

COMMONWEALTH OF THE BAHAMAS

2020

IN THE SUPREME COURT

FAM/div/00216

Family Division

BETWEEN

S.P

Petitioner

AND

T.P

Respondent

Before: The Hon. Madam Justice G. Diane Stewart

**Appearances: V. Alfred Gray for the Petitioner
Hope Strachan for the Respondent**

Ruling Date: January 5th, 2023

RULING

Background Facts

1. The Petitioner, S.P and the Respondent T.P were married on 27th December 2014. There one child of the marriage, S. P (female) born 31st December 2016. The Petitioner filed an Amended Petition seeking the dissolution of the marriage on the ground that since the celebration of the marriage the Respondent had been guilty of a homosexual act contrary to Section 16(1) (e) of the Matrimonial Causes Act.
2. The Decree Nisi was granted on 19th November 2020 by Justice McKay. Ancillary matters were adjourned to Chambers.
3. The Petitioner filed her application for ancillary relief seeking custody of and maintenance of the child of the marriage and for a property adjustment order of the matrimonial property.

4. There are three pieces of property which the parties claim are matrimonial assets although they do not jointly agree that each piece is a matrimonial asset.
5. The Respondent applied for a grant of Crown land situated in Cunningham Town Inagua which grant has not yet been determined but upon which there is built a triplex. Secondly there is a duplex on lot 182 in Matthew Town Inagua where the Petitioner resides and thirdly, a vacant piece of land owned by the Petitioner in Abaco.
6. By an Interim Order dated 22nd October 2021, it was ordered that:-
 - i) Appraisals be obtained of both the triplex and the vacant property in Abaco and that the costs of such appraisals are to be paid by the Respondent from rents collected from the Inagua property
 - ii) The Respondent was to pay to the Petitioner the sum of \$400.00 per month beginning 30th November 2021 to assist the Petitioner with her rental expenses
 - iii) A Representative from Lands and Survey Department be present at the next hearing to speak to ownership of the land in Inagua on which the parties built the triplex
 - iv) There be a strict accounting by the Respondent of the rents collected from the apartments from 2014 to date
7. By a further Interim Order dated 29th April 2022, it was ordered that:-
 - i) The Respondent pay to the Petitioner the sum of \$250.00 per month towards maintenance of the child of the marriage
 - ii) The Respondent pay the school fees for the said child
 - iii) The Respondent pay to the Petitioner one half of the rents collected each month from the triplex situate at Lot No. 182 Dorset and East Street, Matthew Town Inagua from the date when the next rent is collected until further notice
8. By a Second Interim Order made on the same date, it was ordered that:-
 - i) The Respondent have access to the child of the marriage from Saturday 16th April 2022 to Wednesday 20th April 2022 when she is to be returned to the Petitioner

- ii) The Respondent shall have access to the said child two weekends of each month and at such other times as agreed between the parties beginning 29th April 2022
- iii) The Respondent shall have access to the said child on Father's day of each year and the Petitioner on Mother's day of each year beginning those days in 2022
- iv) The Petitioner and the Respondent shall each have access to the said child on her birthday equally on that day or otherwise as agreed between the parties beginning 2022

Petitioner's Evidence

9. The Petitioner is employed as teacher with the Ministry of Education earning \$2,760.00 per month.

10. Her monthly expenses are:-

Fidelity Loan	1,350.00
Electricity	\$175.00
Telephone Bill	\$130.00
Groceries	\$300.00
Medical Insurance	\$170.00
Health Insurance	\$70.00
Total	\$2,195.00

11. She maintains that the Respondent collects \$1,650.00 per month from rent and that she has only received \$300.00 on one occasion in January 2020. She maintains that the triplex belongs to both parties and alleges that she has contributed \$75,000.00 towards the construction whereas the Respondent has only contributed \$50,000.00.

12. The Petitioner is seeking \$4,500.00 for her legal fees incurred.

13. She maintains that she paid the contractor who is her uncle, \$75,000.00 to build the triplex and that both she and the Respondent have an equitable interest in the building. She also alleges that she had purchased all flooring and furniture for the apartments in the amount of \$6,475.00 and labour costs in the amount of \$4,000.00 for a total of \$10,475.00.

14. She admits that she owns a vacant piece of Property in Abaco has done so since 2012 which was before she met and married the Respondent.

15. She does not believe that the property in Abaco should be considered matrimonial property.

16. The Petitioner requests that the rental or future rental income from the property in Inagua be shared equally between the parties until the title is resolved.

Respondent's Evidence

17. The Respondent is employed by Morton Bahamas Ltd. as an Equipment Operator earning \$31,200.00 per year which is approximately \$2,600.00 per month. He has no other source of income.

18. His monthly expenses are:-

NIB	\$74.88
Insurance (Guar. Life)	\$157.88
Medical Health	\$98.00
Loan Teach & Sal.	\$1,085.60
Union Dues	\$20.00
Child Maintenance	\$300.00
Tithes	\$50.00
Light	\$80.00
Drinking Water	\$50.00
Phone (cell)	\$90.00
Groceries	\$150.00
Clothing	\$25.00
Grooming	\$48.00
Entertainment/ Misc.	\$100.00
Total:	<u>\$2,365.76</u>

19. His quarterly and yearly expenses are:-

Car Insurance	\$230.72
Car License	\$165.00
Car Inspection	\$30.00
Total:	<u>\$425.72</u>

20. He proposes that he and the Petitioner share joint custody of the child of the marriage with liberal access to him with stipulated visitation. The Respondent also proposed that the he and the Petitioner share equally the medical, dental, optical and educational expenses once the child starts attending school, including books, uniforms and technological devices.

21. He avers that they do not own any real estate together. In 2010 he applied for a crown grant and was granted land prior to the marriage. He obtained a loan in the amount of \$56,000.00 to build a house on the land. He has always solely repaid the loan and denies that the Petitioner's contributed \$70,000.00. He avers that the Petitioner gave \$10,000.00 towards the marital expense of buying furniture, etc. He claims that he never used the money and it is available to be returned to the Petitioner.
22. The Respondent is unsure what the loan for \$80,000.00 taken out by the Petitioner in June of 2018 was used for. He has speculated that the money was used to carry out construction on the property in Abaco.
23. Prior to the breakdown of the marriage, they resided in a duplex on Lot No. 182 in Inagua. The property was leased by them with the intent to purchase commencing 5th July, 2018. The rent from one of the apartments in the triplex was used to pay the rent to the landlord. The Respondent was forced to leave the duplex in 2020.
24. He avers that he has been paying all school fees for the child in the sum of \$35.00 per week.
25. The proceeds from the loan obtained by him and, supplemented by his salary were used to finance the building of the triplex and the purchase of necessary materials. Some of the expenses of building the apartments incurred by him are:-

Clearing of property	CJ's Enterprises	20/11/2014	\$800.00
Loads of concrete mix	CJ's Enterprises	15/12/2014	\$1,900.00
Plumbing work	Daniel Simmons	17/11/2014	\$3,000.00
Electrical work		23/05/2014	\$15,000.00
Cabinet	Green's Construction	07/08/2018	\$4,000.00
Flooring	Aaron Green	19/08/2018	\$5,800.00
Doors	Aaron Green	24/08/2018	\$450.00

26. He also paid for and obtained necessary approvals from the government agencies and corporations. He denies the Petitioner's claim that she paid \$6,475.00 for flooring and furniture. In fact the Respondent states that he used his sister's Donna Weir's credit card for such purchases and reimbursed her.
27. The appraisal for the triplex was recently obtained from HG Christie which valued the property at \$205,000.00. The Respondent maintains that the Petitioner's property in Abaco should be considered as part of the marital assets.

28. The duplex situate at Lot No. 182 was leased as a rent to own. The purchase price is \$75,000.00. A balance of \$46,100.00 remained due and owing on the property as of 4th December 2020 when the Respondent was forced to move out of the home. The total rents collected between January 2021 and August 2021 amounted to \$6,800.00 for apartment one and \$8,000.00 for apartment two, for a total of \$14,800.00. The rents collected from apartment one was used to pay the lease payments on the property.
29. The Respondent states that from the rents received from the units in the triplex he has maintained the apartments and expended funds as follows:-

Yard maintenance	\$2,000.00
House Insurance	\$5,014.70
Split Unit	\$800.00
Washing Machine	\$700.00
Total:	<u>\$8,514.70</u>

Evidence of R.P. of Department of Lands & Surveys

30. He confirms that there is no record of any crown grant or lease granted to the Respondent. Only the Minister can authorize a lease or grant. He further stated that there is no inspection report on the property.
31. He cannot recommend a crown grant of the land but he can recommend a general lease based on the appraisal and photographs seen in the absence of an inspection by the Department.

Petitioners Submissions

32. The Petitioner accepted that the child at the time of the hearing only had a preschool fee of \$80.00 per month and once she started primary school, the tuition would be free. She expected however, assistance with education, optical and medical expenses.
33. She accepts that the parties do not have any legal title to the land on which the triplex is built. She submits that the court cannot make any decision on the interest in so far as there is no title to be adjusted but seeks a sharing of the rent of the units until the title is cleared.
34. She accepts that it is difficult to reconcile with certainty the exact amount paid by either party on the construction of the triplex.

35. The property of the Petitioner in Abaco was purchased two years before she met and married the Respondent. The land is vacant and there is no evidence of any contribution by the Respondent.
36. The Petitioner seeks joint custody of the child with care and control for to and liberal access to the Respondent.
37. She further seeks that the interim order for maintenance be made permanent except that the Respondent pay the school fee directly and not from the rental proceeds.
38. The Abaco property is not a matrimonial asset.
39. The equity from the triplex be shared equally with the rent being shared save and except a portion be set aside for repairs until the title of the land is cleared.

Respondent's Submissions

40. The purchase price quoted for the rent to own building is Seventy-five Thousand (\$75,000.00). The couple lived in one apartment unit until the marriage broke down and rented one unit which apparently helped to pay the rent of One Thousand Dollars (\$1,000.00) per month.
41. As for the rent to own duplex, the rent was diligently paid from renting the second unit. The Petitioner continues to reside in said unit. The Respondent was forced to leave that apartment unit in 2010 due to the Petitioner's violent behavior towards him which she did not refute. A balance of Forty six Thousand One Hundred Dollars (\$46,100.00) remained owing as at 4th December, 2020. Even though at the beginning of the separation between the parties the Respondent continue to collect the rent from the apartment he was later made during these court proceedings to reimburse the Petitioner half of the collected rents thereby placing both parties on even footing as far as the collected rents are concerned.
42. The Respondent contends that the Abaco vacant land was property brought into the marriage in the same month the triplex was brought into the marital relationship. It therefore should be added to the pot of marital assets.
43. The main contention between the parties is the extent to which they each contributed to the building of the triplex built on the crown land. They contradict one another on every single detail of the building process and of the financial contributions made to the building and furnishing of the apartments.
44. The Petitioner outlines her contributions towards the family in paragraph 10 of her Affidavit filed 30th September, 2010 and in her Affidavit filed 3rd February,

2011 at paragraph 5 where she alludes to the fact that it was initially agreed between her and the Respondent that the mortgaging of the triplex was supposed to be a joint enterprise between the parties. Notwithstanding this the Respondent took out the mortgage himself.

45. The Respondent's position is, not surprisingly, diametrically opposed to the Petitioner's. His position is that there was no agreement between the parties about their mortgaging the triplex together. He submits that the Petitioner is not entitled to any interest in the property, nor should she get a lump sum payment from him.
46. The Petitioner contends that she paid for furnishings during the time that they resided in the apartment owned by the Respondent's mother. All of these were left in the apartment with the Respondent.
47. The Respondent queries whether S.2. 28 can be invoked where the property is not owned by either of the parties and neither can it be said that either of them are entitled as crown land cannot be owned until it is transferred by the Government.
48. The Petitioner's proof of the payment is a "word computer generated statement" which bears a computer generated signature and it is described as work performed on "Tamario and Simone Palacios building Matthew Towne Inagua". It bears no dates as to when the work was performed.
49. A second receipt by Aaron Green indicates that he performed certain tasks which when compared to Mr. Palacios would appear to duplicate some of the work that Mr. Palacios claimed to have done. Mr. Green's receipt is dated 17th August 2018, and does not indicate that he purchased material as the Petitioner contends.
50. The Petitioner's letter exhibited to her Affidavit from Fidelity Bank indicates that she had already drawn down fully on the \$75,000.00 loan by 24th March, 2015, a second loan was obtained in September, 2016 for \$78,000.00 and again in June 28th 2018 for \$80,000.00. Assuming the subsequent loans were top ups on the first the Petitioner has failed to provide any contractors or sub-contractors receipts which correspond to the time she obtained the loans from the bank.
51. The Respondent indicated that he first borrowed Fifty Thousand Dollars for the building construction. He exhibited to his Affidavit of 5th July 2021 a copy of his bank transaction history showing the balance of the account when the Fifty Thousand dollars (\$50,000.00) was applied to the account. Copies of the application form completed by the Respondent at the Teachers and Salaried workers cooperative credit Union also demonstrate that the Respondent's purpose for acquiring the loan was stated clearly as for home repairs materials and labor and that the contractor on the project would be paid in stages.

Moreover, his contention was corroborated by the Petitioner in her affidavit of 20th April, 2021. The Respondent also exhibited receipts from several contractors and sub-contractors that he paid for services ranging from 2014 to 2018 who according to the receipts were performing works that The Petitioner's Uncle Calsey; (Mr. Thompson) is claiming he would have done. Both the parties have exhibited receipts for \$4,000.00 apparently issued by Aaron Greene for various carpentry work yet these charges were also listed in the Thompson Bill. The receipts from the public corporations for light and water are made out to the Respondent and indicate that they were installed since 2015.

52. The Respondent admits that the Petitioner contributed Ten Thousand Dollars (\$10,000.00) only to the building of the triplex which was the only amount paid to Calsey Thompson who in fact had agreed to provide the labour for the building as part of a wedding present to the couple.
53. The Petitioner remains living in the rent to own premises to which the Respondent's half of the rent would have contributed.
54. Both the Petitioner and the Respondent are submitting that this is a case where equality should be departed from on the basis that their respective financial contributions to the construction of the triplex was more than the other. But the Courts must determine is whether both or either of them is being truthful based on the evidence presented. Since the mortgage on the rent to own was paid from the rent on the apartment can either party contend they have contributed more than the other. However if the Petitioner intends to keep the rent to own duplex and the Abaco property, fairness dictates that the Respondent be given the value of the triplex to keep.
55. The Respondent relies on the principle of fairness as established in *Miller v Miller; Mcfarlane v Mcfarlane* [2006] UKHL.

DECISION

56. By virtue of **Section 28 of the Matrimonial Causes Act ("MCA")**, the Court is enabled to make property adjustment orders in divorce proceedings. There are three properties in question before the Court, one being the triplex, the second, the lease to own duplex and the third being a property in Abaco which the Petitioner acquired prior to the marriage. The rent to own between the parties was subsequently terminated after the Respondent left the duplex and a new lease to own was given in the name of the Petitioner.
57. The Court's starting approach in these types of proceedings is the equal sharing principle unless there exists a compelling reason to depart from it.

58. The Court must take into consideration the established guidelines as set out in **Section 29 of the MCA** when making property adjustment orders.

59. Section 29 provides:-

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

(2) Without prejudice to subsection (3) it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that it to say —

(a) the financial needs of the child;

(b) the income, earning capacity (if any), property and other financial resources of the child;

(c) any physical or mental disability of the child;

(d) the standard of living enjoyed by the family before the breakdown of the marriage;

(e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;

and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1) just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.

60. Under the MCA, the objective of the Court in ancillary proceedings is to achieve a fair result between the parties based inter alia on a number of factors which include the factors outlined in Section 29. The equality principle as established in this jurisdiction in **A v B #320 of 2008** is considered the starting point when dealing with property adjustment. This principle however may be departed from in order to ensure that the matrimonial assets are distributed to each party of the marriage based on need, contributions made and to ensure fairness.

61. Any sharing as set out in **Jupp v Jupp** may only occur after considering Section 29. In **Jupp v Jupp** the Court of Appeal held:-

“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 you to 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. “

62. Further, in **White v White [2001] 1 AER 1**, Lord Nicholls states:-

“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.”

63. 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.

64. Further in *Miller v Miller*; and *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.”

65. In considering the statutory guidelines and determining what is fair in the circumstances, I accept the following:-

- i) The parties were married for six years. This was a short marriage. The Petitioner was 29 and the Respondent was 34 on the date of their marriage.
- ii) There is no evidence that either party suffers from any physical or mental disability, therefore their earning capacity is not hindered in any way by disability. The Petitioner earns slightly more than the Respondent per month.
- iii) The parties have given contradictory evidence of their contribution to the construction of the triplex. The Petitioner maintains that she has contributed \$75,000.00, whereas the Respondent maintains that he obtained a loan in the amount of \$56,000.00 for assisting with the construction of the matrimonial home and supplemented the remainder with his personal funds. This triplex is income producing.
- iv) The parties have acknowledged that they do not hold legal title for the property on which the triplex was built. The evidence of the Department of Lands and Surveys confirms this. There is a pending application by the Respondent and the evidence of the witness from Lands and Surveys confirms that he would recommend a lease to the Respondent.
- v) As of December 2020 a balance of \$46,100.00 was owing on the lease to own duplex for an agreed price of \$75,000.00. This duplex is presently

rented by the Petitioner. She confirmed that she intends to purchase this house when the divorce is finalized. This duplex is income producing. There is no appraisal of the value of the duplex before the court to determine its market value.

vi) There is no evidence of any pension available to either party.

66. The Petitioner submits that the property she purchased in Abaco prior to the marriage is not a matrimonial asset; that the equity in the matrimonial home be shared 50/50 and when the legal title has been transferred to the parties that one party be allowed to buy out the other, or the property be sold and proceeds be shared equally. The Petitioner also prays that the rental proceeds from the property be shared equally between the parties.

67. The Respondent maintains that the property in Abaco is a matrimonial asset. He further submits that because he has made all of the financial investments in the triplex, the Petitioner should not share in equity. Finally the lease to own duplex should be considered a matrimonial asset.

68. In order to determine whether a property must be regarded as matrimonial property the Court considers **Charman v Charman (2007) 1 FLR 1246** which defined matrimonial property as **“property of the parties generated during the marriage otherwise than by external donation.”**

69. Further in **Watchel v Watchel 1973 FAM 72** Lord Denning described family assets as **“those things which are acquired by one or other or both of the parties, with the intention that there should be continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole.”**

ABACO PROPERTY

70. The Petitioner purchased the property in Abaco prior to knowing or marrying the Respondent and the land has remained vacant and undeveloped. There is no evidence that this property was used for the benefit of the marriage, a hurdle which must be crossed in order for an order to be made with respect to an asset acquired outside of the marriage and which was used for the benefit of the marriage. I therefore find that the Abaco property is not a matrimonial asset.

TRIPLEX

71. I accept that both parties contributed to the construction of the triplex. While the title to the property is not vested in any of the parties at this time, there is a considerable investment on this property and it is incumbent on the parties or

one of them to have the issue of title resolved.

72. I am satisfied that the representative of the Department of Lands and Surveys has indicated to the Court what his recommendation will be and by such the issue of title will be resolved. Despite this the investment on the land must be adjusted.
73. The property has been valued at \$205,000.00. I accept that a loan was obtained by the Respondent to aid with the construction and also that his salary was used to complete the construction to the stage it is at. I also accept that the Petitioner obtained a loan from Fidelity Bank in 2015 which was increased annually until a balance of \$80,000.00 was reached.
74. I am not satisfied however, that the full proceeds of this loan were used toward the matrimonial home. The Respondent admits that the Petitioner gave him \$10,000.00 towards the purchase of the furniture. On her own evidence, she admitted to spending \$10,475.00.
75. The document which purports to be a statement from Thompson Construction is not accepted as evidence of the Petitioner's construction. The document has a computer generated signature and various tasks performed conflict with the receipt issued in 2018 by Mr. Green. There appears to be an overlap in the work performed and I therefore do not accept the Thompson statement as evidence of the Petitioners contribution.
76. Despite the contradictions in the evidence, I am satisfied that both parties contributed toward the triplex. I am satisfied however, that the Respondent was the major contributor to the property and still is paying to develop the property. The Respondent lives in the triplex.
77. I am also satisfied that the Petitioner has an income producing property which she intends to purchase.
78. Based on these facts, it is fair to depart from the equal sharing principle. I hereby order that the Respondent be awarded 75% of the value of the triplex and the Petitioner 25%. The Respondent shall pay the Petitioner the said sum of \$51,250.00 within 90 days of the date of this ruling, failing which in the absence of any agreed extension the triplex is to be sold and the net proceeds divided in the manner as ordered herein. The Respondent shall retain the right to reside in the triplex.

LEASE TO OWN DUPLEX

79. The lease to own home is a marital asset. The Petitioner still resides in it. The parties lived there together until 2020. The rent from one of the units was used to pay the rent. The property is to be purchased for \$75,000.00. There is no appraisal of this property. There is a balance owing of \$46,100.00 as at December 2020. The equity as at that date would be \$28,900.00.
80. I am satisfied that at that date the parties would have had an equal interest in the equity and so I order. I am also satisfied that the value of this property is probably greater than the \$75,000.00. The Petitioner shall retain the right to purchase and shall pay to the Respondent the sum of \$14,450.00 within 90 days of the date of this ruling, which sum shall be deducted from her interest in the triplex.
81. Upon payment of the said sums, each party shall release the other from any claim or interest in the other party's allotted property.

CUSTODY AND MAINTENANCE OF S.P.

82. I hereby grant joint custody of the child S.P. to both parties with day to day care and control to the Petitioner and liberal staying access to the Respondent.
83. The following terms of the Interim order made on the 4th October 2021 are confirmed :-
- i. The Respondent pay to the Petitioner the sum of Two Hundred and Fifty Dollars (\$250.00) per month towards the maintenance of the child of the marriage namely S.P until she reaches 18 years of age.
 - ii. The Respondent shall pay the school fees for the said child for any school which the parties agree that the child shall attend.
84. The following terms of the order made on the 13th April 2022 are confirmed:-
- i. The Respondent shall have access to the said child Two (2) weekends of each month and at such other times to be agreed between the parties beginning 29th day of April, 2022.
 - ii. The Respondent shall have access to the said child on Father's Day each year and the Petitioner on Mother's Day each year.
 - iii. The Petitioner and the Respondent shall each have access to the said child on her birthday by arranging equality of time on that day or

otherwise as agreed between the parties beginning 2022.

85. The Court grants a S.73 (1)(b)(i) declaration that it is satisfied that the only child to whom this section applies is SP and that the arrangements for the welfare of the child are satisfactory.

86. Until payment by the Respondent to the Petitioner of the equity in the triplex, she is to receive \$400.00 per month from the rental of the units. Upon receipt of the payment of her equity the rental proceeds shall cease.

87. The parties shall share all medical, dental, optical and educational expenses of the child save as tuition until she reaches the age of 18.

88. Each party shall bear their own costs of these proceedings.

Dated this *5th* day of *January* 2023



The Hon. Madam Justice G. Diane Stewart