

**COMMONWEALTH OF THE BAHAMAS**

**2020**

**IN THE SUPREME COURT**

**FAM/div/000018**

**Family Division**

**BETWEEN**

**T. V. M**

**Petitioner**

**AND**

**C. P. M**

**Respondent**

**Before: The Hon. Madam Justice G. Diane Stewart**

**Appearances: Glenda Roker for the Petitioner  
Maria Daxon for the Respondent**

**Ruling Date: 3<sup>rd</sup> February, 2023**

### **RULING**

#### **Background Facts**

1. The Petitioner, T.V.M was lawfully married to the Respondent C.P.M on 27<sup>th</sup> January 2012. There is one child of the marriage, namely C.D.M born 10<sup>th</sup> November 2012. The Petitioner is employed as a nail technician. The Respondent is employed as a plumber. The Petitioner filed her Petition on 14<sup>th</sup> January 2020 praying for a dissolution of the marriage on the ground that- since the celebration of the said marriage, the Respondent had treated her with cruelty.
2. A Decree Nisi was granted on the grounds of the Respondent's cruelty and subsequently made absolute on 18<sup>th</sup> February 2021 after the parties had agreed the terms of a consent order.
3. By the Consent Order dated 4<sup>th</sup> February 2021, it was ordered that:-
  - i. The Petitioner and the Respondent shall have joint custody of the minor child, C.D.M. The Petitioner shall have day to day custody care and control

- of the minor child and the Respondent shall have liberal and reasonable access to the minor child as agreed between the parties;
- ii. The Respondent shall pay to the Petitioner the sum of \$250.00 per month for maintenance of the minor child commencing 30<sup>th</sup> July 2020 and continuing every month thereafter until the minor child attains the age of 18 or completes tertiary education at a bachelor degree level;
  - iii. The Petitioner and Respondent shall each pay one half of all medical, dental and optical expenses of the minor child thereafter until the minor child attains the age of 18 or completes tertiary education at a bachelor degree level;
  - iv. The Petitioner and the Respondent shall each pay one half of the education expenses of the minor child inclusive of tuition thereafter until the minor child attains the age of 18; and
  - v. The Respondent shall pay to the Petitioner the sum of \$250.00 towards the general clothing expenses of the minor child or provide clothing in the value of \$250.00 on a bi-annual basis until the child attains the age of 18 or completes tertiary education at a bachelor degree level
4. On 8<sup>th</sup> July 2021, the Petitioner applied by summons for leave to commence committal proceedings against the Respondent pursuant to Order 52 Rule 2(2) RSC and to seek an Order that the Respondent be committed to The Bahamas Department of Correctional Services for contempt of Court in failing to comply with the Consent Order. This summons was supported by a statement filed the same date and an affidavit filed August 6<sup>th</sup> 2021.
5. Leave was granted and a Notice of Motion was filed September 23<sup>rd</sup>, 2021.

### **Petitioner's Evidence**

6. In her Affidavit filed in support of the application, the Petitioner maintains that the Respondent failed to and/or refused to pay the amounts as required for maintenance, to assist with educational expenses, medical, dental and optical expenses and to assist with general clothing as stipulated by the Consent Order.
7. The Petitioner and the Respondent had begun alternating staying access and day to day care and control in 7 day intervals. Despite this, the Petitioner maintained that she still had to provide clothing, food and school supplies while the minor child was in the Respondent's care.
8. Since the Consent Order was granted, the Respondent ought to have paid the sum of \$3,000.00 in general maintenance but, the Petitioner had only received a total

of \$700 from the Respondent. According she maintained that the Respondent was in arrears for the sum of \$2,300.00.

9. The parties, having discussed the minor child's continued education, jointly agreed to enroll the child in Akhephran International School. Both parties agreed that it was in the child's best interest even though the tuition was more expensive. The Petitioner paid the registration fee of \$500.00 and \$4,000.00 for the 2020/2021 tuition. The Petitioner also paid for regular school supplies such as a tablet and writing books, etc., totaling the sum of \$500.00. The Petitioner also paid the cost of the uniforms, book bags, P.E. kits, school shoes which totaled approximately \$500.00. The educational expenses totaled \$5,500.00. The Respondent did not pay his half and accordingly he was in arrears for educational expenses in the sum of \$2,750.00.
10. The Respondent also failed to and/or refused to pay \$250.00 bi-annually for general clothing or to provide clothing for the minor child valuing \$250.00. The Respondent was in arrears in the sum of \$500.00 for failure to pay for clothing for the child as ordered and as agreed by him.
11. When she attempted to request that the Respondent contribute financially to the minor child's maintenance she would be met with his animosity. She maintained that she is unable to properly maintain the minor child without the Respondent's financial assistance.
12. The Petitioner denied the Respondent's averment that the rental car business was owned jointly by the parties and maintained that it is her sole asset. During the start-up phases of the business, the parties were already separated and in substantive relationships with other persons.
13. The Petitioner admitted to borrowing \$1,800.00 as a loan from the Respondent to purchase the first set of vehicles for the business. Over a few months the Petitioner repaid \$900.00 to the Respondent. The Respondent advised her that she did not need to repay the remaining \$900.00.
14. The Respondent never assisted in the management of the rental car business and did not perform any of the duties and responsibilities required in the day to day operations of the business. There was no discussion of buying the Respondent out of his interest in the business nor was there any discussions or agreement that the Respondent's alleged share in the business be used towards maintenance payments for the child.

15. The Petitioner denied that the Respondent made payments in the amount of \$1,250.00 over the course of five months as averred. The Petitioner acknowledged that she sent groceries whenever the child would be staying with the Respondent because he claimed that he did not have enough income to support himself.
16. When cross-examined, the Petitioner averred that the Respondent only contributed \$350.00 for the year towards the child's education.
17. The parties varied the staying access times and presently they alternated weekly. She stopped sending groceries as she felt that the Respondent was taking advantage of her.
18. The Petitioner admitted to giving the Respondent funds from the business because he assisted her in the business but he did not own it.
19. The parties reconciled in 2019 but the reconciliation did not last a year.
20. She denied that there was ever any discussion to take monies from the business to maintain the child. When the marriage was dissolved, he asked if he could get anything from the business but she gave him her personal car and nothing from the business. The Respondent sold the car 1 week later.
21. She averred that she only shared details of the car rental business with the Respondent when she needed to borrow funds to invest in the business to purchase the cars.
22. She admitted to taking funds from the Respondent's account which she said was a joint account whenever he told her to. The funds borrowed from him for the purchase of the cars were taken from this account. She never deposited any monies to that account.
23. The Petitioner admitted to several withdrawals of cash from the Respondent's account.
24. She encouraged the Respondent to enroll in BTVI in order to start his own car repair business, however, he did not attend. The reason she encouraged him was to be able to repair the vehicles for the rental business, but to allow him to make his own way.
25. She admitted that the telephone numbers on the flyer for the business was the Respondents' and her mother's.

26. She admitted that the Respondent did some work for the business, e.g. washing cars and dropping them and picking them up. He never did any repairs on them.
27. The business was named after the child and did not reflect where the Respondent was working at the time.
28. Under re-examination, she averred that she gave the Respondent money but it was never for services rendered to the business.

### **Respondent's Evidence**

29. The Respondent filed his Affidavit on 29th July 2022. In his affidavit he seeks a share of the car rental business. He disagreed that he failed to and/or refused to pay the amounts as required for maintenance, to assist with educational expenses or medical, dental and optical expenses and failed to assist with general clothing as stipulated by the Consent Order.
30. In or about mid-2019, the Petitioner insisted that she buy the Respondent's share of the car rental business, Coco's Car Rental. However, the Respondent objected and suggested that the Petitioner use the profits from the business for the child's maintenance and to assist with educational expenses and medical expenses as needed. The Petitioner agreed to the same.
31. He maintained that he paid the Petitioner \$250.00 in July of 2020 for general maintenance and he also paid the Petitioner over the course of five months approximately \$1,250.00 in cash, collected by the Petitioner herself.
32. He accepted that the parties jointly agreed that the best decision for the child's education was to enroll her in Akhepran International School. However, he subsequently lost his job at Automated Plumbing in January 2021. He was then unemployed from January 2021 to November 2021 during which time he collected NIB assistance and was still unable to meet his financial obligations. He informed the Petitioner that he would pay the school fees in full for the school year 2021-2022 so that he could make up the arrears for the previous school year. The Petitioner declined however and demanded a lump sum payment which he was unable to do. He acknowledged that the educational expenses were in arrears for the school year 2020/2021 but he paid the school fees on 9<sup>th</sup> December 2021 and 24<sup>th</sup> January 2022 which amount to \$750.00.
33. He maintained that when the child was in his care, the Petitioner did not have to provide any clothing, food and or transportation. His failure to pay for or provide clothing bi-annually was because his share of the profits from the car rental

business was to be used for maintaining the child as he did not receive any profits from the business since the divorce, from 2018 to the present day.

34. The car rental business was organized to earn \$300 weekly from each of the three cars.
35. During the Covid-19 pandemic he accepted that he had been unable to work as frequently. He lost his job with Associated Plumbing in January 2021. Due to the unforeseen changes, he experienced financial hardship and therefore found himself in arrears with maintenance payments. He regained employment in November 2021.
36. He and the Petitioner established the car rental business in or about 2018 as a means for their child to inherit the business. He claimed that he deposited \$1,800.00 into the joint account that he and the Petitioner shared at RBC Finco. This money was used to purchase the initial vehicles for the business.
37. The business licence for the business was issued solely in the Petitioner's name because during that time he was employed at ISD on Coco Cay, Berry Islands. He further claimed that he contributed \$1,200 to purchase two additional vehicles for the rental business. He would contribute his time to the business by dropping the vehicles to customers, cleaning the cars, replacing the tires and fixing the cars. He also signed contracts and issued receipts to customers from August 2018 to February 2020. The Petitioner made more money than him during the marriage. The Petitioner always had access to the joint account where his salary was deposited when he worked with ISD.
38. The monies from the business was used to maintain the family, pay bills and buy groceries.
39. He was never served with the Consent Order.
40. Under cross-examination he averred that they discussed the car rental as a joint business and that it would be for the benefit of the child. He averred that he did not have any messages or witnesses to his claim that the car rental business was a joint enterprise.
41. Monies from the joint account which was funded solely by him was used by the Petitioner whenever she needed funds.
42. The \$1,800.00 was to start the car rental business. The Petitioner managed all the details of the business because she was in Nassau and he was on the island

working.

43. He was uncertain how much money was made from the nail business but he was not claiming any interest in the same.
44. He averred that he made maintenance payments until the pandemic and then he was unable to make the payments because although working, he was not earning enough to make the payments. He is a plumber by trade.
45. He only decided to pursue the auto mechanic course so as to assist the business but he never completed it because the course was not offered the following semester and when BTVI did offer it, they were divorced.
46. When the child lived with him, he provided money and took her to school.
47. In August 2018, the Respondent studied auto body mechanics at Bahamas Technical and Vocational Institute (BTVI) as he and the Petitioner agreed that he would repair the vehicles as needed to lower costs for the business. The Respondent also claims that when the petitioner created a flyer for the business, his telephone number was listed as a contact number for the business.

## ISSUES

48. The issues to be determined are:-
  - i. Whether the car rental business is a matrimonial asset
  - ii. Whether there has been a breach of the consent order by the Respondent to warrant committal for the same.

## DECISION

### THE CAR RENTAL BUSINESS

49. The Court is enabled to make property adjustment orders by virtue of **Section 28 of the Matrimonial Causes Act (MCA)**. The marital asset which falls for consideration is a car rental business, namely, Coco's Car Rental 242. This business is licensed in the name of the Petitioner but the Respondent claims an interest in the same.
50. The Court's starting approach is the equal sharing principle unless there exists a compelling enough reason to depart from the same. The Court must take into consideration the guidelines as established in **Section 29 of the MCA** when making property adjustment orders.
51. In **White v White [2001] 1 All ER** Lord Nicholls 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.”**

52. In reviewing the statutory guidelines, the evidence and submissions presented, I accept the following:-

- i. The Petitioner began the research on the business in February 2018.
- ii. In September 2018, she was granted permission by Road Traffic Department to operate a car rental business.
- iii. On 25<sup>th</sup> January 2022, the business licence was granted in her name.
- iv. The Petitioner came up with the initial business idea and the Respondent assisted with the initial financial investment to purchase two cars.
- v. The Respondent believed that he was a joint owner in the business venture.
- vi. The Petitioner stated that it was a loan of which she repaid \$1,000.00.
- vii. The parties were married for 8 years before the marriage was dissolved. This was a relatively short marriage considering that the parties had separated on more than one occasion and separated permanently in 2019.
- viii. The Respondent washed the cars, signed contracts and collected payments and issued receipts for the rentals. His cell number is listed on the flyer as a contact number.

53. Matrimonial assets was described by Lord Denning in **Wachtel v. Wachtel 1973 1 All ER 829** as:-

**“1. ... It refers to 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.”**

54. In **Rossi v. Rossi [2006] EWEC 1482 (Fam)**, Judge Nicholas Mostyn QC provides 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 2. 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.”

55. Henry P in the Court of Appeal decision Dean v Dean 1991 BHSJ No. 164, defined family assets,

“... it is clear that it is not every capital asset acquired by the party to the marriage either before or during the subsistence of the marriage that will automatically become a family asset. The intention of the party acquiring the asset is vital if one of the spouses acquires a house and meets the purchase and furnishing expenses exclusively but nonetheless use the house as the matrimonial home, the house acquire the attribute of family assets because of the intention of the spouse in whom the legal ownership resides and because the house is being used for the benefit of the family as a whole.”

56. The consideration for the distribution of the matrimonial property begins at the breakdown of the marriage and when mutual support ended. This was enunciated in Rosemary Edit Burrows v Sylvester John Burrows SCCivApp No. 58 of 2021 where Crane Scott JA held:-

“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.”

57. While I do not deny that the Petitioner alone developed the initial business plan, I do believe that the Respondent assisted financially, administratively and operationally with the business in its start-up phase and periodically thereafter. The Petitioner stated in her evidence that although the parties separated they still continued to offer each other assistance, both financially and otherwise. There were also periods of reconciliation between the parties, and most importantly the business commenced during the subsistence of the marriage.

58. The Petitioner had the Respondent’s cellphone number as a contact number on the flyer for the business. She admitted that he delivered the cars and washed them. She paid him monies from the business although she said it was not for serviced rendered.

59. The Respondent thought the business was a joint venture to which he was entitled to a share of the profits. I do believe that the Petitioner, took advantage of the parties reconciliation to further benefit. She accepted that he told her she did not have to repay the balance of the funds which she claimed she owed as a loan, and

she did not. Their reason for this differs. He acted on the premise that it was a family business and hence they would all benefit. It is the Respondent's evidence that he went to the extent to enroll himself in BTVI to study auto body mechanics to benefit the business. He is a plumber by trade and it would be reasonable to accept that to study auto body mechanics could only be to assist the business.

60. Accordingly, I do find that the car rental business, Coco's Car Rental 242, is a marital asset. Based on the evidence I am satisfied that it is fair to depart from the equal sharing principle and I award the Respondent a 1/3 interest in the business.
61. I order that the parties obtain a joint evaluation of the value of the business and the Petitioner is at liberty to pay the Respondent 1/3 of the value of the same, failing which the Petitioner is to provide the Respondent with monthly statements and pay to the Respondent 1/3 of the net profits.

### **COMMITTAL**

62. By the Petitioner's Notice of Motion, she sought to have the Respondent committed for failure to comply with the Consent Order made on July 7<sup>th</sup> 2020.
63. By virtue of S. 68 of the MCA the Rules of the Supreme Court shall apply to the proceedings and procedure of matrimonial matters. Accordingly the Rules of the Supreme Court which govern committals would apply to these proceedings.
64. Leave was granted to the Petitioner to make the application.
65. By her affidavit filed in support of the leave application, the Petitioner maintained that the Respondent only paid the following:

<b>General Maintenance -</b>	<b>\$700.00 out of \$3,000.00</b>
<b>Educational Expenses-</b>	<b>\$0.00 out of \$2,750.00</b>
<b>Clothing -</b>	<b>\$0.00 out of \$500.00</b>

66. At the time the affidavit was filed, the consent order was 1 year and 1 month old. The Petitioner was only seeking to recover 12 months maintenance as allowed by S. 31 (1) of the MCA. Accordingly I find that she is at liberty and in compliance with the statute to pursue her claim once she can satisfy the Court that there was a breach of the order for failure to pay these sums and that he was able to pay them.
67. The Respondent indicated that he was not served with the consent order until he came to court for child support however as his signature appears on the Consent

Order, I am satisfied that he was aware of the same. Despite this however the order governing the rules require that the Respondent must be personally served with the order in addition to the Notice of Motion and accompanying documents in order to pursue committal proceedings.

68. There is no affidavit of service on file proving service of the Consent Order or the order granting leave on the Respondent. There is an affidavit however which proves service of the Notice of Motion.
69. In order to pursue committal proceedings, the Petitioner must produce evidence to show that the Respondent had the means to pay the arrears and was contumelious in his failure to do so.
70. The only evidence led by the Petitioner of the Respondent's means was the averment that he was a skilled plumber who carried out side jobs since the order was made. She averred that the order was made during the height of the Pandemic and made by consent hence he must have had the means to pay.
71. The Respondent on the other hand avers that he lost his job in January 2021 and was unemployed until November 2021 during which period he collected NIB assistance. I note that the Consent Order was not filed until February 2021 at which time the Respondent would have been unemployed. During the Pandemic, he averred that although he was working, his working hours had deteriorated and hence his income declined which made it difficult to meet his agreed obligations. I am satisfied that the Respondent did not pay the sums as ordered in the Consent Order.
72. Finally the Respondent believed that the car rental business income would be used to maintain the child as it had previously.
73. Accordingly I do not find that the Petitioner provided any independent evidence that the Respondent had the means to pay his obligations under the Consent Order and to counter his evidence as to his lack of means. Further I am not satisfied that there is proof that he was personally served with the Consent Order and accordingly I dismiss the Petitioners application for committal of the Respondent.
74. I order that should the Petitioner fail to pay the Respondent the 1/3 value of the business within 90 days of the valuation an accounting be conducted of the profits from the car rental business and that 1/3 of the net profits be paid to date to the Respondent less the obligations agreed and unpaid under the Consent Order. The Respondent is to receive monthly statements and is to be paid 1/3 of the net profits each month. Once his unpaid obligations to the date of this ruling

have been settled from the profits, no further deductions shall be made from his profits. The Respondent is still obligated to pay maintenance as ordered under the Consent Order.

75. Each party is to bear their own costs.

**Dated this 3<sup>rd</sup> day of February, 2023**



**Hon. Madam Justice G. Diane Stewart**