

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

FAMILY DIVISION

2020/FAM/Div./00430

B E T W E E N:

J.E.B

Petitioner

AND

N.E.B (nee I)

Respondent

Before: **The Hon. Madame Justice C. V. Hope Strachan**

Appearances: **BandeLe LaFleur, Counsel for the Petitioner**
Shantell Munroe and Tanisha Tynes-Cambridge,
Counsels for the Respondent

Hearing Dates: **31st March 2026, May 20th and 21st 2026,**

Matrimonial Causes Act; Short Marriage; custody care and control children; terms of access; maintenance for children; payment of private school fees; custody of young children, custody of adolescent male child; siblings in same household, loan given by one party to the other; matrimonial property, non-matrimonial property, whether there should be a departure from equality.

RULING

Introduction

- [1.] This ruling is to determine ancillary matters between the Petitioner JB (“the husband”) and the Respondent, NB (“the wife”) after what only could be described as a short marriage.

Background

- [2.] The parties were married in January, 2018. A Petition for divorce was filed on 15th September 2020. The couple have two children, JB, a male child born about Five (5) years before the marriage on 12th March 2013 and AB, a female child born on 21st July, 2019. Now age 13 years and 9 years respectively. The husband is employed as the Managing Director of Kanoo (a financial services company) and the wife is a medical doctor so employed.
- [3.] There is one property, Lot No. 21, Love Beach, Nassau Bahamas, purchased by the husband prior to the marriage. A divorce was granted to the parties on the basis of their cruelty to each other.
- [4.] An Interim Order was granted on 17th December 2020 with respect to the maintenance of the children upon an application by the wife. The court granted an interim order that the husband should pay the wife the sum of **Five Hundred Dollars (\$500.00)** each month or **Two Hundred and Fifty Dollars (\$250.00)** per child, per month. That order was filed on 22nd December 2020.
- [5.] The wife commenced an application for the husband’s committal to prison on 26th May 2021 for failure to adhere to that order. That application has not been pursued by the wife to conclusion.
- [6.] The application for ancillary relief was filed on 20th August 2024. Both parties filed a myriad of affidavits. The wife on 6th September 2024, 5th February 2025, 20th February 2025, 22nd May 2025 and 21st October 2025, 10th November 2025, 14th November 2025, 11th May 2026 and the husband on 5th February 2025, 30th April 2025 and 29th May 2026.
- [7.] Notwithstanding these many affidavits filed by the parties specifying the issues in dispute, the parties and their attorneys elected not to cross-examine on the Affidavits.

Submissions were provided by the respective counsels for the parties. The court also had ample opportunity to observe the demeanour of both parties individually and in particular to observe their interaction with each other and as it related to their attitudes and conduct regarding their parental roles and responsibilities. The tone was toxic.

[8.] These are the pertinent facts arising from the Husband's Evidence

As it relates to the children the Husband avers: -

- i. That it is in the best interest of the children for the parties to have joint custody of the children.
- ii. That the children may go days without seeing the wife because she is constantly busy and at work.
- iii. That the children are on the verge of suffering serious repercussions from the school because they are always late for school, have numerous absences and face challenges with grades.
- iv. The Husband opposes either party having sole custody, as the evidence demonstrates that it is essential for both parties to have access and be involved in the children's life. He suggests that the custody of the children should alternate on a Six (6) month basis between the parties.
- v. That sole custody is an exceptional remedy. Both parents have meaningful roles in the children's lives, and the children will benefit from the involvement of both parents.
- vi. That the wife has not demonstrated that the husband is unfit, has abused the children, exposed the children to violence, suffers from untreated conditions or is a danger to the welfare of the children.
- vii. That he earns a salary of Six thousand Two Hundred and Fifty Dollars (**\$6,250.00**) per month. His monthly obligations total Seven Thousand Nine Hundred and Ninety-five Thousand dollars and Seventy-five Cents (**\$7,995.00**). He attributes about One thousand Seven Hundred and Sixty Dollars (**\$1,760.00**) to the children.
- viii. That as a member of the Board of Nassau Flight Services he earns an honorarium of Seven Hundred Dollars (**\$700.00**) monthly but the position is at the will of the Government which can be withdrawn at any time.

- ix. That it is the position of the husband that the maintenance at its monthly amount of **Two Hundred Fifty Dollars (\$250.00)** per child or **Five Hundred Dollars (\$500.00)** per month be reduced due to several factors including shared custody.
- x. That prior to the filing of the Petition for divorce, the parties had not agreed to send the last child to private school. The parties had not lived together as man and wife since before the birth of the said child. That he cannot afford to send both children to private school where the wife has them enrolled.
- xi. The husband provided evidence of tardiness and absences from school while the children was in the wife's custody. Report cards reflecting challenges in a few subjects was also provided for the children.
- xii. He proposes that since the interim order was given, at the time, the last child was still breast feeding, hence the order to pay private tuition is not applicable to the last child.
- xiii. The Husband proposes that the maintenance ordered of **\$250.00** per month per child be discontinued as the parties both have shared custody. Each party has the children for 6 months, and that there be no maintenance, since the maintenance will be shared.
- xiv. That he admits that he borrowed the sum of Five thousand (**\$5,000.00**) from the wife.

[9.] As it relates to the issue of property adjustment the husband avers: -

- i. That the property lot #21 Love Estates in Nassau, Bahamas is not marital property and must not be divided as if it were. That in January 2017, the bidding process for the property at Lot #21 Love Estate was commenced. He was a single man. The conveyance was signed in November 2017 and mortgage obtained 6th December, 2017. That although the parties were married shortly thereafter in January 2018, the husband at the time of the conveyance of the property had no intention of being married.
- ii. That the wife contributed **Six Hundred Fifty Dollars (\$650.00)** per month towards household expenses only. That this money did not include mortgage payment, as rent was **Twelve Hundred Dollars (\$1200.00)**.

The Wife's Evidence

[10.] These are the pertinent facts arising from the Wife's evidence -

- i. That she is employed with the Public Hospital Authority as a Senior Registrar where she earns a salary of **Five Thousand Fifty-nine Dollars Thirty-six Cents (\$5,059.36)** per month. She is also employed at Oaktree Medical Center where she earns an average commission of Seventy percent (70%) commission for patients treated.
- ii. Her total monthly expenditure on family obligations is Seven thousand and Eighty-nine Dollars and Forty-four cents (\$7,089.44) per month. She attributes around Two Thousand Two Hundred Dollars (\$2,200.00) of those expenses to JB and AB.
- iii. The children of the marriage are both enrolled in QC - JB is in 7th grade, while AB is in 1st grade. The parties share school tuition and related expenses for JB but she alone pays the school tuition and most of the school related expenses for AB. The Husband also pays school tuition for his older daughter born prior to the marriage.
- iv. The children ought to be in a stable environment as opposed to moving from place to place every 6 months. That the husband is unreliable and very often does not collect the children on time.
- v. That the husband is very controlling and seems more concerned with retaining care of the passports as opposed to the children themselves.
- vi. The wife requests an order allowing her to retain the passports and provide them to the husband as is necessary.
- vii. The husband is presently in arrears in the amount of **One Thousand Dollars (\$1000.00)**.
- viii. That the husband worked previously as the Chief Sales officer at Caribpay but is presently employed as a Managing Director of Kanoo and received a considerable increase in salary as a result which he has failed to disclose to the court.
- ix. That she loaned the husband the sum of **Five Thousand Dollars (\$5,000.00)** which he should be made to pay back.
- x. That on Christmas day 2021, the husband failed to collect their daughter, neither did he communicate his intention not to do so. The child was dressed and awaited his arrival from 9am in the morning for most of the day. He spent Christmas with his other two children excluding AB.

- xi. The husband initially contributed a onetime payment of **Three Hundred dollars (\$300.00)** towards AB's educational expenses and has refused to provide anything additional.
- xii. The husband has unfairly treated AB differently from his other children and refuses to contribute to any expenses as it relates to AB.
- xiii. That on AB's birthday, the husband neither attended or visited with AB. That he also sought to prevent JB's attendance. He treats AB differently from his daughter born prior to his marriage to the wife. While the husband is comfortable with his other children attending private school, he is opposed to paying for AB to attend the same.
- xiv. She described the relationship between her and the husband as "tumultuous." She described one occasion where she says the husband was excessive in disciplining their son. She felt it amounted to abuse. This concerned her to such a degree that she thought a joint custody order would be impractical and that the contemplation of having to approach the court for the next Thirteen (13) years to have the most basic matters determined would be impractical.

[11.] As it relates to Property Adjustment the wife avers: -

That she also made payments continually to the mortgage of the matrimonial property. She exhibited receipts of Four (4) payments of Sixteen Hundred Dollars (\$1600) made to the husband to demonstrate her direct contribution to mortgage payments. 5th April 2021, 5th March 2021, 27 September 2024, 28th August 2024.

[12.] Issues

- 1) Whether a joint custody order should be made.
- 2) Whether an order granting one of the parties' custody care and control of the children giving the other reasonable of liberal access.
- 3) Should the husband's suggestion of alternating periods of Six (6) months custody between the parties be made?
- 4) Whether maintenance should be increased, reduced or remain at its current level?
- 5) Whether or not the husband should be compelled to pay private school fees for the last child of the marriage, despite the parties never having agreed to it.
- 6) Which party should keep the children's passports in their custody (assuming joint custody is granted).

- 7) Whether the husband should be made to pay monies due and owing under a loan which the wife made to the husband in the amount of **Five Thousand dollars (\$5,000.00)**.
- 8) Whether Lot No. 21, Love Estates is matrimonial property or not. If so-
- 9) Do the parties own an equal interest in the said property?
- 10) How should the property be divided and disposed?

Custody of the children

[13.] This court is statutorily empowered to determine the issues raised in the applications taken by the parties in these divorce proceedings. S. 27 Matrimonial Causes Act Ch. 125 (MCA) addresses the authority of the Court to make financial provisions with regards to matrimonial matters.

“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 financial provision order in favor of children who have attained the age of eighteen. (2) The court may also, subject to those restrictions make any one or more of the orders mentioned in subsection (1)(d), (e) and (f) — (a) in any proceedings for divorce, nullity of marriage or judicial separation, before granting a decree; and...” [Emphasis added.]

[14.] The determination of custody must be made in accordance with the statutory provisions governing the Court’s exercise of its powers in relation to a child of the family. The Court is accordingly required, so far as practicable, to place the child in the position he or she would have enjoyed had the marriage not broken down. In particular, **section 29 (2) MCA** requires the Court to have regard to all the circumstances, including the child’s financial needs and resources; any physical or mental disability; the family’s pre-breakdown standard of living;

and the child's actual and anticipated education or training. The relevant statutory provision states:

“(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 discharged his or her financial obligations and responsibilities towards him.”

[15.] The children of the marriage, aged thirteen and seven, have no disabilities. Neither has expressed reluctance or concern about staying access with either parent. While both parents remain obliged to promote the children's welfare notwithstanding the breakdown of the marriage, the evidence and the parties' respective attitudes during the hearing demonstrate profound disagreement on matters affecting the children and an inability to communicate meaningfully. Those circumstances do not support the making of a joint-custody order, which is sought by the husband.

[16.] In **J v C** [1969] 1 All ER 788; AC 688, the House of Lords identified the relevant considerations in determining custody as follows:

1. Maintaining the status quo (the maintenance of the existing situation if it is working satisfactorily).
2. The need to protect children from abuse or harm.
3. The parents' behavior towards the child.
4. The financial position of the parents.
5. The other partner of the parent.
6. The wishes of the child and the desirability of keeping siblings together.
7. The willingness of the parents to facilitate an access order and other relevant factors (religious, educational opportunities”).

Submissions of Counsel

Husband's Counsel

[17.] Counsel LaFleur submitted, concurring with Counsel Munroe, that the focus in determining custody issues is the welfare of the children. He cited several authorities to that effect **R.C. v B.C. FAM/Div/00024 of 2017** and **D v D, FAM/div/00253 of 2021** buttressed

by **Anishka A Missick (aka Hanchell) v Larell R.L. Hanchell** SCCivApp. No. 72 of 2021. However, **Hanchell** as he pointed out, reaffirmed that custody proceedings are governed by the welfare principle. He also relied on **Jamelia Clears v Peter Marshall** SCCivApp No. 142 of 2024 to further emphasize that custody decisions require careful evaluation of all relevant evidence affecting the child's welfare and cannot rest upon unsupported allegations or parental disagreement alone. This argument is accepted by the court. However, he felt that a joint custody order notwithstanding the acrimonious and bitter relationship between their parents is the better alternative.

Wife's Counsel

[18.] The wife submitted, through counsel Munroe, that joint custody is not in the children's best interests and should be refused. Counsel relied on **ORUV v KMV [2011] 2 BHS J. No. 90**, at paragraphs 26–29, as authority for the matters relevant to joint or sole custody, submitting:

“It is submitted that given the above factual matrix and the guidance of the case of **ORUV v KMV**, ‘Before the court makes an order for joint custody of the children, that it should be satisfied that the parents had at the very least a stable and amicable relationship enabling each to behave towards the other in a mature and civilized manner in dealing with their relationship, and particularly the question of custody and access. That minimum is absent here. The relationship between the two parents is very far from cordial, indeed so much so that, at least for the time being, it does not permit their behaving towards each other in a mature and civilized manner in the matter of the care and upbringing of the children. It may be that in time to come a stable, amicable and mature relationship will emerge. Until it does, there is no room for either joint custody or joint guardianship of the persons of the children.’ [Emphasis mine]

[19.] Counsel Munroe further submitted the following, that;

“The necessity for Social Services intervention resulting in parenting classes, and a report generated therefrom dated, 30th November, 2022, [TAB-2] which noted that “This officer has no doubt that they both love their children and want what is best for them, however because they are “fighting each other” they may be blind to the fact that it has and will continue to affect them negatively in the long term period it is hoped that mister and Mrs. Butler implement some of the skills they have gained in the parenting classes to coparent effectively and that their children would be able to witness and emulate them as the loving and caring parents they strive to be period.

Discussion and Analysis

[20.] In light of the parties' admitted acrimonious relationship, whether it would be appropriate to grant a joint custody order or a sole custody order is an issue to be determined. The

existing position has repeatedly generated disputes, particularly concerning decisions on the children's education and travel. Further, the Wife was compelled to seek the Court's intervention to secure consistent maintenance for the children, resulting in the interim order referred to above. The court is careful to determine this issue only after assessing all the circumstances.

- [21.] The need to safeguard the children from harm is inherently part of the welfare principle. This is particularly so where the parties disagree on the approach to and methods of disciplining the children. The absence of agreement between the parties as to appropriate methods of disciplining the children is concerning and weighs against an order for joint custody.
- [22.] The Husband's apparent differential treatment of AB, compared with JB and his child from a former relationship, is also material. The Wife's evidence—including the alleged exclusion of AB from Christmas Day activities despite her preparations to participate—suggests disregard for AB's emotional well-being. The Husband's refusal to contribute to her school tuition, while treating her siblings differently, may cause AB significant emotional harm given that she is old enough to understand the disparity. Such conduct may suggest that she is less valued and may undermine her relationship with both the Husband and her siblings. The Court regards this alleged pattern of exclusion as concerning because it indicates insufficient regard for AB's emotional welfare.
- [23.] Both parties are professionally employed and possess the earning capacity to provide the children with a secure and promising future. The Husband's business interests and the Wife's medical profession indicate that, taken together, their resources are sufficient to maintain the standard of living the children have hitherto enjoyed, including appropriate housing, education, travel and beneficial extra-curricular activities. Accordingly, notwithstanding the Husband's present refusal to contribute to his daughter's school tuition, the parties' combined financial circumstances are capable of supporting the children's continuing needs and reasonable expectations.
- [24.] S. 33 Child Protection Act ("CPA") mandates that a man is required by law, to take care of his children. The fulfillment of these responsibilities, is mandated to be without prejudice to either of the children. The Court cannot ignore, that there has been a blatant refusal on the part of the husband to pay for the tuition of his last child, but that must be tested against the backdrop of his income and the necessity for paid education. This is examined in detail further in this ruling.
- [25.] Notwithstanding the concerns arising from the Husband's past treatment of AB, neither party proposes that the children should be separated. The Court recognizes the general importance of preserving the sibling relationship and, where consistent with the children's welfare, of keeping siblings together. (This is discussed further in this ruling).

[26.] Terms of access are consequent upon custody being determined. The Court's paramount consideration concerning custody and access is the welfare of the children.

[27.] Having regard to s.29 (2) MCA which is to so far as practicable, to place the children in the position they would have enjoyed had their parents' marriage not broken down. The children have no independent income, earning capacity or property and are dependent upon the provision made by their parents, which has afforded them a middle-class standard of living. The conclusion that can be drawn from the list of considerations is that those considerations should achieve the objective of the provision. It can also be concluded therefrom that if the s.29 (2) MCA objective is achieved the best interest of the children should also be achieved. The best interest of the children is a coinciding objective to s.29 (2) MCA. Objective and has been expressed to be the overarching consideration. The Child Protection Act (CPA) s.3 provides:

CPA s. 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) of subsection (1), the court or any other person shall have regard in particular to —

- i. the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;
- ii. the child's physical, emotional and educational needs;
- iii. the likely effects of any changes in the child's circumstances;
 - a. the child's age, sex, background and any other circumstances relevant in the matter;
 - b. any harm that the child has suffered or is at the risk of suffering;
 - c. 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.

[28.] The ordinary meaning of welfare encompasses a child's well-being, happiness, safety, health, prosperity and benefit. Each of those considerations must be promoted by any order made in respect of the children. In **Brixey v Lynas [1996] 2 FLR 499;**(Brixey) the *House of*

Lords reaffirmed that the Court must consider all factors bearing upon the welfare of the child. [Emphasis Mine]

[29.] In **Re McGrath** [1893] 1 Ch.143, *Lindley J* in the *House of Lords*, defined the approach to welfare-

“The dominant matter for the consideration of the Court is the welfare of the child. But welfare of a child is not to be measured by money only, not by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.” [Emphasis Mine]

Treatment of Young Child

[30.] Where a very young child is concerned, the child’s relationship with the mother is a relevant welfare consideration. In **Brixey**, the *House of Lords* considered the custody of a four-year-old child and held that the benefit to a very young child of remaining with the mother is neither a legal principle nor a presumption, but a factor grounded in practical experience. Its weight depends upon the child’s age and individual circumstances, including whether the child has lived with the mother and whether she can provide proper care. Where a very young child has remained with the mother since birth and her care is not criticized, that consideration will ordinarily yield only to the strongest competing welfare advantages. As the *House* stated:

“The advantage to a very young child of being with its mother is a consideration which must be taken into account in deciding where lie its best interests in custody proceedings in which the mother is involved. It is neither a presumption nor a principle but rather recognition of a widely held belief based on practical experience and the workings of nature. Its importance will vary according to the age of the child and to the other circumstances of each individual case such as whether the child has been living with or apart from the mother and whether she is or is not capable of providing proper care. Circumstances may be such that it has no importance at all. Furthermore, it will always yield to other competing advantages which more effectively promote the welfare of the child. However, where a very young child has been with its mother since birth and there is no criticism of her ability to care for the child only the strongest competing advantages are likely to prevail.” [Emphasis Mine]

[31.] Although **Brixey** concerned a child born outside marriage, the welfare consideration identified in that decision is equally applicable to children of a marriage. In AB’s case, her young age and the fact that the wife has been her dominant carer to date are matters of particular significance. The husband’s asserted dismissive attitude towards AB and apparent reluctance to contribute to her welfare on the same basis as her siblings are further considerations which support the resolution of the custody issue in the wife’s favor.

Treatment of Adolescent Male

[32.] JB is now approaching adulthood. The issue is whether an order granting the husband custody of JB would promote his best interests. Under **section 74(1) MCA**, the Court may make such order as it considers fit for the custody and education of a child of the family under the age of eighteen in matrimonial proceedings, whether before, upon, or after the grant of a decree.

“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).”

[33.] The husband proposes that custody alternate between the parents at six-month intervals. While that arrangement may provide practical convenience to the parties, there is also an asserted concern that it may have been advanced to reduce or avoid the husband’s maintenance obligations during the periods of his custody. The decisive consideration remains the best interests of both children. It is therefore necessary to determine whether JB’s age and status as a young teenaged male give rise to any particular welfare considerations or preferences relevant to the custody determination.

[34.] In **Brixey**, the *House of Lords* held that a young child’s relationship with the mother was a relevant welfare factor, but not a legal principle or presumption. The significance of that factor depends on the child’s age and the circumstances of the individual case. The same reasoning is inconsistent with any automatic, gender-based preference for a father of a teenage boy. [Emphasis Mine]

[35.] In **R (A Child) [2009] EWCA Civ 445; [2010] 1 FLR 509**, a nine-year-old boy was living with his father. The Court of Appeal treated the relevant matters as the child’s wishes and feelings, emotional, educational and physical needs, stability, schooling, and the likely effect of change. Crucially, the court stated that age was not, of itself, determinative; the boy’s residence with his father was upheld because of the particular welfare assessment — especially his settled home and school—not because a boy should reside with his father. [Emphasis Mine].

[36.] **G v G (Minors: Custody Appeal) [1985] 1 WLR 647; [1985] 2 All ER 225** is an example of custody being awarded to a father on its own facts. The decision turned on the children’s established care, security and welfare in the father’s household, including the support provided there. It does not establish any preference for fathers of boys or teenagers. [Emphasis Mine]

[37.] In the final analysis it is safe to conclude that there is no presumption that a teenage boy should reside with his father. The child’s age, sex, maturity, relationship with each parent, wishes and feelings, educational and emotional needs, the stability of the proposed arrangement, and the likely effect of any change are all relevant; but the overriding question remains what arrangement best promotes that child’s welfare.

Siblings in Same Household

[38.] There is also no presumption that siblings must reside in the same household, the Court must assess whether the proposed arrangements meet the welfare needs of each child (s. 3(1) CPA,) and expressly address the consequences of any separation. There is no presumption that custody of siblings should remain with one parent upon divorce. However, courts generally consider it desirable for siblings to be brought up together unless there are strong factors justifying a different arrangement. This principle was articulated in the case of, *C v C (Minors: Custody)* - [1988] 2 FLR 291 (1988) where the court stated that unless there are compelling reasons to the contrary, siblings should be raised together to provide emotional support to one another.

[39.] I am further of the view that the Court should exercise caution before departing from the existing interim arrangement, under which the wife has custody and the husband has weekend staying access. Although the husband alleges that the children are experiencing educational difficulties, there is no verifiable evidence attributing those difficulties to either parent. Further, his proposal for alternating custody would disrupt the stability of the children's home without resolving his complaints concerning the wife's alleged lateness and tardiness, since she would continue to have their care for half of each year. Those matters justify skepticism as to whether the proposal would promote the children's welfare and favor an arrangement that preserves stability and enables the parents to work together for their benefit.

[40.] I am also of the view that the existing interim order afforded an opportunity to test a situation where both parents have sufficient flexibility to participate in the children's schoolwork and to coordinate collection and drop-off arrangements, should they elect to do so. Although the husband's access has not been free from difficulty, the evidence demonstrates the wife's willingness to ensure and facilitate the access to which the husband is entitled.

[41.] The Court is also mindful that neither parent has a superior right to custody of the children. This is specifically provided in s. 29 CPA; -

S. 29 CPA clarifies the Courts position " Where in any proceeding before any court — (a) the custody or upbringing of a child; or (b) the administration of any property belonging to or held on trust for a child, or the application of the income thereof, is in question, the court shall in deciding that question, have regard to the guiding principle mentioned in section 3 (1) and shall not take into consideration whether the claim of the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or vice-versa

[42.] Further to applying **section 29 (2) of the MCA**, and the obligation to consider all the circumstances and the likely effect of any proposed arrangement upon the children, material to the issue is a stable home environment. This is central to their foundation, growth and development. The allegations advanced by the respective parties concerning the other's conduct and parental responsibilities, demonstrate a relationship which is, for the most part, unworkable which is a material consideration in determining custody.

Split Custody Order

[43.] It is generally preferable for siblings to remain together, the specific circumstances of each case must be considered, and strong factors may justify a split custody arrangement. **Re P (Custody of Children: Split Custody Order) - [1991] 1 FLR 337 (1990).**

Whether maintenance should be increased, reduced or remain at its current level?

Maintenance

[44.] The CPA, Chapter 132 Section 33 supports that a man is required to maintain his children: -

“Subject to the other provisions of this Act, every man is hereby required to maintain his own children and also every child, whether born in wedlock or not, which his wife may have living with her at the time of the marriage to him so long as such children are unable to maintain themselves.”

[45.] The stated obligation applies whether a child resides with the man or not. and whether the children reside together with one parent or are divided between the parents.

[46.] On the question of whether these children should be separated between their mother (the wife) and their father (the husband) this court having regard to all the relevant considerations finds that it is not in the best interest of the children to make any order to which subscribes to such a separation. Nor is the husband's proposal for custody to alternate between the parties at six-month intervals acceptable.

Whether the Husband should be made to pay AB's private school fee?

[47.] Notwithstanding the s.74 provisions and the husband's requirement to maintain each of his children, the payment of private school tuition does not necessarily meet the defined obligation. The Court notes that the husband is already meeting the private-school costs of his two other children. On its face, his resistance to meeting such costs for AB may appear

discriminatory. The husband, however, contends that he should not be required to pay AB's private-school fees because the parties did not previously agree to enroll her in private school. He further maintains that, as the parties have lived separately since AB's birth, he should not be bound by a decision made unilaterally by the wife.

Private School Tuition and Financial Capacity

[48.] The husband's financial circumstances are material. It is significant that the husband's expenditure, similar to the wife's, exceeds his income significantly. However, it is notable that the wife not only is a superior earner to the husband but her earning potential given her profession is significantly greater. Therefore, notwithstanding that both parties overextend themselves financially each month, I am satisfied that the wife's ability to absorb private school fees for AB outweighs the husband's.

[49.] As an aside although the husband is in arrears under the interim maintenance order in the sum of **One Thousand Dollars (\$1000.00)** for the children, it was not established that those arrears were willfully incurred; the issue arose principally from discrepancies in the parties' respective records. The evidence nevertheless suggests that the payment of private-school tuition for AB is beyond the husband's means. The question is whether he should be required to meet those fees at the expense of other financial commitments.

[50.] Notwithstanding the husband's position on the school tuition for AB this court must consider whether he should be compelled in the circumstances to pay the tuition. In **Thurston v McKenzie, 2011/App/Mag/0001**, (Thurston) *Barnett CJ* identified the relevant considerations in determining whether a parent should meet private-school fees:

“No doubt a court would take into account a number of factors including (inter alia) the ability of the parents to pay; whether the children were attending private school prior to the divorce whether there was any prior agreement between the parties, if the private school is affiliated with a particular religion; any special needs of the child that can only or can be better met at a private school and past attendance of the parents at private schools.”

[Emphasis Mine]

[51.] Further, in **K v O [2008] 3 BHS J No. 5**, (K v O) *Hall CJ* stated:

“When considering the reasonable maintenance of children, the court can never assume the correctitude of the view common in this society that schooling at a private, fee-paying school is superior to that offered by publicly funded institutions. It would be impossible for the court, the judicial arm of state authority, to presume the inadequacy of the educational system which the state, in another manifestation, sustains from the taxes which support other institutions of state, including the courts. The adequacy, or otherwise, of a particular school-public or private – would have to be established by evidence in any case that such a parent can afford to do so and that it is unreasonable

for him not to contribute having regard to the needs of the children, notwithstanding the necessity to re-order priorities following the breakdown of the marriage. More so, when the custodial parent, as does K in this case, include items such as “piano lessons” and “vacation” in calculating the maintenance needs of the children, the court would regard these as extraordinary expenses, luxuries, which, if the parent should not be compelled to contribute.” [Emphasis Mine]

[52.] Applying the principles expounded in *Thurston* there is no evidence from the parties of any prior agreement between the parties, in fact to the contrary. There is no evidence that the private school is affiliated with a particular religion. There is no evidence that there are any special needs of the child (AB) that can only or can be better met at a private school and there is no evidence of past attendance of the parents at private schools.”

[53.] Applying the principles expounded in *K v O* supra no evidence has been established that the husband can afford to do so and that it is unreasonable for him not to contribute having regard to the needs of the children. Moreso the wife has included in her expenses music lessons, gymnastics and a Heritage Foundation which might be considered extraordinary or luxuries that *Hall J* indicated militates against imposing such an obligation on the husband.

[54.] Application of the principles of *Thurston* and *K v O* to the circumstances of the parties this Court will not compel the husband to pay AB’s private-school tuition.

Property Adjustment

[55.] The issue is whether the wife has acquired an interest in Lot No. 21 Love Beach, which the husband purchased one month before the marriage ceremony. The husband contends that the property was acquired before the marriage, without any intention that it should become a matrimonial asset, and that he alone has made the mortgage payments. He therefore maintains that it should not fall for division between the parties. The wife, however, produced evidence of four mortgage payments, asserts that she made further payments, and claims an interest in the property equal to that of the husband. The short duration of the marriage is also a material factor.

[56.] **S. 28 (MCA)**, authorizes the Court to make Property adjustment orders in connection with the matrimonial proceedings;

“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; (b) an order

that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them; (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or postnuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage.”

[57.] **S. 29 (MCA)** provides that the Court may make decisions in the best interest of the parties and may award payment only after having regard to the entire circumstances of the parties **Section 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; (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...” [Emphasis mine]

[58.] Although all the factors in section 29 (1) (a) – (g) are material, the principal considerations on the parties’ respective factual cases are those in section 29(1)(d) and (f): the duration of the marriage and the contributions each party made to the welfare of the family. Having considered all the circumstances, the Court’s objective is to achieve a fair outcome between the parties.

In **A v B [2010] 2 BHS No. 19**, *Barnett J* emphasized that the modern approach to the division of matrimonial property is one of equal sharing, absent a compelling reason to depart from equality. The fact that the husband acquired the property before the marriage is, however, a material consideration in determining whether, and to what extent, it should be treated as a matrimonial asset. [Emphasis Mine].

[59.] **K v L [2011] EWCA Civ 550** establishes that pre-marital or inherited property may retain its non-matrimonial character where it remains identifiable, segregated and is not used or treated as shared family capital. The mere passage of time does not convert such assets into matrimonial property. That character may nevertheless be diminished through mixing with matrimonial assets, where it becomes impracticable or unfair to distinguish the asset, or where it is deployed for the family home. The case is therefore distinguishable on the present facts, including the wife's direct mortgage contributions and the Court's finding as to the intended matrimonial character of the property.

[60.] In **Rossi v. Rossi [2006] EWHC 1482 (Fam)**, *Judge Nicholas Mostyn QC* provided useful guidance on the distinction between non-matrimonial and matrimonial property: -

“1. the matrimonial property is likely to be divided equally, although there may be departure if (i) the marriage is short, and (ii) part of the matrimonial property is “non-business partnership, non-family assets” or if the matrimonial property is represented by autonomous funds accumulated by dual earners; and the non-matrimonial property is not in fact quarantined or excluded from the court's powers. It simply represents an unmatched contribution by the party who brings it to the marriage. The court must decide whether it should be shared and, if so, the proportions in which it is to be shared. In reality, the longer the marriage, the more likely the non-matrimonial property will become merged with matrimonial property. By contrast, in a short marriage, non-matrimonial assets are not likely to be shared unless needs dictate.” [Emphasis Mine]

Classification and Division of Lot No. 21

[61.] S. 29 (1)(f) requires the court to have particular regard to the duration of the marriage and the parties' respective contributions to the welfare of the family. With fairness as the continuing theme, the wealth of authorities available give invaluable guidance.

[62.] In **Charman v Charman [2007] All ER (D) 425**, matrimonial property was distinguished from property generated during the marriage otherwise than by external donation. The Court observed that, under section 25(2)(a) of the English Act, non-matrimonial property may provide a stronger reason for departing from equality.

[63.] Given the short duration of the marriage the court considered **GB v VB 2006/FAM/div/548 & 573**, *Winder J* where considered a short marriage in which the wife had acquired and completed the home before the marriage; the home remained in her sole name, while the husband's contributions were valued at **Eight Thousand Dollars (\$80,000)** against a property value of **Four Million Dollars (\$4,000,000.00)**. Notwithstanding that he co-signed a loan, the husband acquired no interest, *Winder J* stating:

“I accept the comments of Rossi that after a short marriage, non -matrimonial property is unlikely to be shared unless the needs dictate....” [Emphasis Mine]

[64.] It is established and recently confirmed in **Standish v Standish** [2025] UKSC 26, [4]–[5], [30]–[43], that sole legal title and the husband’s principal mortgage payments do not prevent the divorce court from making an award in the wife’s favor. Nor may the court discount the wife’s childcare and homemaking contribution merely because the husband met most mortgage payments. The law does not discriminate between the income-producing spouse and the spouse who contributes through the home and children.

Effect of the short marriage

[65.] A short marriage remains important. It may provide a good reason to depart from an equal division, particularly where the property was wholly acquired and substantially paid for by the husband before marriage. In **Miller v Miller** [2006] UKHL 24, [48]–[73] the short duration and pre-marital source of the husband’s wealth justified an award substantially below half, although the wife still received a substantial provision which included the matrimonial home: Thus, the likely argument is **not** that the wife automatically receives **Fifty Percent (50%)**. It is that, the home was the family’s central matrimonial asset, she made some mortgage payments, she made wider financial contributions which assisted family life, she undertook childcare and domestic responsibilities; and if she is the children’s principal carer after separation, their housing needs may strongly justify housing provision from the property.

[66.] The court may therefore order a transfer, a lump sum funded from the equity, a sale with division of proceeds, or—where appropriate—a deferred sale arrangement. The precise outcome will turn on the equity, both parties’ needs and earning capacities, whether there are children living with the wife, and the availability of other assets.

[67.] The relevant facts here are that the husband acquired Lot No. 21 in his sole name one month before the marriage; the property remained vacant and was neither occupied nor developed during the marriage. He made the majority of the mortgage payments. The wife, however, established that she made four payments of **Sixteen Hundred Dollars (\$1,600.00)** towards the mortgage which I accept based on the receipts she exhibited. She contributed to the rent and children’s expenses, paid school fees, and was JB’s principal carer and AB’s sole carer. The Court accepts that the **Sixteen Hundred Dollars (\$1,600.00)** payments were made directly to the husband for the mortgage.

[68.] Those payments, together with the proximity of the conveyance to the marriage, support the conclusion that the property was acquired in contemplation of the marriage and was

intended to form part of the matrimonial assets. The intention for which the property was purchased is material. In **Burns v Burns** [1984] Ch 317, the Court of Appeal held that housekeeping, domestic work, caring for children, and ordinary expenditure on family life did not by themselves give the claimant a beneficial interest in a sole-name home. The Court drew a distinction between ordinary family expenditure and payments genuinely referable to the property's acquisition, such as the deposit, mortgage payments, or substantial payments which free the owner to meet mortgage obligations. [Emphasis Mine]

[69.] Additionally, in **Wachtel v Wachtel** [1973] EWCA Civ J0208-2, the Court of Appeal recognized that financial and domestic contributions to family welfare are both relevant to financial provision and property adjustment. The Court stated:

“This is the extent to which each has contributed to the welfare of the family, including not only contributions in money or money's worth ... but also to the contribution made (normally by the wife) in looking after the home and family.”

“... the contribution which wives make towards the acquisition of the family assets, by performing their domestic chores, thereby relieving their husbands for financial employment, is at present wholly ignored in determining their rights. Under our proposal this contribution would be a factor which the Court would be specifically directed to take into account.”

[70.] The short duration of the marriage does not displace these cumulative factors. Unlike the position in **GB v VB**, the wife's direct and indirect contributions to the mortgage and the welfare of the family, considered with all the circumstances, operate in her favor. I consider the parties' respective housing needs arising from the custody and access arrangements, to be on an equal footing.

[71.] In **Miller v Miller (Short Marriage: Clean break)** [2006] UKHL 24, the *House of Lords* stated:

“The statute provides that first consideration shall be given to the welfare of the children of the marriage... The first is financial needs... ‘the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future’.”

“The matter stands differently regarding property (‘non-matrimonial property’) ... The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered.” “Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so... The judge will then give to [sic] the contribution made by one party's non-matrimonial property the weight he considers just.”

[72.] Having regard to the date and circumstances of the conveyance, the wife's mortgage contributions, the parties' shared approach to rent and family expenses, and the wife's

substantial financial and caring contributions, the net equity in Lot No. 21 should be treated as jointly owned in equal shares. There is no compelling reason to depart from equality under the principles identified in **A v B**, **Charman v Charman**, and **Miller v Miller**.

[73.] In the final analysis I harken back to Winder J's reference in **GB v VB** supra and I find that, the short duration of this marriage has disadvantaged both parties in creating a home and a more stable, safe environment for the children. I am further of the view that the parties are equally in need of creating such a home where the well-being of the children, their happiness, safety, health, and prosperity can be given priority. Ultimately, I am of the view that the children's interests are best safeguarded by treating their parents equally in the circumstances where their fledgling marriage never even got of the ground and they were light years away from matrimonial maturity. Equality in this regard is the fairest way of so far as it is practicable and having regard to their conduct in the financial position in which they would have been if the marriage had not broken down and each of them had discharged their financial obligations and responsibilities towards each other. The disposition of the property in this regard promotes their welfare and is in their best interest.

As to the question of whether the husband should be made to pay monies due and owing under a loan, which the wife says she made to the husband in the amount of \$5,000.00?

Loan to the Husband by the Wife

[74.] The wife's contention that she loaned the husband **Five Thousand Dollars (\$5,000.00)**, was admitted by the husband. In the circumstances, he should reimburse her those funds.

CONCLUSION

In conclusion and based on the statutory authority, the case law provided and discussed herein, the exercise of the court's discretion where applicable and in all the circumstances of the case the court makes the following orders;

Custody and Access

- 1) The wife shall have primary custody/care and control of the children with liberal access to the husband. The husband shall have staying access of the children every other Friday after school through Sunday at 7pm when the husband shall return the children to the wife.

- 2) The husband and wife shall alternate access to the children on birthdays and holidays. The children shall spend Father's Day with the husband and shall spend Mother's Day with the wife. The parties shall also alternate Christmas and New Years Day, with the children spending Christmas day until 6pm with the husband and New Year's Day with the wife beginning this Christmas and alternating to the other party in each subsequent year until the children attain the age of Eighteen (18) years.
- 3) The husband and wife shall share the Summer school vacation, four (4) weeks with the husband from the day school closes; June or July, until the expiration of Four (4) weeks and four (4) weeks with the wife from the first day of August until school re-opens, unless otherwise agreed between the parties. The Easter school vacation is also to be shared equally with the husband having the first week and the wife the second week unless otherwise agreed. Mid- term breaks with the children are also to be shared equally between the parties, with the husband having the first half, thereof depending on the number of days of the break and the wife having the second half.
- 4) The husband do pay to the wife the sum of **Five Hundred Dollars (\$500.00)** towards the maintenance of the minor children on or before the first day in each month, effective from 1st August, 2026 and on or before the first day of each month thereafter until the children attain the age of Eighteen (18) years.
- 5) The husband and wife shall pay equally all medical, dental and optical expenses of the said children not covered by medical insurance.
- 6) The wife's application for payment of private school tuition for AB the youngest child of the marriage is refused.
- 7) The husband and wife will share equally the private school tuition of JB the eldest child of the marriage.
- 8) The husband and wife shall share equally all educational expenses for JB and AB including but not limited to uniforms, school shoes, books, tablets and other technological equipment, school supplies, school bags, P.E. Uniforms, Extra-curricular activities and any other supplies and equipment required by their school/s.
- 9) The husband shall pay a clothing allowance of **Five Hundred dollars (\$500.00)** twice per year on or before the 30th August and on or before the 30th November each year.

- 10) The passports of the children will remain in the custody of the wife as the custodial parent. The passports shall not be unreasonably withheld by the wife when required by the husband for travel with the children. Travel itineraries for the children shall be provided to the opposite party at least Two (2) weeks before travel except in the case of emergencies. The itinerary should at the very least, include the mode of travel whether by land, sea or air; the address for the stay and travel dates. Upon return from travel the children's passports shall be returned to the safekeeping of the wife.
- 11) Where travel is initiated, the travelling parent will be responsible for all travel expenses pertaining to the travel of the children.
- 12) The husband and wife shall make available on a daily basis, by the other party, access to children via cell phone, internet tablet, computer or other device.

Property

- 13) It is declared that the husband's and wife's interest in the property situate Lot #21 Love Beach is to be shared on an equal 50/50 basis.
- 14) The husband shall have the first option to purchase the wife's interest in Lot #21 Love Beach within **One Hundred Twenty (120)** days of the date hereof. The husband shall pay to the wife a sum the equivalent of **Fifty Percent (50%)** of the net equity of the property whereupon the wife shall transfer all her right, title and interest in the said property to the husband.
- 15) Following the expiration of **One Hundred Twenty (120)** days from the date hereof should the husband fail to purchase the wife's fifty percent interest **Fifty Percent (50%)** in Lot #21 Love Beach, the wife shall have the right to purchase the husband's interest in the said property, within **One Hundred and Twenty (120)** days, upon payment to the husband, a sum the equivalent of **Fifty Percent (50%)** of the net equity of the property, whereupon the husband shall transfer all his right, title and interest in the said property to the wife. The wife shall be entitled to offset the sum of **Five Thousand Dollars (\$5,000.00)** owed to her by the husband against the payment of the **Fifty Percent (50%)** net equity of the said property.
- 16) Upon the expiration of **Two hundred and forty (240) days from the date hereof**, should the husband and the wife fail or refuse to exercise the right to purchase the other's interest in Lot # 21 situated at Love Beach, the property shall be sold and the net

proceeds shared equally between parties, following the payment of the mortgage and any other outstanding debts attached to the property.

- 17) During the process of transfer, should either party refuse to transfer their interest, the Registrar of the Supreme Court is directed to execute the said transfer documents.
- 18) Parties shall equally contribute to the payment of the property mortgage until the property is transferred or sold and shall be entitled to offset any amount not paid in the calculation of their portion of the net value.
- 19) All costs of the property transfer or sales to be shared equally between the husband and the wife.
- 20) The husband shall repay to the wife the sum of **Five Thousand Dollars (\$5,000.00)** loaned to him by the wife within **One Hundred and Twenty (120)** days of the date hereof.
- 21.) Each party shall bear their own costs of the proceedings.
- 22.) A Declaration is granted pursuant to s. 73 (1)(b) (i) of the Matrimonial Causes Act Chapter 125.

Dated this th 4 day of September, 2026



C.V. Hope Strachan Justice

