

IN THE SUPREME COURT

Family Division

BETWEEN

EJ

Petitioner

AND

LJ

Respondent

Before: The Hon. Madam Justice G. Diane Stewart

Appearances: Mrs. Glenda Roker for the Petitioner
Mr. V. Alfred Gray for the Respondent

Ruling Date: 7th October 2022

RULING ON ANCILLARY RELIEF

1. On the 13th February 2018, a Decree Nisi was granted to the parties, dissolving their marriage. The marriage lasted for a period of five years from 2013 to 2018. Thereafter, the Petitioner filed a Notice of Intention to Proceed with Ancillary Relief for property adjustment orders over Lot 23 Dundas Town, Crown Allotments Abaco ("**Lot 23**") and Lot 66 Government Subdivision (now known as "Cove Estates") Marsh Harbour, Abaco ("**Lot 66**") ("**the Matrimonial Property**").
2. Both the Petitioner, and the Respondent filed numerous Affidavits in support of their respective positions giving particulars of the properties and income.
3. The Petitioner seeks an Order that the Respondent's interest (if any) in Lot 23 and Lot 66 be conveyed to him solely or alternatively that he relinquish all his interest in Lot 23 and that the Respondent relinquish all interest in Lot 66 or in

the further alternative that he pay the sum of \$10,000.00 to the Respondent for her interest in the properties.

RELEVANT FACTS

4. The Petitioner and the Respondent, were married on 31st August 2013 and were married for five years from 2013 to 2018. There are no children of the marriage.
5. By Deed of Gift dated 17th April 2014, the mother of the Petitioner, gifted the couple with Lot 23 as joint owners. The Petitioner was responsible for all legal fees associated with the transfer of the property from his mother to himself and his wife.
6. By an Agreement of Sale dated 27th October 2016, the parties agreed to purchase Lot 66 by way of a loan from APS and his wife which was to be secured by a mortgage. The parties became joint owners of Lot 66 which was encumbered by the mortgage to the lenders dated the 28th October 2016. Pursuant to the Agreement of Sale the parties agreed on a deposit of \$40,000.00 towards the purchase.
7. The Petitioner maintains that at all material times, he was responsible for all mortgage payments and bills associated with Lot 66 until Hurricane Dorian. However, the Respondent averred that she made helpful contributions towards the home, although not equal to that of the Petitioner. The Parties differ as to their respective contributions toward the purchase price.
8. The parties jointly shared a vehicle. However the Petitioner has released his title and interest in the vehicle to the Respondent.

PETITIONER'S EVIDENCE

Affidavit filed 13th February 2020

9. The Petitioner, in this Affidavit in support of his application for Ancillary Relief sworn on 29th January 2020, avers that he is employed with Cherokee Aviation as a Ramp Manager, but since Hurricane Dorian, Cherokee Aviation has ceased its operation and he has not received any remuneration since August 2019. He further maintained that he does not own any shares, stocks, bonds or securities of any kinds or any other assets.
10. The Petitioner's monthly expenses were:-

a) Mortgage	\$1,571.00
b) Fidelity Bank Car Note	\$900.00
c) Fidelity Bank Credit Card	\$60.00

d) Royal Bank of Canada Credit Card	\$60.00
e) Medical insurance (Petitioner & Respondent)	\$808.51
f) House Insurance	\$300.00 p/m
g) Food, Grocery & Personal Care Items	\$400.00
h) Car Insurance, License & Registration (\$650.00 p/a)	\$54.17
i) Car Gas (\$60.00 p/w)	\$260.00
j) Caregiver/ Maid	\$866.67
k) Haircuts (\$12.00 p/w)	\$52.00
TOTAL	<u>\$5,332.35</u>

11. The Petitioner is a dialysis patient which results in his having to take considerable time off from work.
12. By Deed of Gift dated 17th April 2014, his mother conveyed Lot 23 to both the Petitioner and Respondent jointly. Lot 23 was a wedding gift to both parties. It was the Petitioner's mother desire that they would build a home on the property. The lot forms a part of a larger tract of land which is occupied by several of the Petitioner's family members.
13. The Petitioner confirms that he nor the Respondent paid any consideration for that property, but, he was solely responsible for the payment of the legal fees associated with the transfer.
14. The Petitioner and Respondent acquired Lot 66 by a Conveyance dated 27th October 2016 from APS to the Petitioner and Respondent. Lot 66 is encumbered by a mortgage from the Petitioner to APS to secure a loan of the purchase price. Lot 66 was purchased after much agitation from the Petitioner to the Respondent as he felt it was an amazing deal. APS who is his current employer, was able to provide an interest free arrangement for the purchase of the property. The Respondent eventually agreed to the purchase of Lot 66, which had a home built on it.
15. The Petitioner avers that the Respondent contributed \$15,000.00 towards the purchase and that he contributed \$25,000.00 and that he was also responsible for both the Vendor and Purchasers legal costs of the transaction.
16. Both parties lived at Lot 66 for approximately eleven months. During this time, he was responsible for paying the utilities and all other outgoings relative to the property and house. He maintained that he was also responsible for providing all fixtures and chattels in the home.
17. Prior to Hurricane Dorian he resided at Lot 66 with his minor child and current wife.

18. During the course of the marriage, the Respondent was unable to maintain any full time employment, therefore he was responsible for handling all financial obligations within the household.
19. The Respondent often had access to the Petitioner's accounts during the duration of the marriage. The Respondent had spent a substantial amount of the money from the Petitioner's bank accounts.
20. The Petitioner now suffers from a serious illness with rising medical costs.
21. Since the dissolution of the marriage, the Petitioner has released to the Respondent all his interest in a vehicle valued at \$18,000.00 and provided documentation of the same to the Respondent. He has continued to maintain the Respondent on his medical insurance for two years since the breakdown of the marriage and has paid roughly \$600.00 for the Respondent's personal items to be shipped to Bimini where she currently resides.
22. Since the dissolution of the marriage, the Respondent has accessed his credit card and accumulated charges amounting to almost \$1,000.00. He had informed the Respondent that he would take responsibility for her credit card charges in exchange for her giving him a portion of her interest in Lot 23 and Lot 66.
23. The Petitioner maintained that due to his serious health complications, he is no longer in a financial position to maintain the Respondent on his health insurance.
24. Any interest that the Respondent may have in Lot 66 would be dissipated through transfer of his interest in the vehicle to her, maintaining the Respondent on his medical insurance, moving cost, and her credit card charges.
25. Lot 66 was severely damaged during Hurricane Dorian. The property was insured and a payout check for repairs was issued to the mortgagees and both parties in December 2019. The Respondent was advised of the insurance payout and the need for repairs to the property. The Petitioner maintained that he made and paid for travel arrangements amounting to \$230.00 for the Respondent to travel to Nassau to endorse the check to allow the Mortgagee to access the money for repairs. The Respondent travelled to Nassau, but fail to fulfill her obligation of going to the bank to endorse the check.
26. The Mortgagee has, since the passing of Hurricane Dorian, granted the parties forbearance on the mortgage payments as the property was uninhabitable. The Mortgagees have since advised that because of the time elapsed since the last payment and the failure of both parties to endorse the check, they would exercise their powers under the mortgage to obtain vacant possession, judgment and costs.

Supplemental Affidavit filed 10th June 2020

27. This Affidavit was filed in support of an urgent application to compel the Respondent to endorse the insurance claim check with respect to Lot 66 and for ancillary relief orders.

28. The buildings on the property were insured with Royal Star Assurance and were valued without the land prior to Hurricane Dorian as follows:-

Building	\$217,000.00
Carport	\$7,282.85
Patio	\$8,700.00
Shed	\$7,500.00

29. Significant wind and water damage was sustained during the Hurricane and the adjusted value after the hurricane was:-

Building	\$162,750.00
Carport	\$7,282.85
Patio	\$7,996.60
Shed	\$3,263.70

30. A cheque in the sum of \$181,293.15 in settlement of the claim was made payable to both the parties and the mortgagees from the insurance company.

31. The mortgage is now in default having last been paid in August 2019. Due to Hurricane Dorian, the Petitioner becoming unemployed and due to the uninhabitable state of the property, the mortgagees extended some forbearance regarding the mortgage payments. Some seven months has elapsed since the insurance payout and the mortgagees have expressed their concerns and frustration that there have been no repairs and no mortgage payments. Since filing the initial affidavit, there has been an additional ten months of arrears incurred from September 2019 to June 2020. The calculated mortgage payout to June 2020 is estimated to be \$184,757.00. This amount does not include any interest.

32. There is no agreement for the Respondent to be paid \$30,000.00 for her interest in the matrimonial properties. The Petitioner has made several attempts to settle these issues with the Respondent but she refuses to negotiate.

33. The Petitioner maintained that he is experiencing grave financial hardship and is willing to offer the Respondent \$15,000 for her interest in Lot 66 and Lot 23. This sum represents the amount that she contributed towards the purchase of the same, bearing in mind that he has been solely responsible for all mortgage payments, upkeep and maintenance of Lot 66.

Second Supplemental Affidavit filed 19th June 2020

34. The Petitioner received two estimates for the repairs of the matrimonial home. One was for \$190,960.00 from Platinum Construction and the other was for \$180,880.00 from Newbold Construction. Repairs are expected to take four months to complete.
35. The mortgagees advised that they are committed to repairing the property and are willing to forego on any remedies under the mortgage until the repairs are completed.

RESPONDENT'S EVIDENCE

Affidavit of Means filed 10th March 2020

36. The Respondent's monthly expenses were:-

a) Rent	\$700.00
b) Bahamas Power & Light	\$250.00
c) Dental	\$300.00
d) Car Insurance (per year)	\$500.00
e) Phone Bill	\$112.00
f) Groceries	\$400.00
g) Gas	\$100.00
h) Miscellaneous/Personal	\$320.00
i) Phone Bill	\$112.00
j) Car License (per year)	\$200.00
TOTAL	<u>\$2,994.00</u>

37. She maintains that her mother in law, gifted the couple Lot 23. By law she is therefore entitled to half the value of the matrimonial property.
38. She along with the Petitioner contributed to the down payment and legal costs for Lot 66. She accepts that they did not contribute equally but they did it together and the property was a matrimonial asset as they lived on the property together as husband and wife.
39. During the marriage, they purchased a vehicle for \$22,000.00 each contributing \$11,000.00. At the time of separation, the vehicle was valued roughly at \$18,000.
40. The parties agreed that:-
- The Petitioner would relinquish his interest in the vehicle to the Respondent
 - The Respondent would relinquish her interest over Lot 23 to the Petitioner
 - The Respondent would relinquish her interest in Lot 66 in consideration for \$30,000.00

The Petitioner has not kept his word and as a result the Respondent has suffered loss.

41. At the time of purchase, Lot 66 was valued at more than \$225,000.00. The Respondent maintains that she believes the property is still valued at a substantial amount.
42. The Respondent is willing to accept the \$30,000.00 for her interest in Lot 66 plus legal fees in a full and final settlement of the ancillary matters.

Second Supplemental Affidavit filed 20th October 2020

43. The Respondent maintains that the legal fees and stamp duty on Lot 66 totalled \$40,000.00. The Petitioner was untruthful in claiming that he paid \$25,000.00 and paid all of the legal fees of the Vendor and Purchaser. She says that she contributed \$30,000.00 and the Petitioner contributed \$10,000.00 for the legal fees and stamp duty.
44. The Petitioner released his interest in the car to the Respondent which was valued at roughly \$9,000.00.
45. She paid the mortgage as the Petitioner would give her his portion of the \$1,571.00 which was \$800.00 and she would put the remaining balance to pay the mortgage.
46. The Respondent avers that the credit cards are in both of the parties names and that the Petitioner maxed out the card for both his personal and medical expenses.

Affidavit of Compliance of APS filed 12th November 2020

47. The Mortgagee made this Affidavit in compliance with the directions rendered by the Court on 30th October 2020.
48. The Petitioner made the monthly mortgage payments via direct transfers to his bank account. By an Opinion of value dated 26th August 2019, Lot 66 was valued at \$310,000.00.
49. The balance owing on the mortgage as of 1st October 2020 was \$180,325.58 comprising \$171,256.58 principal and \$9,069 accrued interest.
50. By order of the Court made in September 2020, the sum of \$36,293.15 was ordered paid to the Mortgagee from the insurance proceeds and the balance of the proceeds paid to Mr. Newbold to repair the home.

51. As of 11th November 2020, the Petitioner and Respondent owe a balance of \$145,508.57 made up of the principal amount \$145,304.85 and interest in the amount \$203.72.

DECISION

52. The Petitioner seeks a property adjustment order with respect to Lots 23 and 66. It must be determined whether there should be a property adjustment order made over each of these lots and what are the interests in the properties of each party.

53. Section 27 of the Matrimonial Causes Act (the “MCA”) gives the Court jurisdiction to make financial provision orders and Section 28 of the MCA enables the Court to make property adjustment orders.

54. Section 29 (1) of the MCA sets out the statutory guidelines for the Court's consideration when exercising its powers to make financial provisions or property adjustment orders. It provides:-

“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.

The remaining provisions relate to orders made in favor of children, and as there are no children they are inapplicable to the issues to be determined.

55. Any sharing as set out in **Jupp v Jupp** must be construed after considering this Section. In **Jupp v Jupp** the Court of Appeal stated:-

“It must be remembered that authorities from the United Kingdom cannot trump what the statute law of The Bahamas says. It is only if these cases are consistent with the statute law can they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute requires that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reasons for the same.

56. Therefore, the established approach of an equal sharing may sometimes be departed from in order to ensure that the assets are shared fairly after considering the guidelines set out in Section 29(1). The factors which must be considered when determining whether and how to divide matrimonial assets have been the subject of many decisions.

57. The law is well settled. The Court must consider, in addition to the above, the contributions made by each party as stated in **White v White [2001] 1 All ER** where Lord Nicholls of Birkenhead stated:-

“Divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms, the answer is obvious. Everyone would accept that the outcome of these matters, whether by agreement or by court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone’s life is different. Features which are important when assessing fairness differ in each case. And sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eyes of the beholder.”

Lord Nicholls statement is that there should be no bias in favour of the bread winner where both parties had equally contributed to the family’s welfare but in different ways.

58. In *A v B* [2010] 2 BHS J No.18, Barnett CJ, reaffirmed *White v. White* by holding that the modern day approach to the division of assets in The Bahamas is equal sharing of property unless there is a compelling reason to depart from it.

59. Further in *Miller v Miller; McFarlane v McFarlane* (2006) 3 All ER 1 the House of Lords stated:-

“This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties housing and financial needs, taking into account wide range of matters such as the parties ages, their future earning capacity, the family’s standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.”

60. The parties married in July 2013 and a Decree Nisi was pronounced dissolving the marriage in February 2018. This was a relatively short marriage. They both contributed financially to the purchase of the matrimonial home, Lot 66. Although they do not agree as to the exact amount contributed by the other, it is accepted that their contributions were unequal, and accepted that both parties have a vested interest in the property. Lot 23 was gifted to the couple during their marriage. According to the Petitioner’s evidence he was responsible for the stamp duty and legal fees associated with the transfer of this property. The Petitioner was 34 and the Respondent was 28 at the time of the dissolution of the marriage. Both parties are employed and the Petitioner earns a greater salary than the Respondent.

61. The starting point for the division of both properties is the general rule that they are marital assets and are subject to the equal sharing principle unless there is a compelling reason to depart from it.

Lot 23 Dundas Town Subdivision, Abaco

62. Both parties agree that this lot was gifted to them by Deed of Gift from the Petitioner’s mother. The Petitioner avers that he was responsible for the stamp duty and legal fees associated with the transfer of this property.

63. This property has been valued at \$16,500.00. I am not satisfied there is any evidence or factors which would justify departing from the equal sharing principle even though the Petitioner paid the stamp duty and legal fees associated with the transfer. The property was intended to be gifted to both of them equally.

64. After considering all of the statutory factors set out in section 29, I find that each party has a 50% interest valued at \$8,250.00. The Petitioner may purchase the Respondent's interest in the property for \$8,250.00. Should he fail to do so within 60 days of the date hereof, the Respondent may then have the same time period to purchase his interest failing which the property is to be sold and the net proceeds divided equally.

Lot 66 Cove Estates, Abaco

65. This is the matrimonial home of the parties.

66. To determine whether the Court should depart from the equal sharing principle, a consideration of the extent of the contributions by both parties is important. Both the Petitioner and the Respondent confirm that, at the time of the purchase of Lot 66 they both contributed to the purchase and the payments of the mortgage on the same. The conveyance and mortgage documents are in both names. This reflects an initial intention of equal ownership.

67. On 7th October 2020, it was ordered by this Court that the insurance company, Royal Star Assurance, payout of the sum of \$181,293.15 representing the proceeds of the hurricane insurance claim be distributed in the following manner; \$145,000.00 to Newbold Construction to repair the house and \$36, 923.15 shall be made payable to the mortgagees to pay on the arrears owed on the mortgage.

68. Since the breakdown of the marriage, the Respondent moved out of the matrimonial home, and the Petitioner resides there with his current wife and child. The Respondent maintained that she was in fact put out of the home by the Petitioner as she had only gone "to clear her head" and the Petitioner quickly shipped her clothing to her. I am satisfied however that if she did not wish to remain out of the home, she would have returned. The Petitioner currently enjoys the benefit of residing in the matrimonial home. It would be unfair to the Respondent to order that both parties continue to make contributions towards the mortgage when she does not enjoy the benefit of the property.

69. Although the Petitioner has contributed significantly greater than the Respondent to the matrimonial home by mortgage payments, utility bills, upkeep and maintenance, he has had the benefit of the home while the Respondent has not. The Respondent's contribution to the purchase price no matter how small, or to the upkeep of the home cannot be ignored. During the course of the marriage, the Respondent was not regularly employed, as such the Petitioner being the breadwinner assumed most of the financial burden associated with the matrimonial home. Further I am satisfied that the parties only lived in the home together for a short period of time, less than one year, and the Petitioner has had the benefit of living in the home to date and so it is expected that he would pay the mortgage.

70. Based on the evidence, the parties have faced financial challenges which resulted in the defaulting of the mortgage. Further, the Petitioner has a chronic and debilitating medical condition which requires him to take time from work and which will impact his ability to work as he did previously. There is no evidence of any pension or other type of financial settlement in existence or which may become available to either of the parties.
71. In March 2019 the house was valued at \$310,000.00. In 2019 the mortgage balance would have been \$158,381.58 as per the statement of account of the Mortgagee leaving an equity of \$151,618.42. By the demand letter as at October 2020 the amount owing inclusive of accrued interest was \$180,325.58.
72. The equity would have decreased after the hurricane because of the damage to the house but with the repairs to the house, the value would once again have increased. The Respondent however would not have contributed to any of the mortgage payments due since the breakdown of the marriage, but the sum paid to the Mortgagee from the insurance check would have inured to her benefit.
73. After considering the statutory guidelines, I am satisfied that the Petitioner made the major contributions to the payments on the mortgage and the house generally therefore I find it appropriate to depart from the equal sharing principal.
74. The Petitioner shall be awarded 75% of the equity and the Respondent 25% percent. The Petitioner shall pay to the Respondent 25% of the equity of \$151,618.42, which totals \$37,904.60 within 60 days or any agreed extension failing which the property is to be sold and the net proceeds divided to reflect each party's interest as set out herein. The Parties shall execute the necessary releases to the properties within 7 days after payment of the said sum. Should any party fail to sign any document necessary to give effect to this order the Registrar is enabled to sign on their behalf.
75. The Petitioner has already released his interest in the vehicle to the Respondent. The value of the interest in the car is \$9,000.00 and is to be deducted from the Respondent's interest in the home.

Credit Cards

76. There has also been an issue raised regarding outstanding credit card balances and medical insurance premiums. After the breakdown of the marriage, the Petitioner continued to maintain the Respondent on his medical insurance for two years.
77. The consideration for such distribution begins at the break down of the marriage and when mutual support has ended. This was confirmed by Crane-Scott JA in

**Rosemary Edith Burrows (nee Knowles) v Sylvester John Burrows
SCCivApp No. 58 of 2021:-**

“68. The legal principle is that the date when the marriage broke down and mutual support ended is the point in time at which the property and financial resources of the parties which are or will be available for equitable distribution is to be assessed. That overarching principle is, in our view, well established and not seriously in dispute.”

78. By the evidence, the Petitioner and the Respondent are each responsible for some of the credit card charges and balances incurred to their separate credit cards given the breakdown on the affidavit sworn by SD on April 6th, 2021. Each party will be responsible for the sums set out therein namely the Respondent is responsible for \$5,938.32 and the Petitioner for \$4,642.79 less any payments actually made by them on the respective balances owed. The Respondent's charges are to be deducted from her interest in the matrimonial home if not already paid by her.
79. No order is made for the Respondent to reimburse the Petitioner for the cost of shipping items to Bimini, or for the cost of the airplane ticket to Nassau.
80. No order is made for the Respondent to reimburse the Petitioner for the cost of the medical insurance premiums.
81. Each party shall bear their own costs.

Dated this 7th day of October 2022



Hon. Madam Justice G. Diane Stewart