

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**2020/fam/div/00635**

**B E T W E E N**

**K.A.S**

**Petitioner**

**AND**

**T.R.S**

**Respondent**

**AND**

**I.S.**

**Woman-Named**

**Before: The Honourable Justice C.V. Hope Strachan**

**Appearances: Cathleen Johnson-Hassan for the Petitioner,  
Marylee Braynen-Symonette for the Respondent**

**Hearing date: 1<sup>st</sup> April 2025, 29<sup>th</sup> April 2025**

*Family law-maintenance; custody, access with conditions, maintenance, failure to make full and frank disclosure, considerations for making maintenance order, whether tertiary tuition should be paid for where child is juris, future educational or training plans.*

## RULING

### Background

[1.] The Petitioner (Husband) and Respondent (Wife) were married in March 2015 and separated after nearly four years. A Joint Decree Nisi was granted in March 2023 due to the husband's adultery and the wife's desertion. The current application concerns arrangements for their daughter, ATS, who is almost nine (9) years old and lives with her mother. ATS attends a private school and enjoys a comfortable lifestyle. The wife agrees to the husband having staying access to ATS, provided he does not leave her with others in his absence. The court must decide whether to impose this condition on the husband's access and what financial support should be provided for ATS.

[2.] On 19 March 2019, the Magistrates Court ordered the husband to pay the wife \$250 bi-weekly for ATS's maintenance, plus half of all educational expenses (including tuition, books, uniforms, shoes, and supplies). Both parents must equally share all medical, dental, and optical expenses for ATS not covered by the husband's insurance.

[3.] The husband precipitated the hearing of the ancillary matters when he filed a Notice of Intention to Proceed with Application for Ancillary Relief supported by his Affidavit of Means filed on the same date. He sought the following reliefs;

- i. Joint custody of the minor child; care and control to the wife; liberal access to the him; staying access with the minor child on alternate weekends (Friday after School to 6 pm Sunday).
- ii. That he pays the sum of **Four Hundred Dollars (\$400.00)** per month to the wife for the maintenance of ATS by way of direct deposit to the wife's account; that he and the wife share equally educational expenses, payment for schoolbooks and supplies, and uniforms. All payments to extend to ATS attaining the age of Eighteen (18) years.
- iii. That the wife shares equally with him all medical expenses not covered by the Insurance policy, which he will maintain
- iv. That the husband and wife share all dental and optical expenses for ATS not covered by medical Insurance.
- v. That each party will be responsible for the co-pay when the child is taken to the doctor
- vi. That all medical expenses will be agreed upon between the parties
- vii. That major medical decisions be agreed upon

- viii. That in the case of an emergency, there is notification provided by each party
- ix. That both parties be allowed to travel with the minor child within or outside of The Bahamas
- x. That in the event of travel, both parties be facilitated with a travel itinerary and other pertinent details, at least two weeks in advance of travel
- xi. That the wife provides the husband with the passport and other travel documents for the said child at least one week in advance of travel
- xii. That on return from travel, the passport and other travel documents be returned to the wife.
- xiii. That each party shall cooperate with the other in respect of the renewal of government and other documents as required for the minor.
- xiv. That parties share equally, all school and public holidays, inclusive of but not limited to Christmas, Easter, half-term breaks, and summer, equally or alternatively.
- xv. That parties share their legal costs of this action

[4.] The wife, in her response to the husband's prayer, indicated her agreement to an Order for Joint Custody with her having care and control of ATS and the husband having liberal access, Fridays after school to Sundays. The fine distinction being every weekend is opposed to the husband's alternate weekends.

The Respondent (wife) in her Affidavit of Means filed 17<sup>th</sup> July, 2024, also sought;

- i. Staying access for half of the school holidays.
- ii. Husband to indicate his unavailability to provide staying access in advance, with possible rescheduling to be confirmed for equal time in the future.
- iii. The husband to pay to the wife **One Thousand Five Hundred Dollars (\$1500.00)** maintenance for the minor child.
- iv. The wife to contribute Seventy Percent (70%) of the tuition by virtue of her employment with the Catholic Board of Education, the Husband to contribute Thirty Percent (30%) of the tuition. But, if the wife becomes unemployed with the Catholic Education Board, becomes disentitled to remuneration, or the child ceases to attend the school. The educational tuition is to be shared equally between the husband and wife.

- v. The husband and wife share equally all tertiary level educational expenses for ATS until she attains the age of twenty-three (23) years or up to a Bachelor's degree.
- vi. The husband be solely responsible for all medical, dental, and optical expenses for the minor child until she attains age 18 or completes tertiary education up to a Bachelor's degree.
- vii. That the court grants a declaration pursuant to s.73 (1)(b)(i) of the Matrimonial Causes Act (MCA).

[5.] The parties agreed to joint custody, with the wife having care and control of ATS and the husband having reasonable access. The court approved this arrangement as being in ATS's best interests.

## ISSUES

[6.] In light of the foregoing, the issues to be decided in this matter are fairly narrow and are as follows:

- 1) Whether the conditions proposed by the Wife for the husband's staying access are in the best interest of ATS.
- 2) What financial provisions should be made for the maintenance of ATS?

**THE LAW** – The statutory provisions referenced herein are the Matrimonial Causes Act (MCA) s. 25; s. 27(1); s. 27(2); s. 33; s. 74 and the Child Protection Act s. 3 – although not necessarily in that order.

[7.] The Statutory Provisions empowering the court to make orders with respect to the custody and education of ATS are:

### **Section 74 (1) MCA –**

The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen-

- (a) In any proceedings for divorce, nullity of marriage or judicial separation, before or on granting a decree or at any time thereafter (whether, in the case of a decree of divorce or nullity of marriage, before or after the decree is made absolute);

[8.] When a court is given the power to make any order it "thinks fit," it must exercise this discretion judicially, not arbitrarily. Counsel for the wife referred the court to **Backford v Backford** (1992) BHS J. No 106 as authority for this principle.

*“40. The fact that sub-section 73 (1) empowers the court to make such an order as “it thinks fit” simply means, in my view, that the court has a discretion and that discretion must be judicially and administratively exercised for the benefit of the children concerned.”*

[9.] A decision must follow any relevant guidelines, with the primary consideration being ATS’s welfare. The Child Protection Act requires the court to prioritize the child’s best interests in such *matters*.

*“3. (1) Whenever a determination has to be made with respect to – (a) the upbringing of a child; or (b) the administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the paramount consideration. (2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child. (3) In determining any question relating to circumstances set out in paragraphs (a) and (b) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding; (b) the child’s physical, emotional and educational needs; (c) the likely effects of any changes in the child’s circumstances; (d) the child’s age, sex, background and any other circumstances relevant in the matter; (e) any harm that the child has suffered or is at the risk of suffering; (f) where relevant, the capacity of the child’s parents, guardians or other persons involved in the care of the child in meeting his or her needs.”*

**The child’s welfare shall be the paramount consideration.**

[10.] *Lord McDermott in J v C [1969]* 1 All ER 788 at pages 820 -821 in explaining the meaning of those words said, “it is not to be treated as the top in a list of items relevant to the matter in question. I think they connote a process whereby, when all the relevant facts, relationships, claims, and wishes of parents, risks, choices, and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child’s welfare as that term has now been understood. That is the first consideration. It is of first importance and the paramount consideration because it rules on or determines the course to be followed....”

[11.] The wife’s proposed conditions on the husband’s access could be seen as interfering with his parental rights. In **Re Plomley, Vilder v Collyer** (1882), *Cotton LJ* stated that courts should only restrict a father’s rights if his conduct shows he is extremely unfit to exercise parental authority.

[12.] Given **Re Plomley** and the absence of any claim that the father is unfit, there is little basis for the wife’s proposed conditions. However, considering all relevant factors as outlined in **J v C**, the court must ultimately choose the course that best serves ATS’s welfare.

[13.] The wife’s proposed conditions are based on ATS’s young age and dependence, and concerns about her sleeping arrangements at the husband’s home, where ATS sleeps on a blow-up bed in the living room while adults occupy the bedrooms. The wife worries that ATS is left vulnerable if alone in the living room, though the husband claims he sleeps there with her. The wife does not object to overnight visits but wants ATS returned to her if the husband is unavailable,

to avoid ATS being left with others. She suggests this condition remain until ATS turns Twelve (12), arguing it protects ATS without prejudicing the husband's access rights.

[14.] There is no evidence that ATS has formed any relationship with the husband's paramour or her daughter, who also live in the house where ATS stays. This is a relevant factor for the court to consider, in line with the principles from *J v C*, when deciding whether to impose the wife's proposed conditions on the husband's access. It is a legitimate concern.

[15.] The court finds that prioritizing ATS's welfare and applying all of the *J v C* considerations make the wife's proposed conditions reasonable. The court orders that, as far as possible, the husband must notify in advance if he will be unavailable during his access time, and those visits should be rescheduled or deferred. This condition will apply until ATS turns Twelve (12).

[16.] The court now addresses financial provision for ATS. It has the authority to order financial support for a child of the family, which may include regular payments or a lump sum, to balance the financial circumstances between the parties.

**Matrimonial Causes Act (MCA) S. 25.1** “The financial provision orders for the purposes of this Act are the orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 27 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation under section 31 (6) on proof of neglect by one party to a marriage to provide, or to make a prior contribution towards reasonable maintenance for the other or a child of the family, that is to say- (a) any order of periodical payments in favour of a party to a marriage under section 27 (1)(a) or 31 (6)(a) or in favour of a child of the family under section 27 (1)(d), (2) or (4) or 31 (6)(d);

**S 27. (1) MCA** - 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 either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order; (b) an order that either party to the marriage shall secure to the other to the satisfaction of the court such periodical payments, for such term, as may be so specified; (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified; (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;

subject, however, in the case of an order under paragraph (d), (e), or (f), to the restrictions imposed by section 33(1) and (3) on the making of a financial provision order in favour of children who have attained the age of eighteen.

[17.] The wife requests that the husband make regular payments for ATS's benefit, continuing until ATS completes her first degree at university. This is permitted under the Matrimonial Causes Act (MCA). [Emphasis Mine]

**S. 33.** (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. [Emphasis Mine]

**S. 33** (2) The term to be specified in a periodical payments or secured periodical payments order in favour of a child may begin with the date of the making of an application for the order in question, but shall not, in any event, subject to subsection (3), extend beyond the date of the child's eighteenth birthday.

**S. 33** (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.

[18.] Financial provision orders generally end when a child turns eighteen (18), unless the child is already enrolled or is expected to enroll in further education. Since ATS is currently eight (8) years old, university is at least ten (10) years away.

[19.] Both parties agree that maintenance for ATS should be paid monthly, but they disagree on the amount. The court has discretion to decide the amount, considering various factors listed in section **29(1)** of the Matrimonial Causes Act (MCA).

*“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 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 of those parties had properly discharged his or her financial obligations and responsibilities towards him.”*

[20.] There is no evidence that either parent has a physical or mental disability as portended by section 29(1)(c) MCA. The wife’s medical report that she suffers from esophagitis was devoid of explanation of the condition, its effects, or any type of prognosis. I also did not find the contributions in section 29(1)(f) central to this case. The most relevant factors are those in sections 29(1)(a), (b), (c), (d), and (g), which all influence the court’s decision to varying degrees.

### **THE AGE OF THE PARTIES**

[21.] The age of the parties affects both the amount and duration of maintenance. The wife seeks payments until ATS completes a first degree or turns twenty-three (23), whichever is later. The husband, now fifty-five (55), wants payments to end when ATS turns eighteen (18), as he expects to be retired by then. The court has the power to extend payments beyond age Eighteen 18 if ATS is or is expected to be in tertiary education, as provided by section 27(2) of the Matrimonial Causes Act which are set out in detail hereinafter.

In **G v G** (Periodical Payments) [1997] 2 WLR 614 -(2) Under s 23(1) of the 1973 Act the court had power to make an order for periodical payments to a child and to a parent for the benefit of the child, since the section provided that the court could make 'any one or more' of the orders specified, and those words were wide enough to mean not only the orders provided for in each paragraph, but any one or more orders within a paragraph. [Emphasis Mine]

[22.] The court has discretion to decide on maintenance, aiming to act fairly and in ATS’s best interests. This involves considering ATS’s needs, the family’s expectations for her education, and both current and future financial circumstances. The goal is to ensure the decision is fair, realistic, and responsive to the actual situation of the parties and the child. Courts have required continued payments in suitable cases.

[23.] However, the courts have expressed reluctance to make orders in a number of cases;

In **Brown v Brown** [2004] D&M No. 416 of 1991, *Sir Burton Hall CJ* opined and held: -

*“that the expense of tertiary education, which can prove unpredictable, cannot be legally fixed on a parent according to the arbitrary choice of the other parent or child who is of full age unless there is the clearest evidence that the parent against whom an order is sought is in a position to do so and it is right for the court to so order.*

He further stated:

*“However, while the court has jurisdiction to make the award prayed for, I am not persuaded that the court should, in this case, do so. Without gainsaying the inestimable value of a tertiary education which all parents having the means to do so should – morally – afford their children, the expense of such education, which can prove unpredictable, cannot be legally fixed on a parent according to the arbitrary choice of the other parent or a child who is of full age unless there is the clearest evidence that the parent against whom an order is sought is in a position to do so and it is right for the court to so order..... I am of the view that it would be unfair to the respondent to legally require him to do more. It is a matter for him, according to his conscience, to decide the extent to which he will further assist E, but I am unable to order him to do so merely because E and the petitioner so desire.”*

*C J Hall* was in consistent in the application of the principle when in **K v O** 2008 3 BHJ he stated:

*“37. The court cannot compel a parent to contribute to 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 of the other priorities following the breakdown of the marriage...”*

[24.] In cases like this, extenuating circumstances—such as the fact that tertiary education is at least ten years away for ATS—may weigh against making a maintenance order that extends beyond age eighteen. The court may consider such future educational needs too remote at this stage.

In **NI v AD** [2025] EWHC 2997 (fam) – a period of Ten (10) years was considered too far away. The court considered the parties’ likely future resources and needs, including the impact of retirement and the child’s likely educational path too remote. *“The matter should be revisited closer to the time the child approaches university level, and relevant factors are more ascertainable. .... Of course, there are exceptional circumstances, like where there is certainty that the child will attend university or where there is money available to assign to that purpose.”*

[25.] The court notes the husband’s age is relevant, but there is also no evidence of any joint plan for ATS’s tertiary education. The husband opposes extending maintenance beyond age Eighteen (18), and while he claims he has supported another child’s university education, there is no cogent evidence of that and certainly there is insufficient financial information to determine if similar support is feasible for ATS. The court finds that planning for ATS’s tertiary education is too remote at this time and should be reconsidered closer to when it becomes relevant as in **NI v AD** (supra)

## **THE INCOME OF THE PARTIES**

[26.] To provide the court with financial details, the wife filed an Affidavit of Means on 17 July 2024, and the husband responded on 29 August 2024. Both were cross-examined at trial. These affidavits address s.29(1)(a) regarding income and financial resources. The husband works as a

Supervisor at Cable Bahamas Limited, earning **Four Thousand Two Hundred Eighty-four Dollars and Sixteen Cents (\$4,284.16)** per month, with monthly expenses of **Five Thousand Nine Hundred and Sixty-two Dollars and Thirteen Cents (\$5,962.13)**.

The husband's Affidavit of Means notes the following expenses:

<b>Husband's Expenses</b>	
Monthly	Amount
Rent	1189.00
Credit Card Payments	350.00
Telephone:	
1) Home	15.00
Cellular (pre-paid)	30.00
Groceries, Household & Lunch	800.00
Insurance:	
Life	133.70
Family Medical (K & ATS)	589.48
Basic Life/AD& D/Disability/Dependent Life	28.10
Medical (outside of insurance) (KK, L & ATS)	334.00
Pension	214.70
National Insurance	125.04
ATS School Tuition (\$750.00 per year)	62.50
ATS Summer School Fees (\$200.00 per year)	17.00
L Maintenance	200.00
ATS Maintenance	500.00
ATS Back -to-School Expenses (\$200/year)	17.00
Car:	
Gasoline	300.00
Insurance & Driver's License (688.75 per year)	57.40
Licensing & Inspection (197.50 per year)	16.46
Propane Gas (\$400/year)	33.00
Home Security System	30.00
Diesel Generator Maintenance/Fuel (Twice per year)	100.00
P.O. Box Rental	3.00
Utilities:	
BPL	320.75
Water & Sewerage	46.00
Barber & Grooming	140.00

Medication	50.00
Miscellaneous (e.g., Pet/Car/Yard Maintenance)	260.00
Total	5962.13
Husband's Monthly Income	\$4,294,16

[27.] The husband claims **Five Hundred Ninety-six Dollars and Fifty Cents (\$596.50)** in expenses for ATS and includes her in a **Nine Hundred Fifty-One Dollars and Fifty-eight Cents (\$951.58)** insurance payment, but does not specify her share. The wife disputes the accuracy of his financial disclosure, accusing him of not providing full and frank information. Full and frank disclosure is essential in such cases, as established in **Livesey (formerly Jenkins) v Jenkins** [1985] 1 All ER 106, where the *House of Lords* held that both parties must fully disclose all material facts for the court to properly exercise its discretion in financial matters. An order may only be set aside if a lack of disclosure led to a substantially different outcome.

The Act and sections referenced by the Law Lords accord with our s. 27 (1) (a) – (b) MCA.

[28.] The wife claims the husband failed to fully disclose his income, both in the 2019 Magistrates Court proceedings and in the current case. She alleges he did not reveal a part-time job at his parents' bakery and reported lower income and higher expenses. Although he now admits he previously worked at the bakery, he maintains he no longer does. The wife argues this pattern shows a lack of full and frank disclosure regarding his financial situation.

[29.] The wife highlighted inconsistencies in the husband's statements about paying **One Thousand One Hundred Eighty- Nine Dollars (\$1,189)** monthly rent for his residence. Although he claims to rent the property from Sheko Enterprises Limited, cross-examination revealed he has lived there for 18–20 years, including during the marriage, and was believed to be the owner. Sheko Enterprises is actually his mother's company. The court prefers the wife's evidence and does not accept that the husband pays rent to anyone.

[30.] The husband only disclosed during cross-examination that he pays all household bills except food in the home he shares with his paramour, her adult daughter, and his own adult daughter. He did not clarify whether these expenses are shared. The wife's counsel argued, with merit, that the husband appears willing to support these adults but resists covering expenses for their eight-year-old child, ATS. This is a relevant factor for the court's decision.

[31.] It is established law that failing to provide full and frank disclosure can result in a court order that would have been different if all facts were known. Such failure allows the court to draw

its own, potentially less favorable, inferences. The wife’s counsel cited **Payne v Payne** (1968) 1 All E.R. 1113, where the Court of Appeal confirmed this principle.

.... Nor do I think that he was justified in criticizing the registrar for “speculating”, as the judge described it, on other possible sources of income which the husband might have. I think that it is probably wrong to say that the learned registrar did “speculate” about other possible sources of income. The truth of the matter is (and it is abundantly justified) that he was not satisfied that he had had a full and frank disclosure from the husband about what his resources were. As we now know, it is quite plain that he had not. In such circumstances, it is well established that the court is entitled to draw inferences adverse to a husband who has not made a proper disclosure of his available resources. That was held by Sachs J in **J v J**, a decision which was subsequently upheld, so far as that point at any rate was concerned, by this court ([1955] 2 All ER 617; [1955] P at p 236). It was also held by *Lloyd-Jones J* in **\*Ette v Ette**, where it was again decided that it was proper to draw inferences adverse to the husband from the fact of his failure to make a proper disclosure. I think that that is right. \* (1965)1 All E.R 341 [Emphasis Mine]

[32.] The wife is an elementary school teacher earning a gross salary of \$3,308.33 per month. She also receives Two Thousand Dollars (\$2,000) monthly in rent from a house she owns, but this is used entirely (and more) to pay a Two Thousand Three Hundred and Ninety Dollars and Fifty-One Cents (\$2,390.51) mortgage. She mentioned private tutoring but did not provide income details. Despite criticizing the husband’s lack of financial disclosure, the court finds the wife’s information about her own means and ATS’s needs is also unclear.

[33.] The wife in her affidavit states, “I have the following monthly financial obligations for the minor child and me: -

WIFE'S EXPENSES				
	Monthly	MYSELF	ATS	TOTAL
1	Mortgage	2390.16		2390.16
2	House Insurance (Westdale)	433.13		433.13
3	Landscaping/Gardiner (Westdale)	150.00		150.00
4	Electricity (Parents' Home)	300.00	100.00	400.00
5	Water & Sewerage (Parents Home)	25.00	25.00	50.00
6	Cable, phone & Internet bundle (PH)	100.00	35.00	135.00
7	Aliv	90.00		90.00
8	House Maintenance (West & PH)	150.00		150.00
9	Entertainment	50.00	100.00	150.00
10	Car Insurance	50.42		50.42
11	Car Licensing & Inspection	16.50		16.50
12	Gas (car)	200.00	100.00	300.00
13	Groceries	200.00	600.00	800.00

14	Lunch		100.00	100.00
15	Propane Gas	20.00	20.00	40.00
16	Clothing and Shoes	75.00	150.00	225.00
17	Medical Insurance	259.36		259.36
18	Extracurricular Activities		133.00	133.00
19	School Supplies		400.00	400.00
20	School Uniforms, brownies, PE Kit		242.44	242.44
21	School Projects		200.00	200.00
22	Summer School and Field Trips		300.00	300.00
23	Vacation (Airfare, room, food, & activities)	200.00	100.00	300.00
24	Personal grooming (hair care, etc.)	125.00	120.00	245.00
25	Alarm/postal	50.00		50.00
26	National Insurance	125.07		125.07
27	Pension Fund	160.42		160.42
28	Real Property Tax (Westdale)	252.51		252.51
29	Laundry and Detergent	80.00	150.00	230.00
30				0.00
31	Educational/Toy Items		40.00	40.00
32	Miscellaneous, vitamins, hair accessories, bed	100.00	50.00	150.00
<b>TOTAL</b>		<b>5602.57</b>	<b>2965.44</b>	<b>8568.01</b>
Gross Salary		3208.33		
Net Salary (after mortgage)		2653.47		

[34.] The wife corrected her expense chart, reducing the total by **One Thousand One Hundred Ninety –two Dollars (\$1,192)** after realizing some items were annual, not monthly. She estimates ATS’s monthly expenses (excluding tuition, school costs, and medical/dental/optical expenses) at just under **Two Thousand Dollars (\$2,000)**, but provided no receipts or invoices to support these figures. The court accepts the bank printout as proof of her mortgage debt, the school invoice showing a Seventy Percent (70%) tuition discount, and a doctor’s certificate confirming her medical condition. However, the court does not consider her bank records as reliable evidence of expenses for ATS or herself, since there was no explanation for the transactions.

#### **FINANCIAL RESOURCES OF ATS**

[35.] The husband’s counsel argued that the wife described ATS’s expenses as “monthly financial needs and obligations” rather than actual spending, possibly to sway the court. The court agrees that the lack of receipts, which could have been provided, supports this argument.

[36.] The wife's stable income from her teaching job is **Three Thousand Two Hundred Eight Dollars and Thirty-three Cents (\$3,208.33)** gross, or **Two Thousand Six Hundred Fifty-three Dollars and Forty-seven Cents (\$2,653.47)** net after deductions, as shown in her pay statement. The **Two Thousand Dollars (\$2,000)** monthly rent from her property is fully used for the **Two Thousand Three Hundred Ninety Dollars and Fifty-one Cents (\$2,390.51)** mortgage, leaving nothing for maintenance or household expenses. Her claimed monthly expenses total **Seven Thousand Five Hundred Ninety-three Dollars and Ninety-four Cents (\$7,593.94)**, which far exceeds her income. The court finds it unlikely that her family provides over **Four Thousand Dollars (\$4,000)** monthly in financial assistance, as this is not reflected in her affidavit. Therefore, the court does not accept the wife's evidence as a full and frank disclosure either.

#### **PROPERTY OWNED BY THE PARTIES**

[37.] Both parties own homes and have stable, long-term employment, with no concerns about job security. The wife's plan to move back into her house would mean losing rental income, requiring her to cover the mortgage from her salary and occasional tutoring. The husband earns about **One Thousand Dollars (\$1,000)** more per month than the wife and, given his field, has greater earning capacity. The court finds the husband's inconsistent statements about his bakery employment were intended to mislead and believes he still has undisclosed part-time income. Therefore, the court concludes the husband's income and financial resources are significantly greater than he claims and exceed those of the wife, both now and in the future.

#### **FINANCIAL NEEDS AND OBLIGATIONS**

[38.] Both parties own homes and have steady jobs, with the husband earning about **One Thousand Dollars (\$1,000)** more per month than the wife and having greater earning capacity. ATS will live with the wife, either at her mother's or her own home, which would require the wife to cover a **Two Thousand Three Hundred Ninety Dollars (\$2,390)** mortgage if she moves back. The wife's stated monthly expenses for herself and ATS are **Seven Thousand Five Hundred Ninety-four Dollars (\$7,594)**, while the husband claims **Five Thousand Nine Hundred and Sixty-two Dollars and Thirteen Cents (\$5,962.13)**, though the court does not accept his claimed **One Thousand One Hundred Eighty-nine Dollars (\$1,189)** rent payment. The husband also has three adults living with him who could help with expenses. Both parents must support ATS. The husband mentioned supporting his Twenty-three (23) year-old daughter's tertiary education, but there is no evidence of actual payments or court orders for this. The court views his statement as gratuitous and not a significant financial obligation.

#### **THE STANDARD OF LIVING ENJOYED BY THE PARTIES AND ATS**

[39.] The wife includes **Two Thousand Dollars (\$2,000)** per month as ATS's expenses and wants the husband to contribute **One Thousand Five Hundred Dollars (\$1,500)** of that amount. This is intended to maintain ATS's middle-class standard of living as before the marriage

breakdown. Maintaining the child's standard of living is supported by section 29(1)(c) and section 29(2) of the Matrimonial Causes Act.

*“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 Mine]*

[40.] Before the marriage breakdown, ATS enjoyed a middle-class lifestyle, living in a three-bedroom home with her own room and attending private school with a Seventy Percent 70% tuition discount due to the wife's employment. After the separation, ATS moved with her mother to her grandmother's house, sharing a bedroom and bed with her mother, and living with extended family. ATS has always attended private school and participated in extra-curricular activities. Both parents' affidavits confirm ATS's standard of living, including expenses for school, medical care, clothing, and babysitting. The court's goal is to ensure ATS's financial needs, standard of living, and education are maintained despite the marriage breakdown, in line with relevant legal principles. See **T.V.N.D. nee B v K.A.D [2002]/fam/div/00038**.

#### **FINANCIAL RESOURCES OF ATS**

[41.] There is no indication that ATS has any income or financial resources of her own or any physical or mental disability.

[42.] The court finds the wife's claimed monthly expenses to be greatly overstated and unrealistic, especially attributing **Two Thousand Dollars (\$2,000)** per month to ATS (excluding tuition and medical costs) and a total of **Seven Thousand Six Hundred Two Dollars and Fifty-seven Cents (\$7,602.57)** in expenses from an income of **Three Thousand Two Hundred Eight Dollars (\$3,208)**. The court also finds the claimed grocery, laundry, and utility costs for ATS excessive and unsupported by evidence. The wife's explanation of additional family support is vague and not credible. Overall, her account of income and expenses lacks reliability.

[43.] The husband is also overextended, claiming **Five Thousand Nine Hundred Sixty-Two Dollars (\$5,962)** in monthly expenses against **Four Thousand Two Hundred Ninety-four Dollars and Sixty-one Cents (\$4,294.61)** in income, leaving a shortfall of **One Thousand Six**

**Hundred Sixty-seven Dollars and Thirty-nine Cents (\$1,667.39).** The court is not confident that either parent has been fully transparent about their actual monthly expenses or those attributed to ATS. As a result, it is difficult to accurately assess their true financial contributions under s.29(1)(f), though this has little impact on the court's decision in this case.

[44.] The court finds it difficult to fully trust the financial disclosures of both parties, suspecting that either undisclosed income exists or expenses have been exaggerated. The husband, in particular, has not provided full and frank disclosure about his part-time work at his parents' bakery or the financial contributions of the adults he lives with. The husband's lack of full and frank disclosure suggests he may be hiding income from the court, an inference supported by the cases **J v J and Ette v Ette** supra.

[45.] The wife's claimed expenses are not only unsupported by evidence but are also unrealistic given the parties' actual income and other necessary expenditures.

[46.] Since both parties have steady jobs and their stated incomes are not disputed, the court will base its decision on their combined monthly income of **Seven Thousand Five Hundred Two Dollars and Sixteen Cents (\$7,502.16)**. Given that ATS is eight years old, the court finds it reasonable that her needs should not exceed a quarter of the joint income, or about **One Thousand Nine Hundred Dollars (\$1,900)** per month, to be shared equally by both parents. The court does not accept the husband's offer of **Four Hundred Dollars (\$400)** for maintenance as sufficient. School tuition, fees, and medical, dental, and optical expenses will continue to be shared equally. This arrangement ensures ATS's day-to-day needs are met and maintains her standard of living in line with her parents' financial capacity, serving her best interests.

[47.] The court accepts that the wife's employment-related discount on ATS's school fees is a major contribution to the child's education. But her contention that the husband should pay the totality of the undiscounted portion is rejected. I am of the view that the discount is conferred by the Catholic Board of Education and is not controlled by any other person or entity. The invoice for the fees reflects what the board has determined to charge for ATS to attend their institution. The discount should be to the benefit of both parties. Moreover, if the Seventy Percent (70%) discount is lost, both parents must share tuition equally for any school ATS attends, with fees not exceeding the current undiscounted rate at the Catholic Board of Education unless both agree otherwise.

[48.] Based on the relevant authorities, **Brown, K v O** and **NI v AD** supra, the court orders that maintenance and school tuition payments for ATS will continue until she turns Eighteen (18). Both parties have the liberty to apply for further orders if circumstances change.

**CONCLUSION:**

[49.] Having regard to the circumstances and facts of this case, the law, and the authorities, and in the judicial exercise of the courts' discretion, it is ordered that:

1. The Magistrates Court Order dated 19<sup>th</sup> March 2019 is hereby discontinued save for any arrears which might be due and owing by the husband thereunder.
2. The husband and the wife do have joint custody of the minor child of the marriage, namely ATS (f), born on the 11<sup>th</sup> day of April, A.D. 2017, with care and control to the wife and liberal staying access to the husband as follows:
  - i. On alternate weekends from Friday after school to Sunday evenings at 6 p.m., provided the Husband is personally available to exercise his right of access commencing within one week of the date hereof.
  - ii. One half of all school holidays, based on the Husband's availability.
  - iii. The wife will spend Mother's Day with the child, while the husband will spend Father's Day with the child.
  - iv. The husband and wife will alternate Christmas, New Year's, school holiday breaks, and other holidays.
  - v. The husband will share summers with the wife, beginning July 1<sup>st</sup> to 31<sup>st</sup> of each year. The wife will have August 1<sup>st</sup> to 31<sup>st</sup> of each year. These periods will be uninterrupted by other access, unless parties agree.
  - vi. Parties will alternate birthdays, with the husband having the minor in 2026.
  - vii. All of the husband's access periods shall be subject to the condition that until the minor child attains the age of Twelve (12) whereby, she can be responsible for her own hygiene, if during any of the Husband's staying access, he is unavailable or out of the jurisdiction the Husband shall so inform the Wife and arrange for such staying access to be deferred to an equivalent period when the Husband is available.
3. The husband do pay to the wife a monthly contribution of **Nine Hundred and Fifty Dollars (\$950.00)** towards the maintenance for the minor child, such payments to commence on the First day of the month of March 2026 and continuing thereafter on the First day of each succeeding month until the minor child attains the age of Eighteen (18) years. The contribution shall be paid into a bank account designated by the wife. The monthly sum of **Nine Hundred and Fifty Dollars (\$950.00)**, once paid to the wife, shall be distributed by her in the manner hereinafter provided:
4. The husband and the wife shall share equally the school tuition, and all school related expenses, including but not limited to books, tablets, school uniforms, school shoes, seat fees, P. E. Kits, and project expenses for the said child until she attains the age of Eighteen (18) years.

5. The husband shall continue to keep the minor child under his health insurance plan as long as he is employed with Cable Bahamas or is otherwise insured. All medical expenses not covered by insurance, deductibles, and co-pays are to be shared equally between the parties. Notice of any medical-related visits, treatments, and confinements shall be shared between the parties within a reasonable time. Emergencies shall be shared, subject to reasonableness as far as possible.
6. The husband and wife shall share equally all dental and optical expenses not covered by Insurance.
7. Both parties are at liberty to travel with the child within or outside The Bahamas. The parent travelling with the said child shall provide to the other parent the details of such travel by producing the complete travel itinerary with the address of their accommodation and contact information at least two (2) weeks in advance of travel. That the child's passport and any other travel documents for the said child shall be provided at least one week in advance of the said travel. Each parent shall co-operate with the other in respect of all agreed forms and parts of passport renewal where necessary. Each party shall be responsible for all expenses associated with travel.
8. The parties are at liberty to apply.
9. Each party shall bear their own costs of the Proceedings.
10. A declaration is granted pursuant to s.73 (1) (b) (I) of the Matrimonial Causes Act, that the arrangements are the best that can be devised in the circumstances.

Dated the            day of March, A.D. 2026

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C.V. Hope Strachan Justice