court in exercising its powers under Sections 27 in relation to the welfare of financial provisions for any child of the family must consider the factors outlined in Section 29(2) of the Act:

... it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, **to have regard to all the circumstances of the case including the following matters**, that it to say —

- (a) the **financial needs of the child**;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) **any physical or mental disability of the child**;
- (d) the **standard of living enjoyed by the family before the breakdown of the marriage**;
- (e) the **manner in which he was being and in which the parties to the marriage expected him to be educated or trained**;

and so to exercise those powers as to place the child, **so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him**

[Emphasis added]

[11.] The parties enjoyed a modest standard of living prior to the breakdown of the marriage. The minor child of the family is 11 years old and currently enrolled in a government primary school. There is no evidence before the Court that the child suffers from any physical or mental disability. Further it is apparent from the evidence the Respondent seeks to enroll the child in a private institution which is not in accordance with the parties means.

[12.] In **Thurston v McKenzie** [2012] 1 BHS J. No.53 *Barnett C.J.* (as he then was) adopted the dicta of *Hall C.J.* in **K v O** [2008] 3 BHS J. No. 5 at para.15 thereof:

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 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 schools. **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 the 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 "vacation ", in calculating the maintenance needs of the 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.

[Emphasis added]

[13.] In the circumstances, the Court finds that there is no basis upon which an order that the Petitioner contribute towards school fees and expenses related to private school for the minor child ought to be granted. Further, as the record reflects that the Petitioner gave an undertaking to the payment maintenance for the minor child. However, there is no basis for the making of an order for arrears of child support as the undertaking was not an order of the Magistrate.

Property adjustment

[14.] Section 25 (2) of the Act provides that the Court has the power to make property adjustment orders:

(2) The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) **under section 28 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say -**

- (a) any order under subsection (1)(a) of that section for a transfer of property;
- (b) any order under subsection (1)(b) of that section for a settlement of property; and
- (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.

(3) **Where the court makes under section 27 or 28** a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then on making that order or at any time thereafter, the court may make a **further order for the sale of such property as may be specified in the order,** being property in which or in the proceeds of sale in which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

(4) Any order made under subsection (3) may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include —

- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
- (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

[Emphasis added]

[15.] Section 28 of the Act provides:

(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 postnuptial 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;

[16.] Section 29 of the Act provides the guidelines and considerations that the Court must follow when make property adjustment orders:

(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]

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

[18.] The Court adopts the equitable sharing principle approach in **Charman v. Charman** to the division of matrimonial property. The parties have not demonstrated any compelling reason for the Court to depart from applying this principle to the matrimonial home. The Court finds that the parties have 50/50 share in the matrimonial home.

Disposition

[19.] The Court hereby orders:

- (1) The Petitioner and the Respondent shall have joint custody of the child of the family, IMAM born 7 November, 2013 with day to day care and control to the Respondent with reasonable access to the Petitioner;
- (2) The Petitioner shall have staying access to the minor child one week of the Christmas school break, one week of Easter school break, and one month of the Summer school break;
- (3) The Petitioner shall continue to pay the sum of \$200 per week for the maintenance of the minor to be paid into a bank account, the details of which shall be provided by the Respondent;
- (4) The Petitioner shall continue to purchase the minor child's school shoes, athletic footwear, and all necessary school supplies;
- (5) The Petitioner shall pay the sum of \$400 for clothing for the minor child on the last working day of June and the last working day of December annually into a bank account the details of which shall be provided by the Respondent;
- (6) Parties shall share equally the costs of medical, dental and optical expenses for the minor child until age of majority;
- (7) The Petitioner shall transfer his interest in the matrimonial home to the Respondent within 60 days hereof and the Respondent shall indemnify the Petitioner from sums due under the mortgage; and
- (8) Each party shall bear their own costs.

[20.] And the Court hereby grants a declaration pursuant to Section 73(1)(b)(ii) that IMAM born 7 November, 2013 is the only child of the family to whom the Section applies and that arrangements for the welfare of the child has been made and are the best that can be devised in the circumstances.

Dated the 30 day of October, 2025

[Original signed and sealed]

Constance Delancy
Justice