

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2021/FAM/div/FP/00099

B E T W E E N

SC

Petitioner

AND

FGC

Respondent

Before: The Honourable Madam Justice Constance Delancy

Appearances: Constance McDonald, KC for the Claimant

Hearing date(s): 29 July, 2025 and 30 October 2025

RULING

DELANCY, J

Background

[1.] The parties were married on 29 December 1990 and, at the date of the filing of the Petition on 28 July 2021, were married for some 30 years. The marriage produced two children both being adults at the time of the filing of the Petition.

[2.] The Decree Nisi was granted on the grounds of separation on 26 January 2022 and made absolute on 3 May 2022.

[3.] The Petitioner filed a Notice of Application for Ancillary Relief supported by an Affidavit of Means filed on 23 April, 2025.

[4.] The Petitioner seeks an order for settlement of the matrimonial property as per her prayer of the Petition filed on 28 July, 2021 and repeated the same in the Notice of Application for Ancillary Relief. The Petitioner refined her request at para. [9.] of her Affidavit of Means:

- a. That the Respondents [*sic*] interest in Lot 14, Block 26, Section 8, Queens Cove, Freeport Grand Bahama be transferred to the children of the marriage namely Fritzgerald Allaxander Cambridge Jr. and Ferre Armitron Cambridge as joint tenants.
- b. That the Respondents [*sic*] interest in Lot 66, Block 6 Bahamia West Replat Freeport, Grand Bahama be transferred to the children of the marriage namely Fritzgerald Allaxander Cambridge Jr. and Ferre Armitron Cambridge as joint tenants.

[5.] The Petitioner's evidence is summarized as follows:

- (i) The Petitioner is a teacher and earns a gross monthly salary of \$2,975.00;
- (ii) the Respondent was a pilot who disappeared in 2012;
- (iii) The Petitioner was solely responsible for paying the mortgage, homeowner's insurance, utilities and general maintenance of the home since 2012;
- (iv) The Petitioner solely maintained the children of the marriage since 2012;
- (v) The Petitioner repaid the loan which funded the Respondent's pilot school fees, bus and plane for his business since 2012;
- (vi) The parties are the joint owners of properties:
 - a. Lot 14, Block 26, Section 8, Queens Cove, ("Queens Cove") Freeport, Grand Bahama (purchased in 1995);
 - b. Lot 66, Block 6, Bahamia West Replat (the matrimonial home), which is subject to a mortgage (purchased in 1998); and
- (vii) The balance on the matrimonial home mortgage is \$55,889.70 as of July, 2024.

Law and Analysis

[4.] Section 25 (2) of the Matrimonial Causes Act ("MCA") 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]

[5.] Section 28(1) of the MCA provides for the categories of the orders which the Court may grant:

(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;** ...

[Emphasis added]

[6.] Section 29 of the MCA enjoins the Court to have regard to all the circumstances of the case when determining an application under Sections 25(3) or 27(1)(a), (b) or (c) or 28 of the 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]

[7.] The Court must determine what the matrimonial assets are. Matrimonial assets or family assets were described in the case of **Wachtel v. Wachtel** [1973] 1 All ER 829 per *Lord Denning MR* at page 836:

...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.

[8.] 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]

[9.] In the instance case, there is no dispute that the properties jointly owned by the parties are matrimonial assets having been acquired during a long marriage. The Respondent was served via substituted service by way of publication in the newspapers but has not participated in the hearing of this application.

[10.] The Petitioner avers that she was solely responsible for the payment of the mortgage and maintaining the matrimonial home since the Respondent’s disappearance in 2012 (over 13 years) and her evidence stands unchallenged. The Petitioner did not provide any particulars on the mortgage or loan, save and except for a copy of a print out for the period May, 2024 to July, 2024, on the matrimonial home. Further, the Petitioner not provide any particulars on the Queens Cove property. The Court finds in the absence of any evidence to refute the Petitioner’s assertions that she has made a substantial contribution to the matrimonial home.

[11.] Counsel for the Petitioner submits that the Court has the authority to adjust the matrimonial property and accede to her request to transfer the Respondent’s interest in the matrimonial property to the children of the marriage. Counsel did not provide any authorities to support this submission.

[12.] The Court is guided by the provisions that Section 33(1) and 33(3) of the Act which states:

- (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.**
- (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; or

- (b) there are special circumstances which justify the making of an order without complying with either or both of those provisions.

[13.] The Court notes that both children of the marriage were adults at the time of the filing of the Petition. The Petitioner did not deduce any evidence upon which the Court may exercise its discretion under Section 33(3) of the MCA. She failed to provide any particulars of the status of the children of marriage, that is, whether either of them was receiving instruction at an educational institution or training for a trade or vocation or employed. The Petitioner also did not provide any evidence of any special circumstances. The Court finds that there is no basis for granting an order transferring the Respondent's interest in the matrimonial properties to the children of the marriage.

[14.] The Court notes that Section 41(1) of the MCA provides for the granting of an order, in lieu of property adjustment, converting parties' joint ownership in a matrimonial home to a tenancy in common. The Court must be satisfied:

Where —

- (a) the matrimonial home is owned by the petitioner or the respondent or **by both of them as joint owners; and**
- (b) the court is satisfied that both parties have made a substantial contribution to the matrimonial home (whether in the form of money payments, or services, or prudent management, or otherwise howsoever),

the court, on granting a decree of divorce, may, if it thinks fit, **on the application of either party made before the decree is made, make in lieu of any property adjustment order affecting the matrimonial home an order vesting the home (including the land on which it is situated and such other land appurtenant thereto as the court directs) in the parties as owners in common in such shares as the court thinks fit.**

[15.] In the instant case the application for property adjustment was made after the decree was made absolute and there was no application before the Decree was made absolute. Therefore, the option to convert parties' joint ownership in the matrimonial home to a tenancy in common under Section 41 of the MCA is not applicable.

[16.] The Court having considered all the circumstances of the case and the evidence of the Petitioner finds that the Petitioner is entitled to 60% interest and the Respondent 40% interest in the matrimonial home; and the parties are entitled to 50%/50% interest in the Queen Cove property.

Disposition

[17.] It is hereby ordered that:

- (1) The matrimonial properties be appraised by a licensed appraiser;
- (2) That an updated statement from the bank which holds the loans/mortgage on the properties be provided;
- (3) That the Petitioner be at liberty to purchase the Respondent's interest in the matrimonial home and the Queens Cove property within 120 days hereof and the funds representing the Respondent's share to be paid into Court;
- (4) Alternatively, that the properties be sold and the net proceeds, less the loans/mortgage and costs related to the sale, be divided as stated in para. [16.] of this ruling with regards to the said properties and the funds representing the Respondent's share to be paid into Court.

Dated the 26 day of January, 2026

[Original signed and sealed]

Constance A. Delancy
Justice

Addendum: The Court notes that the Petitioner brought these proceedings for dissolution of the marriage pursuant to Section 16(1)(d). However, at the time of the filing of the same there was also a provision in Section 70 of the MCA to bring proceedings for the death of the Respondent to be presumed and the marriage to be dissolved which would have been an option.