

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

2023/FAM/div/FP/00108

B E T W E E N

SC

Petitioner

AND

MOC

Respondent

Before: The Honourable Justice Constance Delancy

Appearances: Joyce Cooper-Bowe for the Petitioner
Cassietta McIntosh-Pelecanos for the Respondent

Hearing date(s): 16 May 2025

DECISION

DELANCY, J

[1.] This is the Court's ruling on the Petitioner's application for Ancillary Relief filed herein.

Background

[2.] The parties were married on 12 July, 2008 and were married for 15 years at the time of the pronouncement of the Decree Nisi (13 December 2023). The parties are currently ages 41 years and are the parents of children ages ICC 16 years and IEC 10 years.

[3.] The Petitioner filed a Notice of Application for Ancillary Relief on 2 February 2024 seeking the following:

1. Joint Custody of the children of the marriage with care and control to the Petitioner and liberal access to the Respondent;
2. The Respondent vacate the matrimonial home within 30 days of the Order of the Court;
3. The Respondent sign over all her right title and interest in the matrimonial home within 30 days of the Order of the court and if she fails to do, the Registrar should be given the rights to sign on her behalf;

4. The Respondent pay to the Petitioner the sum of \$400 per two times a year in July and December towards the children's annual vacation and school preparation;
5. The Petitioner and the Respondent split the costs of medical expenses, including medication for the children of the marriage;
6. A Declaration pursuant to Section 73(1)(b)(i) of the Matrimonial Causes Act; and
7. The Respondent to pay costs of this application.

[4.] The Respondent in response to the Petitioner's prayer seeks the following:

1. That the parties be granted joint custody of the children of the marriage with the care and control to the Respondent and reasonable access to the Petitioner.
2. That the Petitioner pay the sum of \$700.00 per month towards the maintenance of the minor children of the marriage.
3. That the Petitioner and the Respondent pay $\frac{1}{2}$ of the school uniforms and books of the minor children of the marriage.
4. That the Petitioner shall provide medical insurance coverage for the minor children of the marriage.
5. That the parties shall share the cost of mutually agreed extracurricular activities.
6. That the Petitioner do pay the additional sum of \$400.00 in July and in December towards clothing for the children.
7. That the Petitioner purchases the Respondent interest in the matrimonial home or the matrimonial property be sold and the proceeds be shared equally.
8. That the Petitioner return all of the items removed from the matrimonial home without the Respondents consent.

Petitioner's Evidence

[5.] The Petitioner's evidence is contained in an Affidavit of Means filed on 29 February 2024 and Supplemental Affidavit in Response to the Respondent's Affidavit of Means filed on 30 July 2024. The Petitioner was cross-examined by the Respondent's Counsel.

[6.] The Petitioner's evidence may be summarized as follows:

1. The Petitioner is employed as a Police Officer and earns a monthly salary of \$2,544.17, and income from private engagements but on indication of earnings therefrom. The Petitioner lists his deductions as follows:

Monthly

- a. \$1388.00 - Mortgage on matrimonial home
- b. \$99.61 - National Insurance
- c. \$110.78 – Life Insurance
- d. \$100.00 – Police Credit Union
- e. \$250.00 – Grocery
- f. \$125.00 – Power Bill
- g. \$150.00 – Rabbit feed and veterinary expenses

Annually

- aa. \$250.00 - School books, toys and supplies for children

- bb. \$300.00 – School uniform for children
 - cc. \$100 – School shoes
 - dd. \$60 – School bag
 - ee. \$250.00 school supplies
 - ff. \$120.00 – service charge
2. The Petitioner avers that the Respondent has damaged and/or destroyed 4 family vehicles since 2015.
 3. The Petitioner avers that the Respondent damaged and/or destroyed security camera system which he installed as a safety measure for the children whom he states the Respondent often left at home unsupervised.
 4. The Petitioner stated that he paid for the youngest child's eye examination and glasses.
 5. The Petitioner expressed concern about the lack of care, safety and welfare of the children while in the Respondent's care. He recounted an incident in which the Respondent burnt ICC with a spoon and another incident when the Respondent bit ICC. That the Respondent leaves the children unsupervised to party with friends; punishes the children for touching food in the house and take the funds which he gave them for school lunch; verbally abuses ICC; and interrogates the children.
 6. He locks his room because the Respondent makes him uncomfortable and he tries to avoid contact with her and to preserve the food purchase for the children.
 7. The Petitioner also has another child but gave no particulars of any contribution which makes, if any to the welfare of said child.
 8. The Petitioner conceded that he did not consult with the Respondent before installing the security camera system and that he has sole control over the same. He denied that the security camera system was installed to spy on the Respondent.
 9. The Petitioner admits he spends time with his girlfriend but denies does not reside in the matrimonial home.
 10. The Petitioner also denies stealing the Respondent's wedding band, her father's necklace and hand chain or any of the Respondent's belongings.

Respondent's Evidence

[7.] The Respondent's evidence is contained in an Affidavit of Means filed on 2 July 2024 Respondent was cross-examined by the Petitioner's Counsel.

[8.] The Respondent's evidence is summarized as follows:

1. The Respondent is employed as a Janitor and earns \$360.00 weekly (or \$1,560.00 monthly). The Respondent lists her deductions as follows:
Monthly
 - a. \$720.00 - Groceries
 - b. \$69.00 – Cable Bill
 - c. \$38.00 – Life Insurance
 - d. \$20.00 – Home gas
 - e. \$50.00 – Hair fees

- f. \$160.00 – Car gas
Annually
 - aa. \$350.00 – Car insurance and license
 - bb. \$180.00 – Car services
 - cc. \$800.00 – Clothing for children (\$400 per child)
 - dd. \$173.00 – medication
2. The Respondent avers that the Petitioner left the matrimonial home in 2021 and left the children in her care.
 3. The Respondent avers that with regard to the Petitioner’s allegation with reference to her damaging the family vehicles. She admitted to damaging one vehicle, and one vehicle malfunctioned, one damaged in a collision where she was not at fault, and one was sold.
 4. The Respondent made it known to the Petitioner that she was uncomfortable with having the security camera system at the matrimonial home and felt that he used them monitor her movements without allowing her access to the same.
 5. The Respondent avers that the incident reference with to burning the eldest child with a spoon occurred 6 years ago was investigated by Social Services and concluded that no abuse was involved.
 6. It was also exposed at the time of the trial of the matters herein, a criminal case was pending against the respondent for biting the parties' older daughter.
 7. The Respondent admitted that there was a physical altercation between her and ICC because ICC refused to grant the Respondent access to her cell phone password and that she bit ICC in retaliation for ICC biting her.
 8. The Respondent also denied denying the children access to groceries but admitted she monitors and control their diets. Further that she denies that she sends the children to school without lunch.
 9. The Respondent admitted that there was also a physical altercation between the Respondent and the eldest child where she burnt her with a spoon.

Social Services Report

[9.] Both parties asked that Social Services conduct an investigation and provide the Court with recommendations with reference to the issues involving the children. The Department of Social Services provided a report dated 7 November 2024 (“the report”). Although the author of the Report was not available at the time of the hearing. The officer who supervised her, vetted, and signed off on the report appeared and Counsel for the parties posed questions and sought clarification with reference to the Report.

[10.] The Court noted, based on the report, that there was a physical altercation between the Respondent and the eldest child. Both children expressed a preference for their father being their primary caregiver. There is also an obvious lack of communication on the part of the parties especially with reference to decisions involving their children.

[11.] The Report made the following recommendations:

- i. *It is therefore being recommended that the Cherubins are approved for joint custody with equal rights and responsibilities in making decisions concerning the children 's education, health care, and general wellbeing. However, it is advised that the children not spend the night or participate in sleepovers at the residence where the father occasionally stays, as a home visit was not conducted at this location.*
- ii. *As part of standard practice, a home visit is an essential component in evaluating the living environment to ensure it is safe, stable, and conducive to the children's well-being. Since the necessary home visit at the father's occasional residence was not completed, the undersigned cannot attest to the suitability of the environment for the children. Despite this, it is crucial to emphasize that the father should remain actively involved in his children's lives, and continue to have regular contact with them in an appropriate setting. Ongoing, communication, regular visits, and engagement in parenting responsibilities should be encouraged to support a healthy relationship between the father and the children.*
- iii. *That whenever one parent has the children in their care, they must inform the other parent of any significant events, activities, or changes in plans. This includes school events, medical appointments, and other important matters.*
- iv. *That both parents will share the maintenance of the children, with the exception of the children's medical insurance as they are covered by their father's employment services.*
- v. *That Mr. Cherubin and Mrs. Cherubin attend co-parenting classes to improve this much-needed skill which will assist them to navigate their roles as supportive parents. The sessions will also assist them to communicate in a respectable and effective manner.*
- vi. *That Isabell and Scarlett attend counseling so as to reinforce them being resilient to handle the divorce of their parents.*
- vii. *That both parties and their children attend family counseling.*

[12.] The Court also interviewed the children separately in the presence of a representative of the Department. The Court found the children to be intelligent, self-aware and maintain a positive outlook on the family's current dynamics.

Matrimonial property

[13.] It is not disputed that the matrimonial home is the sole matrimonial asset of the parties which subject to a mortgage which serviced by monthly deductions from the Petitioner's salary. The home was purchased by the parties in August 2018. However, neither party provided evidence of its value or the actual amount currently due and owing under the mortgage contract save and expect for a bare assertion by the Petitioner that the payout was "over \$90,000" at the filing of his Affidavit of Means.

[14.] The Petitioner seeks an order that Respondent transfer interest in the matrimonial home to him. The Respondent seeks an order that the Petitioner purchase her interest or that the matrimonial home be sold and proceeds shared equally.

Submissions

[15.] Counsel for the Petitioner submits the Petitioner ought to be granted care and control of the of the minor children due the incidents between the Respondent and eldest child. Further, that on the evidence led it is fair, equitable and just the Petitioner be granted an order that the Respondent transfer her interest in the matrimonial home to him.

[16.] The Respondent's Counsel submits that Respondent be granted care and control to the Respondent of the minor children as she provides more "hands on" parenting. Further, that it is fair and equitable there be an equal sharing of the matrimonial property. The Petitioner purchase the Respondent's interest in the home within 60 days or the home should be sold and the proceeds shared equally.

Law & Discussion

[17.] Section 29 of the Matrimonial Causes Act sets out the factors which the Court must consider when making decisions related to financial provisions and property adjustment:

(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.**

(2) Without prejudice to subsection (3) 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]

[18.] The Court must consider what is in the best interest of a child when deciding issues of upbringing, welfare, education and maintenance (*Section 3 Child Protection Act*). Upon the breakdown of a marriage the Court must exercise its discretion to ensure that each party has discharged their financial obligation and responsibilities towards the child or children. The Court must consider the financial needs of the child; the income, earning capacity (if any), property and other financial resources of the child; any physical or mental disability of the child; the standard of living enjoyed by the family before the breakdown of the marriage; the manner in which he was being and in which the parties to the marriage expected him to be educated or trained.

[19.] The parties are the parents of 2 children. ICC is a 16-year-old senior high school student about to graduate and aspires to become a law enforcement officer like the Petitioner. SEC is a 10-year-old student about to enter junior high school and aspires to become a teacher. Neither child has any other financial resources and no evidence of any physical or mental disabilities. The children enjoy a modest standard of living which can be maintained by proper co-parenting on the part of their parents.

[20.] The Court considered the financial capability of parties, current and future, in light of needs of the children. Post-divorce parties will be setting up separate households which have a significant impact on their financial resources. The Court must consider the apportionment of financial resources according to their respective abilities to contribute to the performance of those obligations to avoid making orders that are beyond the means of any party ordered to pay.

[21.] In the case of **KAH v YH** 2018/FAM/div/00549 *Stewart, J.* posited what the Court may consider when the gender of the child is female at paras.44 and 45:

44. The court in determining what is in the paramount interest of the welfare of the child, must consider the wishes of each parent, the rights of the child, the means of each parent, and the needs of each child. I accept that because the child is a girl it may be presumed that she should be with her mother. This presumption was addressed by Dame Butler-Sloss in *Re S (A Minor) (Custody)* [1991] F.L.R. 390:-

There are dicta...to the effect that **it is likely that a young child, particularly perhaps a little girl, would be expected to be with her mother, but that is subject to the overriding factor that the welfare of the child is the paramount consideration. When there is a dispute between parents as to which parent should take the responsibility of the care of the child on a day-to-day basis, it is for the justices or for the judge to decide which of those parents would be the better parent for the child, who cannot have the best situation since they are (not?) together caring for her. I would just add that it is natural for young children to be with mothers but where it is in dispute, it is a consideration but not a presumption.**

45. Also in *Edwards v Edwards* [1990] 27 J.L.R. 374 Rowe P. stated:-

It would seem to be self-evident that a young female child should be reared by her mother if that can be accomplished without harm to the child.

[Emphasis added]

[22.] The Court having considered the evidence, the Report and having interviewed the children finds that the relationship between the Respondent and ICC is strained and combative. The Report indicates that the children expressed their preference to be with the Petitioner. The Department recommended that the children should be placed with the Respondent and the Petitioner be granted access.

[23.] The Court finds neither parent has been deemed unfit. However, the Court must consider the effect that the Respondent's actions towards the eldest child has adversely affected the parenting dynamics within the family unit. The Respondent did not deny the incidents but rather sought to rationalize why they occurred. The Court in considering all the circumstances of the case and prioritizing the best interest of the children finds that the Petitioner ought to be granted care and control of the children.

[24.] The law on the approach that the Court ought to employ with regard to adjustment of assets in matrimonial matters is well settled. In the case of **Miller v Miller; McFarlane v McFarlane** [2006] 1 FLR at page 1186 per the dicta of *Lord Nicholls of Birkenhead* at paras. 11 and 12 states:

[11] This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. **The parties share the roles of money-earner, home-maker and childcarer. Mutual dependence begets**

mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.

[12] **In most cases the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The court seeks to stretch modest finite resources so far as possible to meet the parties' needs. Especially where children are involved it may be necessary to augment the available assets by having recourse to the future earnings of the money-earner, by way of an order for periodical payments.**

[25.] The parties are of modest means, the Petitioner earning almost twice as much as the Respondent. It is not disputed that the matrimonial home is in the joint names of the parties or that it is serviced from the Petitioner's salary. The parties have been married to over a decade and it is also apparent that the Respondent has made contributions to the family by the paying of household related expenses and performing the homemaker and childcarer. There is no evidence that either party suffers from any disabilities. The Court having considered the evidence of the parties finds that there is no compelling reason to depart from the yardstick of fairness in this case.

Disposition

[26.] The Court hereby orders:

- (1) The Petitioner and the Respondent are granted Joint custody of the children with care and control to the Petitioner and liberal access to the Respondent;
- (2) The Respondent to have staying access to the children on alternating weekends from Fridays afternoon to Sundays;
- (3) The Respondent shall have staying access to the children for one half of school breaks and national holidays;
- (4) The Petitioner and the Respondent shall share equally the children's school uniforms, school books and school supplies;
- (5) The Petitioner and the Respondent shall share equally the children's extra-curricular activities which have been mutually agreed;
- (6) The Petitioner and the Respondent shall share equally medical, dental and optical expenses of the children;
- (7) The Petitioner and the Respondent shall complete the co-parenting classes with the Department of Social Services;
- (8) The Petitioner, Respondent and the children are to attend family counselling with the Department of Social Services;
- (9) The costs of vacation and related travel expenses are to be borne by the party accompanying the children;

- (10) The matrimonial home to be appraised and the Petitioner shall purchase the Respondent's 50% interest therein within 60 days and in the event he unable to do so that the matrimonial home be sold and the proceeds, less the balance outstanding on the mortgage and related expenses, be divided equally between the parties;
- (11) Each party has liberty to apply.

[27.] The Court hereby declares that it is satisfied that the only children who are or may be children of the family to whom Section 73(i)(b)(i) of the MCA applies are ICC born 21 May 2009 and IEC born 23 October 2014 and that arrangements for their welfare have been made and are the best that can be devised in the circumstances.

Dated the 26 day of January 2026.

[Original signed and sealed]

Constance Delancy
Justice