

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2023/FAM/div/00165

B E T W E E N

D.K.M.

Petitioner

AND

R.R.M (nee F)

Respondent

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

Appearances: Lilith Smith-Mackey for the Petitioner

Nadia Hope Adderley for the Respondent

Hearing date: 1st September 2025; 29th January, 2026

Ancillary matters, property adjustment, agreement for sharing, whether compelling reason to depart from equality

RULING

C.V.H. STRACHAN, J

Background Facts

[1.] The Petitioner, DKM (“the husband”) and the Respondent, RRM (Nee F) (“the wife”) were married on 25th June 2016. The marriage was dissolved on 6th October, 2023, when the husband obtained a Decree Nisi because of the wife’s cruelty towards him. The marriage lasted

only seven years, which is considered a short period of time. During this time, the couple had a child, a female DRNM born on 6th January, 2021. She is now five (5) years old. Arrangements for DRNM's welfare have already been made through an agreement between the parties, which was assented to by this Court on 12th November, 2025. The Consent Order to that effect was filed on 4th February 2026.

[2.] The parties agree that the only issue to be decided between them is property adjustment. This is the only other matter addressed on the Notice of Intention to Proceed filed by the husband on 24th March 2024. He prays that he should pay to the wife her 50% interest in the matrimonial home, that she vacates the home thereafter, after ensuring that all of the utilities are at a zero balance. Failing to bring the balance to zero, he asks that the outstanding utilities be deducted from the wife's interest payment. Further, that the wife should vacate the matrimonial home 30 days after the receipt of her interest payout, and she has executed the necessary Deed of Release within 30 days of receipt of the interest payment and any other order the court deems fair and necessary under the circumstances.

[3.] In support of his Notice, the husband filed two (2) Affidavits on 24th March 2025 and 27th February, 27th February 2026. The wife, in answer to the averments in the husband's affidavit, filed two (2) Affidavits on 26th February 2026 and 11th March 2026.

[4.] The wife has also agreed that the husband can purchase her interest in the matrimonial home.

[5.] The matrimonial home is Lot No. 4, Block 17, Venice Bay. It was conveyed in the joint names of the parties on 13th July 2015. It was mortgaged to RBC Finco on 16th July 2015 for **One Hundred Eighty-four Thousand Two Hundred and Seventy-five Dollars (\$184,275.00)**, and as at the date of the husband's affidavit filed 27th February, 2026, the balance due on the mortgage was **Two Hundred Thirteen Thousand One Hundred Sixty Dollars (\$213,160.07.)** The monthly mortgage payment is **One Thousand Seven Hundred and Sixty Dollars (\$1,760.00)**, and the wife contributes **Six Hundred Dollars (\$600.00)** per month, with the husband paying the balance. The husband pays the Homeowners Association fees. The husband says that he has also been responsible for maintenance and associated expenses, which have been paid by him.

[6.] The husband also mentioned that he was responsible for completing the home and bringing it to occupation standard, which was only about **Eighty-seven Percent to Ninety Percent (87-90%)** completed before the marriage and for furnishings for the home. That he applied a balance on his credit card and a car loan, also towards completion and furnishing. He said he also paid for airline tickets, household appliances, labour costs, and painting of the home, all of which were necessary to make the property suitable for occupation. He paid for roof repair

solely to the extent of **Two Thousand Seven Hundred Thirty-three Dollars and Fifty Cents (\$2,733.50)**. He is responsible for all maintenance, upkeep, and basic cleaning in the home with no assistance from the wife. He pays for groceries as his wife has not lived up to her promise to purchase groceries. He repaired the air condition which the wife freely utilizes. He paid for the home to be exterminated and for monthly cleaning services, even for the wife's area of occupation, with no assistance from the wife. The husband continues that he pays the BPL light bill, notwithstanding having asked the wife to assist. He admits the wife pays the quarterly water bill in the sum of about **One Hundred and Twenty Dollars (\$120.00)**. He joins the other members of the HOA in paying for maintenance of the generator without any contribution from his wife. The same applies to the water heater. In total, the husband said he's spent **Forty-two Thousand Five Hundred and Five Dollars and Fifty Cents (\$42,505.50)** on the upkeep, repairs, and improvements to the home. The husband is of the view that the sum should be deducted from the wife's **Fifty Percent (50%)**.

[7.] The wife did not refute much of the husband's assertions, other than to say that she did purchase groceries, she paid half of the utilities, that she contributed the sum of **Two Thousand Five Hundred Dollars (\$2,500.00)** towards the purchase of the generator, and has assisted with the maintenance. She averred that while the husband purchased a refrigerator, stove, and sectional, she purchased a washer and dryer.

[8.] The wife's main contention is that the mortgage was refinanced in May 2019 in the sum of **Fifty-one Thousand Seven Hundred Forty-seven Dollars (\$51,747.00)** related to a debt and overdraft at RBC, which she says is personal to the husband. She wants this sum to be factored into any decision to be made.

[9.] By a recent Appraisal obtained by the parties jointly, the Matrimonial home is valued at **Three Hundred Thousand Dollars (\$300,000.00)**.

The Relevant Legislation

[10.] The legal principles to be considered are contained in s. 25, 27, and 29 of the Matrimonial Causes Act, Chapter 125. Statute Laws of the Bahamas.

[11.] To adjust the property rights of these parties, regard must be had to S. 25 MCA, which provides;

s. 25 (2) (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;

- s. 25 (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. **[Emphasis Mine]**

[12.] The husband indicated that he is ready, willing, and able to pay the wife for her interest forthwith, however once he has paid her, he asks that she transfer her interest within 30 days and vacate the home within the same 30-day period. This court has the power to direct any specified period in that regard under;

- s. 25 (6) Where an order is made under subsection (3), the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.

[13.] Both parties are seeking the court's intervention in determining the calculation of their respective interests; however, once that is achieved, the wife wants to be paid out for her interest in a lump sum.

- s. 27. (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), (b), - (c) an order that either party to the marriage shall pay to the other such lump sum or sums as may be so specified. **[Emphasis Mine]**

[14.] The Court is empowered to make the transfer of the wife's interest to the husband as desired by them both pursuant to;

- s. 28. (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. [**Emphasis Mine**]

[15.] The mandate to have regard to the circumstances of the marriage in determining the issues, though narrow, is outlined in s.29 MCA, which provides

s. 29. (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; 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.

[16.] The only dispute between the parties relates to the **Forty-two Thousand Five Hundred and Five Dollars (\$42,505.00)**, claimed by the husband for financial contributions made principally for retaining and maintaining the home, and **Fifty-one Thousand Seven Hundred and Forty-seven Dollars (\$51,747.00)** by the wife for what she calls the personal debts of the husband. A difference of **Nine Thousand Two Hundred and Forty-two Dollars (\$9,242.00)**. Those contributions fall within the s.29 (1)(f) consideration. I am of the view that their concentration on that consideration is appropriate, as a review of the evidence contained in the Affidavits does not indicate that any of the other s.29 considerations are remarkable for the determination. The court's mandate is to do what is fair between the parties; **A v B**, where *Sir Michel Barnett* confirmed the principle in **Charman v Charman**.

A v. B [2010] 2 BHS J No. 18 by Barnett C.J. — *Sir Michael Barnett*, Acting Justice as he then was, expressed it this way;

"The objective of the court is to be fair. In my judgment, the modern-day approach to a division of property in a marriage is that fairness is an equal sharing of property unless there is a compelling reason to depart from that equality. The law is perhaps best summarized in the judgment of the English Court of Appeal in Charman v Charman [2007] 1 FLR 1246." "The

yardstick of equality of division", first identified by Lord Nicholls in White at p. 605G, filled the vacuum which resulted from the abandonment in that decision of the criterion of "reasonable requirements". The origins of the yardstick lay in s.25 (2) of the Act, specifically in s.25 (2) (f), which refers to the parties' contributions: see the preceding argument of Lord Nicholls at p. 605D-E. The yardstick reflected a modern, non-discriminatory conclusion that the proper evaluation under s.25 (2) (f) of the parties' different contributions to the welfare of the family should generally lead to an equal division of their property unless there was a good reason for the division to be unequal. It also tallied with the overarching objective: a fair result....."

[17.] The parties have both focused on that slight difference in financial contributions to the home and the family to justify a share greater than the **Fifty Percent (50%)** that was mentioned by the husband as a base for the distribution. A distribution where one party is granted a larger interest in the matrimonial home would be a departure from that equality espoused in **A v B and Charman** supra. Both the husband and the wife are proceeding on the premise that the court must take away from one of them to give to the other based on the said financial contribution disparity. This is not the case. The approach was well articulated in **In Pinder nee Johnson v. Pinder** [2012] 1 *BHS J.* No. 74, Copy Citation, Bahamas Supreme Court, Family Division, 2007/FAM/div/580, *Hepburn, J.*

Financial provisions made on a divorce by one party to the other are not in the nature of munificence:

"9. ... In the search for a fair outcome, it is pertinent to have in mind that fairness generates obligations as well as rights. The financial provision made on divorce by one party for the other, still typically the wife, is not like largesse. It is not a case of 'taking away' from one party and 'giving' to the other property which 'belongs' to the former. The claimant is not a suppliant. Each party to a marriage is entitled to a fair share of the available property. The search is always for what the requirements of fairness are in the particular case." [Emphasis Mine.]

[18.] It is also important to mention that the consideration is based not only on the bills like the mortgage and maintenance of the home, paying for utilities, credit cards, and buying groceries. What is involved is the contributions that each of the parties makes to the welfare of the family. Another way of putting this, in my view, would be contributions made for the benefit of the family. I assert that means just about everything said and done by the couple during the course of the marriage for the home, themselves as a couple, and the children of the family. In this event, where a woman's main contributions were focused on being the child nurturer and homemaker, she is no less entitled to the distribution of the party's assets at the end of the marriage. There should never be any discrimination in this regard:

(See *Lord Nicholls, Miller and McFarlane* [2006] UKHL 24 at paragraph 9.)

The law has moved on since the days when a husband's superior earning capacity entitled him to the lion's share of matrimonial assets on the breakdown of the marriage. The Court of Appeal, Civil Division in England, as early as 2001, held that it is unacceptable to discriminate in the division of assets by placing a greater value on the contribution of the spouse who earns the income than that of the homemaker, who receives no income for the work she does in the home. The guiding principle on the division of matrimonial assets, or "the yardstick of equality," was expressed by *Lord Nicholls of Birkenhead* in **White v White** [2001] 1 All ER 1 at 8-9, [2001] 1 AC 596 at 605, as follows:

"But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles." [Emphasis Mine]

[19.] Notwithstanding the contradiction in the evidence between the parties as it relates to the generator, the utilities and purchase of groceries as alleged by the wife, and the credit card and the money spent to complete the matrimonial home as alleged by the husband, I am of the view that there is little difference in the parties' respective contributions to the family. In terms of the alleged monetary contributions, the difference between their focused calculations of the extra funds claimed is just **Nine Thousand Two Hundred Forty-two Dollars (\$9,242.00)**. This is a negligible amount when considering the intangible contributions, they each undoubtedly made to the welfare of the family. Moreover, the difference between the appraised value of the property, **Three Hundred Thousand Dollars (\$300,000.00)**, and the balance due and owing on the mortgage, **Two Hundred Thirteen Thousand One Hundred Sixty Dollars and Seventeen Cents (\$213,160.17)**, is just **Eighty-six Thousand Eight Hundred Thirty-nine Dollars and Eighty-three Cents (\$86,839.83)**. When this is divided equally between the parties, it works out to **Forty-three Thousand Four Hundred Nineteen Dollars and Ninety-one Cents (\$43,419.91)**. The husband offered the wife **Forty Thousand Dollars (\$40,000.00)** for her interest in the property, which he is desirous of keeping.

[20.] I do not consider that the present circumstances present a compelling reason to depart from the equal sharing principle in **Charman**. I am of the view that the **Forty Thousand Dollars (\$40,000.00)** offered by the husband is fair, particularly since the husband will bear the responsibility of paying the costs of the transfer of title from the wife to him.

CONCLUSION

[21.] The Court does not consider this an appropriate case to depart from equality.

[22.] The parties are each entitled to **Fifty Percent (50%)** of the interest in the matrimonial property situate at Lot No. 4, Block 17, Venice Bay.

[23.] The evaluation of the said home is **Three Hundred Thousand Dollars (\$300,000.00)**.

[24.] The wife shall pay the outstanding utility bill on the matrimonial home, as at of the date of this order.

DISPOSITION

1. The Husband shall pay to the wife the sum of **Forty Thousand Dollars (\$40,000)** or such as the equivalent of **Fifty (50%) per centum** of the net value of the matrimonial home, taking into consideration the balance due on the matrimonial home situate Lot No. 4, Block 17 Venice Bay as well as any other bank expenses, outstanding real property taxes, outstanding rates and assessments as at the date of the transfer within Ninety (90) days of the date hereof.
2. The wife shall transfer all her right title and interest to the husband, upon payment of the sum of **Forty Thousand Dollars (\$40,000)** or the equivalent of **Fifty (50%) per centum** of the net value of the Matrimonial home situate Lot No. 4, Block 17, Venice Bay as well as any other bank expenses, outstanding real property taxes, outstanding rates and assessments as at the date of the transfer within Ninety (90) days of the date hereof.
3. The wife shall pay any electricity bill outstanding up to the date of transfer, while the payment of the mortgage and other family bills shall be paid, as per the current arrangement, with the husband paying **One Thousand Seven Hundred Dollars (\$1700)**, and the wife **Six Hundred Dollars (\$600)**, monthly on the mortgage until the date of transfer.
4. If the wife fails to execute the necessary transfer documents, the Registrar of the Supreme Court is directed to execute the said documents.
5. The Husband shall bear the costs of the transfer.
6. The costs of these proceedings shall be shared equally between the parties.

Dated the 7 day of April A.D., 2026



The Honourable Justice C.V. Hope Strachan

