

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2002/FAM/div/00038

BETWEEN:

T. V. N. D. nee B

Petitioner

AND

K. A. D.

Respondent

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

**APPEARANCES: Elsworth Johnson for the Petitioner
Shantell Munroe and Jacquelyn Conyers; Alexander Maillis for the
Respondent**

**HEARING DATES: 15th May, 2023; 19th June, 2023; 6th September, 2023;
9th November, 2023; 11th December, 2023; 21st February, 2023 and
5th April, 2024**

Family Law – Ancillary matters-Custody- Access- Maintenance- Property adjustments – Whether Equal sharing should be departed from – whether, deductions of arrears of maintenance should be made from interest in property

RULING

BACKGROUND

[1.] In her Petition for divorce the Petitioner (“the wife”) prayed for the grant of a Declaration pursuant to S.73 (1) (b) (i) of the Matrimonial Cause Act. There are Two children of the marriage KNTD aged 15 years and KNTD aged 11 years. The couple were married for Twenty (20) years when the wife filed for divorce. A Decree Nisi was granted to the wife on 16th August, 2022 on the grounds of the husband’s cruelty. Both the husband and wife are professionals. The wife is

employed in the Auditor Generals Department of The Bahamas while the husband worked as an Engineer at BTC.

[2.] The husband made the first move to have ancillary matters resolved by filing a Notice of Intention to Proceed with Ancillary Matters on 28th October, 2022. His Notice sought orders from the court concerning several issues including joint custody, access provisions for himself, provisions for the maintenance of the children inclusive of school fees, educational expenses, health insurance coverage, medical, dental and optical expenses, clothing expenses, that the court would make an order for him to purchase the wife's interest in the matrimonial home or alternatively an order for the sale of the said home.

[3.] The matrimonial home is a split level tri-plex, situate on a portion of Allotment #67, Fox Hill Allotment, and is assigned the number 14, The South Coast Road, Kool Acres Subdivision, New Providence, The Bahamas. It consists of the apartment unit which the husband, wife and children occupied, and Two (2) additional units occupied by tenants, ("the matrimonial home"). The arrangements made by the husband and wife were that the rents received were to be shared as to one (1) unit's rent to the wife and One (1) unit's rent to the husband. Motivated to resolve the issue of the matrimonial home, the husband also filed a Summons on 31st January, 2023 seeking an order from the court for an appraiser he engaged to enter the matrimonial home to carry out an appraisal of the property. The application was deemed necessary because the wife was residing in the matrimonial home to the exclusion of the husband and was not cooperating in the requests made to agree an appraiser and to fix a time for the appraisal to be done. The wife still resides in the unit with the children of the marriage.

[4.] The Summons was a portent of things to come. This matter has become protracted, the parties both having taken on an intractable position over certain issues notwithstanding having resolved others by consensus.

[5.] The husband in support of his application filed a number of documents;

- i. 16th March, 2023 - Affidavit of Means
- ii. 12th May, 2023 – Affidavit in Response of KAD
- iii. 15th June, 2023 – Affidavit of KAD
- iv. 15th June, 2023 – Certificate of Urgency
- v. 7th November, 2023 – Third Affidavit of KAD
- vi. 30th November, 2023 – Fourth Affidavit of KAD
- vii. 30th November, 2023 – Witness Statement of Dr. Clyde A. Munnings
- viii. 7th February, 2024 – Affidavit of KAD
- ix. 2nd February, 2024 – Certificate of Urgency
- x. 26th March, 2023 – Affidavit in Response of KAD
- xi. 28th March, 2023 – Submissions

[6.] The wife in support of her position and in response to the husband's led the following documents;

- a. 11th May, 2023 – Affidavit of Means TVND (nee B)
- b. 8th December, 2023 – Second Affidavit of TVND (nee B)
- c. 20th March, 2024 – Third Affidavit of TVND (nee B)

[7.] The proliferation of the Affidavits and certificates of urgency filed by the husband is indicative of the husband's anxiety to have these issues determined. Expedition was urged upon the court for more reasons than one, but critically because of the husband's dire health concerns. The Witness statement of Dr. Clyde Munnings allude to the fact that the husband having already undergone one surgery to his knee, now has a condition described as radiculopathy, a chronic condition, that is particularly painful in the lower back and lower extremities. He requires Three (3) surgeries to his cervical, thoracic and lumbar spines.

[8.] Another notable factor for these parties is the husband's changed situation from what it was when the proceedings were begun, and the initial affidavits of means well compensated at BTC. He has since taken A Voluntary Separation Package ("VSEP") and in doing so was paid the handsome sum of **\$273, 083.57** and continues to receive a monthly pension from the company of **\$2,172.16** per month. However, accepting the package placed the husband on the unemployment line where he remains to date. The wife's salary is **\$4,379.17** per month.

[9.] This matter began with both the husband and the wife working assiduously and diligently to reach agreement on the outstanding issues in this divorce. At that time they were both promoting the idea of equality in all matters. However, as time went on and there were delays in the hearing for any number of reasons, the negotiations toward compromise hit an all-time low. The wife insisted on being compensated for several expenses from the husband's interest in the property, in retaliation the husband resists her contentions and now seeks to have his interest determined as superior to the wife's. They both retreated to their respective corners, took intractable positions and the tone of the affidavits filed were particularly acrimonious, and unforgiving. Both parties have had occasion to change their counsels at certain times during the process also.

[10.] After much pulling and hauling the husband and wife arrived at a consent position on the issues of custody and access to the children of the marriage. The Interim Consent Order is dated 19th June, 2023. It was made upon consideration of all of the affidavits the parties had filed to that date, and it remains in effect until the final order is obtained through this court's present undertaking.

THE ISSUES FOR THE COURT'S DETERMINATION

- [11.] The main bones of contention between the husband and wife remain;
- a. What amount of money is payable by the husband to the wife as monthly maintenance for the children?
 - b. What is the respective interest of each of the parties in the matrimonial property?

- c. Whether the court should make an order that either of the parties to the marriage should buy the other party's interest in the matrimonial property?

ALTERNATIVELY:

- d. Should the matrimonial property be sold?
- e. How are the net proceeds of sale to be divided?

THE STATUTORY PROVISIONS APPLICABLE

[12.] When deciding issues concerning the maintenance of children the court is mandated to ensure that whatever decision is made is in the best interest of the child. The Matrimonial Cause Act, (MCA) provides;

27. (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

(a) 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

[13.] When deciding issues which concern property adjustment the court is mandated to apply S. 29 (1) (a) – (g) of the MCA.

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.

(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.

DISCUSSION AND ANALYSIS

[14.] Most of the terms of the consent order made by the husband and wife on 19th June 2023, are not objectionable to this court in any way. Save for a sum for the monthly maintenance payable to the wife, I note that the arrangements they have made for the children are devised in consideration of the financial needs of the children, and the financial resources available for their maintenance and upkeep and to maintain them in the same standard of living that they would have enjoyed had the marriage of their parents not broken down. Having regard to S. 29 (2) provisions, I have found the specific, consent order terms to be acceptable as being in the best interest of the children and I adopt those provisions save as any of those clauses in the consent order have been eliminated or any of the word's changed or adjustments made. Those terms will be set forth in the conclusion hereunder. These terms are to be incorporated into the final order.

GENERAL MAINTENANCE FOR THE CHILDREN

[15.] I turn now to resolving the Issue of the Monthly Maintenance Payments to the wife for the Children. The wife initially demanded periodical payments from the husband of Six Hundred (\$600.00) per child each month along with all other costs attendant upon their care i.e. \$1,200.00 per month. She recently amended this to a request for Four Hundred (\$400.00) dollars per month. The husband has offered to pay Three Hundred (\$300.00) dollars per child per month or Six Hundred \$600.00 dollars per month. Bearing in mind that the majority of the expenses relating to the children are covered by the order I have already approved, it is incumbent upon the parties to prove that the sum proposed to be ordered is appropriate in all the circumstances and just as with the former orders to ensure the children are able to live to the standard that they are accustomed to and as if their parents were not divorced. The wife will obviously bear the brunt of expenses for the children since they are making their permanent home with her. Based on calculations she has provided to the court. Her monthly expenses total Five Thousand One Hundred and Seventy-six (**\$5,176.00**) dollars. Apart from figures she attributes to Lunch money for KNTD One Hundred and Fifty (**\$150.00**) dollars and hair grooming Three Hundred (**\$300.00**) dollars, she does not specify how much of the total expenditure relate to the children. The husband puts his monthly expenditure at Nine Thousand Seven Hundred and Sixty (**\$9,760.00**) dollars. However, he has included expenses that relate to his mother, in the breakdown and I am not prepared to entertain them as mandatory expenses since the evidence given by both he, and the wife indicate that the mother has considerable income producing assets which can be utilized to look after her expenses. In this regard subtracting the sums the husband attributed to his mother, his expenditure would be Seven Thousand Seven Hundred Forty-two (**\$7,742.19**). The average of the husband and wife's monthly expenses is therefore (**\$6,460.00**) monthly expenses. In the absence of specific figures to apply I believe it is appropriate to attribute One Third (1/3) of these expenses to the children, (**\$2,153.33**). The husband and wife are to share these expenses equally, so each one should pay

(\$1,076.00) per month for the children. This works out to **\$538.33** per child (rounded to **Five Hundred dollars (\$500.00)** per person. However, the wife has agreed in her affidavit filed on 20th March, 2024 to accept the sum of **Four Hundred dollars (\$400.00)** per child. Additionally, I accept that the husband's health issues need to be rectified, and the initial anticipated expenditure for surgeries being **Seventy Thousand (\$70,000.00) dollars**, will be a considerable chunk out of the husband's VSEP money. The wife did not refute the husband's assertions in this connection. I have considered this eventuality and also the fact that the husband is presently unemployed and has reduced prospects of employment due to his medical condition, and I accept the husband's assertions. Therefore the husband should pay to the wife the sum of **Four Hundred Dollars (\$400.00)** per child, per month, towards the general maintenance of the said children.

PROPERTY ADJUSTMENT

[16.] The wife is also seeking an uneven distribution of the party's interest in the marital asset on the basis that there are outstanding sums due from the husband for money spent for the maintenance of the children of the marriage. The husband is seeking an uneven distribution on the basis that he has contributed the lion's share of the money paid in acquiring the matrimonial home and apartments, neither does he owe the wife any arrears of maintenance. He objects to any deduction being made from the account for a truck purchased by him during the marriage.

[17.] S 29 considerations will inform this court in navigating the resources and circumstances of this couple.

In **Jupp v Jupp SCCrAPP No. 37 of 2011** it was expressed that a judge must take into consideration section 29 when exercising his discretion;

"It must be remembered that authorities from the United Kingdom cannot trump what 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 required that you look at all 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 assets must be fair in its entirety. It is not the role of the 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 reason for the same."

[18.] The objective is to achieve fairness between the parties at the end of the day.

"Fairness is an equal sharing of property: In A v B 2010 2 BHS No. 18 – Barnette CJ (as he then was) – "In my judgment the modern day approach to a division of property in a marriage is that fairness is an equal sharing of property unless there is a compelling reason

to depart from that equality. The Law is perhaps best summarized in the judgment of the English Court of Appeal in Charman v Charman [2007] 1 FLR 1246.”

[19.] *Barnett was also reaffirming the seminal ruling 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 property of the husband and wife should be divided and whether one of them should continue to support the other. States 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.”

[20.] It is also important to ensure that neither party is discriminated against;

Per Lord Nicholls of Birkenhead in White:

“Sometimes, having carried out the statutory exercise, the judge’s conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge’s decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination.”

[21.] 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 is material to the issue. The husband obtained a considerable cash Voluntary Separation Package (VSEP) from BTC in 2023 and a monthly pension. The wife is employed with the Auditor Generals Department. Aside from the VSEP package the couple could be described as above average earners. Their incomes are supplemented by rents received from Two (2) apartment units built to create a tri-plex for the matrimonial home. There is some consternation about the future financial resources of the husband in particular, as he has major health concerns requiring costly surgeries. He is also unemployed now. His employability will likely be affected by the health issues.

[22.] 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 financial needs of the husband will

obviously be impacted by the anticipated medical procedures which is already being estimated to cost some Seventy Thousand (\$70,000.00) dollars.

[23.] The standard of living enjoyed by the family before the breakdown of the marriage.

Nicholas v Nicholas [1984] FLR 285 at 289, CA 'In deciding what standard of accommodation was appropriate for [the wife], it is reasonable to look at the kind of accommodation that over the years the parties themselves lived in as they steadily improved their position and standard of living as a result of the success in [his] the husband's business ventures' (emphasis mine).

[24.] Both the husband and the wife shall have the responsibility of raising the Two (2) children of the marriage, in the standard of living they have grown accustomed to. They themselves are professionals and both worked for high quality wages by any standard. No less should be expected for their children. Indeed if one were to look at the expenses each of them have outlined for the court it is clear that there was no deprivation suffered by either the parties or the children. It is therefore contemplated that these financial needs, obligations and responsibilities will persist for both parties up to the children achieving the age of Eighteen (18) years or completing a first degree of tertiary education and in any event for the foreseeable future. As I have previously indicated, every effort has to be made to achieve this standard of living enjoyed by the family before the breakdown of the marriage for these Two (2) children. Despite the husband and the wife both emphasizing their respective responsibilities as it relates to other obligations. I am, of the view that no other responsibility is higher than the responsibility to raise children to be fully functioning, well rounded children, who are properly socialized. I adopt here for these purposes the admonition in the Child Protection Act, S.3.

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

[25.] The age of each party to the marriage and the duration of the marriage; the husband and wife are ages Fifty-one (51) (husband) and Fifty (50) (wife). The marriage lasted Twenty-one (21) years which to all intents and purposes would be considered a long time. Long marriages often support the view that there should be an equal sharing of property between the husband and the wife but it is only one factor to be taken into consideration. Charles J, *J v J (2010) [2009] EWHC 2654* citing Lord Nicholls of Birkenhead in *White* when he expounded:

"There is much to be said for returning to the language of the statute. Confusion might be avoided if courts were to stop using the expression "reasonable requirements" in these cases, burdened as it is now with the difficulties mentioned above. This would not deprive

the court of the necessary degree of flexibility. Financial needs are relative. Standards of living vary. In assessing financial needs, a court will have regard to a person's age, health and accustomed standard of living. The court may also have regard to the available pool of resources. Clearly, and this is well recognised, there is some overlap between the factors listed in section 25 (2). In a particular case there may be other matters to be taken into account as well."

[26.] The effects of age and duration is also emphasized in a body of cases, concerning marriages of short duration and the overall approach taken by the courts. The fact is, that it is easier to justify a departure from equal sharing in short marriages of short duration that it is in marriage that qualify as having longevity. The contrast was demonstrated in;

Sharp v Sharp [2017] EWCA Civ. 408, where The Court of Appeal, Civil Division, in an appeal against a decision to divide matrimonial assets on an equal basis held that the appellant wife was correct to contend that the combination of potentially relevant factors, namely, short marriage, no children, dual income and separate finances, was sufficient to justify a departure from the equal sharing principle in order to achieve overall fairness between the parties.

[27.] Any physical or mental disability of either of the parties to the marriage. The physical challenges alluded to by the husband are significant to the issue. The fact that the husband is suffering from what appears to be a painful, debilitating condition, requiring surgical procedures, possibly more than one, will likely inform the final outcome. Having accepted the truth of the husband's condition, I also accept that this of necessity will affect the financial position of the husband and might in the passage of time, his ability to pay the maintenance for the children.

[28.] 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 for this couple is the focused consideration when asking the court to depart from the equal sharing principle. Despite the wife's assertions that the property was gifted to her, the husband contends, that the property was gifted to him by his mother prior to the marriage and thereafter he conveyed it to himself and the wife as joint tenants. He has exhibited a copy of the conveyance to that effect. The document speaks for itself. I prefer the evidence of the husband in this regard. This indicates that while the property is obviously now jointly owned by the husband and the wife, it is clear that the husband's contribution of providing the property on which to build the tri-plex cannot be ignored.

Sharp v Sharp [2017] EWCA Civ. 408, [2018] Fam. 317, [2017] 4 All ER 1046, [2018] 2 WLR 1617, [2017] 2 FLR 1095, [2017] Fam Law 821, 167 NLJ 7751, 167 NLJ 7752, [2017] All ER (D) 74 (Jun) Per Lord Justice Macfarlane in quoting the seminal decision of the House of Lords per Lord Nicholls of Birkenhead in a central passage of his speech in White v White supra, under the heading 'Equality', Lord Nicholls said as to the UK MCA 1973 s. 25 (Our S. 29 MCA);

'Self-evidently, fairness requires the court to take into account all the circumstances of the

case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. ... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (f), relating to the parties' contributions. This is implicit in the very language of paragraph (f): "the contributions which each ... has made or is likely ... to make to the welfare of the family, including any contribution by looking after the home or caring for the family" (Emphasis added). If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer.'(emphasis mine)

[29.] The value of the vacant land is appraised at **\$114,924.00** and the solar improvements at **\$15,000.00** totaling **\$129,924.00**. The total value of the land, the buildings and the improvements to the property is valued at **\$423,000.00**. Therefore the husband alone has contributed Thirty-one (31) per cent of the value of the matrimonial property. I accept that the husband contribution has inured to the benefit of both parties, and while the wife should participate in the increase, it is clear that the husband intended her to participate equal to him in the accumulation of the equity in the property. Also based on how this case unfolded he was intending initially not to question her equal interest in the value of the tri-plex, but has resiled from that position since the wife is exacting payment she said are arrears of maintenance and outstanding mortgage payments. It is an uncontroverted fact that between providing the vacant land to build the tri-plex, he diligently paid his half of the monthly mortgage installment. The husband also outfitted the Tri-plex with a solar system valued at **Fifteen Thousand (\$15,000.00) dollars**.

- (i) Referencing the issue of contributions: -The husband was also able to demonstrate through bank statements exhibited to his 26th March, 2024 affidavit, that each month his contributions to the couples joint account was more than the wife deposited to the joint bank account from which the mortgage payments were made together with the household expenses. This added to his contribution to the family. In the interest of fairness, and justice, I am of the view that this warrants a departure from the equal sharing principle. In *NE v BE [2017] 2 BHS J No.98*, Justice Winder as he then was stated;

"The Husband acquired the matrimonial home prior to the marriage and whilst I accept that the wife made some contribution to the family life I prefer the evidence

of the husband in this regard. Moreover, it is clear that the husband made a greater financial contribution than the wife to the matrimonial home. The property located Pinewood is a matrimonial asset and therefore subject to the sharing principle and in my judgment this is a proper case to depart from the equal sharing principle. Firstly, the matrimonial home was a pre-marital asset and secondly the marriage was of short duration.”

- (ii) Referencing the issue of contributions - It might also occur to the court that while achieving fairness may seem to favour the wife there is also the obligation not to discriminate between the parties and this may actually mean that the person making the largest financial contribution really does deserve a departure from the equal sharing principle if discrimination between the parties is to be avoided;

Sharp v Sharp [2017] EWCA Civ. 408, [2018] Fam. 317, [2017] 4 All ER 1046, [2018] 2 WLR 1617, [2017] 2 FLR 1095, [2017] Fam Law 821, 167 NLJ 7751, 167 NLJ 7752, [2017] All ER (D) 74 (Jun) Per Lord Justice Macfarlane in quoting the seminal decision of the House of Lords per Lord Nicholls of Birkenhead in a central passage of his speech in *White v White* supra, under the heading 'Equality', Lord Nicholls said as to **the UK MCA 1973 s. 25 (Our S. 29 MCA)**;

'Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. ... But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles

- (iii) The husband and wife operated a joint account. This is material to the issue of their respective contributions.

The nature of joint accounts is described as follows: **Halsbury's Laws of England Matrimonial and Civil Partnership Law (Volume 72 (2019), paras 1–460; Volume 73 (2019), paras 461–940)- 282. Joint banking account held by spouses or civil partners.**

“Where spouses or civil partners have a common purse and a pool of their resources, whether in a joint banking account or otherwise, the remuneration of one party is usually regarded as being earned on behalf of both and to be joint property, and amounts paid in and withdrawn by each party are irrelevant”.

See Jones v Maynard [1951] Ch 572, [1951] 1 All ER 802 (where a husband authorized his wife to draw on his bank account which was then operated as a joint

account into which both paid their income and earnings, his payments being much the larger, and from time to time he withdrew money to pay for investments which he purchased in his own name, and it was held that the principle of equality ought to be applied and the wife was entitled to half the final balance in the joint account and to half the value of the investments existing at the date when the account was closed).

- (iv) The husband's revelations about the management of the joint account held by the couple are persuasive. The bank statements he exhibits to his affidavit show an account in the name KAD (the husband) or TVND (the wife), of No. 14 South Coast Road, Hanna Road. They also show deposits made bi-monthly to the account which total the **\$1,419.66** which the husband indicates were deposits to the account from his salary. It also shows the deposits in the amount of **\$1,209.60** apparently made by the wife as it is the exact amount she has indicated she deposited to the account from her salary on a monthly basis, proving the joint contributions of the parties, but also attesting to the husband's superior contribution to the tune of **\$390.06**. Why the wife neglected to include the existence of this account in her affidavits remains a mystery. But suffice it to say that the contributions to this account were made by both the husband and the wife. The joint account also shows deposits from the Two (2) tenants in the sum of **\$800.00** per month, increased to **\$900.00** per month in August 2023. The one change in the deposits made to the joint account by the husband occurred after he accepted the VSEP package from BTC. Direct payments were no longer possible but the statement shows that no month did he fail to deposit his portion of the mortgage which was **\$955.55**. However, the wife contends that the husband owes mortgage payments for the periods Jan, 2022 in the sum of **\$8,394.00**, and the sum of **\$2,247.41**. This is plausible given that the husband made transfers out of the joint account over that period for approximately **\$16,266.65** ostensibly for paying school fees and other household expenses. He did however exhibit receipts for the house insurance premiums in the sum of **\$6,105.33**. The husband also contends that the wife made withdrawals from the account by the ABM totaling approximately, **\$11,950.00**. Given that the wife has not denied that the husband used portions of the sums withdrawn to pay school fees and other household related expenses and the husband cannot prove that the wife used the funds she withdrew for purposes other than household and child related expenses, I accept that both parties used the joint account as intended and agreed. I therefore reject the wife's contention that the husband owes her **\$8,394.59** in mortgage payments for the period January 2022 – March 2023.
- (v) The husband himself admitted that he stopped making mortgage payments at the end of February 2024 due to the terms of the consent order mentioned above. However, as the property adjustment remains an outstanding issue the husband is liable to pay the wife the mortgage payments for the months of February,

2024 and March 2024. She claims the sum of **\$2,247.41** but does not explain how she arrived at that sum because the mortgage payment as demonstrated on the bank statements show that the mortgage payments are **\$1,911.99** per month and divided between the parties is **\$955.55** per person per month. I accept however that there may be late fees attached to any outstanding mortgage payments for the period and if such is established from the bank statement the husband shall be required to pay it.

- (vi) The wife contends that the husband owes a total of **\$3,295.75** for dental and eye expenses for the children. She has failed to show any receipts for these payments or to explain them in any way. Moreover, she has failed to indicate when the charges occurred. In the premises since the husband agreed to pay half of these expenses in the Interim Consent Order, the sum of **\$3,295.00** is to be paid by the husband upon presentation by the wife of an invoice showing that such charges occurred after the Consent Order dated 19th June, 2023. Alternatively the insurance premiums in the sum of **\$997.47** which I accept is owed to the husband for insurance premiums under the interim Consent Order can be off set against the **\$3,295.00** and the husband would pay the wife the difference of **\$2,297.53**.
- (vii) For the air conditioning units, the wife claims the sum of **\$1,966.14**. The husband said she initially told him this cost would be **\$1,666.14**. The receipts exhibited by the husband are unclear. I do not believe that the wife would fabricate an increase of Three (**\$300.00**). This sum is negligible in the existing circumstances, however since the parties are intent on being exact with each other, I find that the husband shall pay the sum of **\$983.07** to the wife to reimburse her for the air conditioning unit to the apartment. It is more likely than not that this helped to facilitate the increase in rent to **\$900.00** now being demanded of the tenants.
- (viii) I am satisfied that the vehicle like the other marital assets were purchased during the course of the marriage and was used to the benefit of the family. I therefore make no deduction from the husband's interest in this sum.

[30.] The final consideration mandated by S. 29 is (1)(g) which provides "*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*"; - had the marriage of these parties survived, the wife would not necessarily be entitled to any pension of her own, and only to any portion of the husbands own if per chance his demise had befallen him prematurely. When the totality of the situation is considered the wife will benefit in any event from the husband's pension, given that he remains unemployed and has to make all of the maintenance payments this court has

ordered from the VSEP funds and the monthly pension that he still receives from BTC. Consequently there is no loss there.

[31.] In exercise of the court's 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. I am satisfied that there is ample reason to depart from the principle of equal sharing and that the husband is recognized as having a greater interest in the matrimonial property than the wife.

[32.] Strikingly beyond the fact that he has contributed more than the wife to the acquisition and improvement of the matrimonial home and property, his medical condition is a special circumstance that cannot be overlooked. If he is unable to get the surgeries needed to improve his life, chances are his ability to provide for the children until they reach the age of majority will be imperiled.

[33.] In all the circumstances of the case I am satisfied that a fair and just outcome for these parties, in the surrounding circumstances, in consideration of the S. 29 provisions and all of the referenced authorities dictate that the party's interest in the matrimonial property shall be shared on a Sixty Per Cent (60%) to the husband and Forty Percent (40%) to the wife basis.

CONCLUSION

CUSTODY, ACCESS AND MAINTENANCE

[34.] That the husband and wife shall have joint custody of the minor children, KNTD (f) born 9th May, 2009 and KNTD (f) born 11th March, 2013 ("collectively called the children" with care and control to the wife and liberal and staying access to the husband.

[35.] The husband shall have access to the children every other weekend wherein the husband shall collect the children from school on Friday at 3 p.m. and thereafter the husband shall return the children to the school the following Monday at 9 a.m. until the children have attained the age of 18 years of age. During the times when the children do not have school, the husband shall collect the children from and return the children to the wife's residence at the same times.

[36.] That on the weeks when the husband does not have access to the children, the husband shall have access to them on Tuesdays and Thursdays by collecting them from school at 3 p.m. and returning them to school the following day at 9 a.m. until the children have attained the age of Eighteen (18) years of age. During the times when the children do not have school, the husband shall collect them from and return the children to the wife's residence at the same times.

[37.] The children shall alternate all school and public holidays and the wife and the husband including ½ of summer vacations, Easter break, Mid Term break, Christmas and New Year's Day until the children have attained 18 years.

[38.] The wife shall have access to the children for one half of the summer vacations from 1st day of July to the 31st July, each year until the children attain the age of Eighteen (18) years.

[39.] The husband shall have access to the children One half of the Summer vacations from 1st day of August, whereby the husband shall collect the children from the wife's residence at 9 a.m., to 31st August, whereby the husband shall deliver the children to the wife's residence by 6 p.m., until the children have attained the age of Eighteen (18) years.

[40.] During the husband's monthly summer access to the children, in the month of August, the payment of maintenance to the wife shall be suspended.

[41.] The husband shall have access to the children for One Half Easter break being the first half of the Easter break and the wife shall have access to the children for One half of the Easter break being the Second half of the Easter break until the children have attained the age of Eighteen (18) years .

[42.] The husband shall have access to the children from 9 a.m. on Christmas Eve and the husband shall return the children to the wife's home by 3 p.m. on Christmas Day, continuing until the children have attained the age of eighteen (18) years of, with access alternating each year.

[43.] The wife shall have access to the children on New Year's Eve and the husband shall collect them from the wife's residence at 9 a.m. on New Year's Day and thereafter returning them at 9 a.m. the following day, until the children attain the age of Eighteen (18) years with access alternating each year.

[44.] The husband and the wife shall be at liberty to travel with the said children. The travel expenses for the said children shall be paid for by the accompanying parent and where no parent is accompanying them, the husband and the wife shall share equally all travel expenses which are agreed as between the parties until the children have attained the age of Eighteen years.

[45.] The Husband and the wife shall make each other aware of intended travel with the children no less than Seven (7) days before travel and they shall provide each other with a travel itinerary including but not limited to the date and time of travel, destination and accommodation no less than Five (5) days before travel.

[46.] The wife shall provide the husband with the children's passports to facilitate travel and the husband shall return the said passports to the wife when he returns the children to the wife. The parties shall execute any necessary documentation to facilitate travel with the said children.

[47.] The husband shall have access to the said children all day on Father's Day and on his birthday, until the children each attain the age of eighteen (18) years.

[48.] The wife shall have access to the children all day on Mother's Day and on her birthday, until they each attain the age of Eighteen (18) years.

[49.] The husband and wife shall share equally, access to the children on the children's birthdays, until they each attain the age of Eighteen (18) years.

[50.] That the husband and wife shall each ensure that the children's cell phones are charged during their access to facilitate communication with the parent that does not have access to the children at that time. Further that the husband and the wife should each monitor the cell phones usage by the children and ensure proper use of the said cell phones by the children.

[51.] That the husband and the wife shall ensure that the children engage in counselling sessions, at a mutually agreed counsellor and/or therapist, in relation to these divorce proceedings and that should there be any costs in relation to the same, that the wife and the husband shall share equally in the cost of and occasioned by the said counselling.

[52.] The husband shall have access to the said children at any other time as agreed between the parties.

[53.] The husband shall pay the wife the sum of Four Hundred (\$400.00) per month towards the maintenance of KNTD (f) born 9th May, 2009, payable on 28th day of each month until; she attains Eighteen (18) years of age or upon the completion of a first degree of tertiary education, provided she enrolls within a tertiary institution within Six (6) months of her eighteenth birthday whichever is the later.

[54.] The husband shall pay the wife the sum of Four Hundred (\$400.00) per month towards the maintenance of KNTD (f) born 11th March, 2013, payable on 28th day of each month until; she attains Eighteen (18) years of age or upon the completion of a first degree of tertiary education, provided she enrolls within a tertiary institution within Six (6) months of her eighteenth birthday whichever is the later.

[55.] That until a property adjustment is completed by preparation, execution, stamping and recording of a Deed and Release from the husband to the wife and the payment of the value stipulated by the court is paid from the wife to the husband that the husband's payment of maintenance shall be collected by the wife from the monthly rental proceeds from the husband's rental unit, attached to the matrimonial home in the amount of Eight Hundred (\$800.00).

[56.] That the husband shall pay the remaining balance of his One half of KNTD (f) born 9th May, 2009 educational expense after the deduction of Fifty (\$50.00) generated by the monthly rental proceeds from the husband's rental unit attached to the matrimonial home until she attains Eighteen (18) years of age or upon the completion of tertiary education provided that she is enrolled within a tertiary institution, which is agreed between the parties within Six (6) months after her Eighteenth birthday, whichever is later.

[57.] That the husband shall pay the remaining balance of his One half of KNTD (f) born 11th March, 2013 educational expense after the deduction of Fifty (\$50.00) generated by the monthly rental proceeds from the husband's rental unit attached to the matrimonial home until she attains Eighteen (18) years of age or upon the completion of tertiary education provided that she is enrolled within a tertiary institution, which is agreed between the parties within Six (6) months after her Eighteenth birthday, whichever is later.

[58.] The husband and the wife shall share equally the children's' educational expenses, including but not limited to tuition, extracurricular activities, examination fees, registration fees,

uniforms, books, school shoes and school supplies until each child attains the age of Eighteen years or upon the completion of a first degree of tertiary education, provided that the equal division of the educational expense shall be applicable in relation to tertiary education agree to the enrollment of each child in each individual tertiary institution, whichever is the latter.

[59.] The husband shall pay the wife the sum of Four Hundred (\$400.00) in May and November of each year, towards the general clothing expenses of each child payable on the 28th day of each month until they each attain the age of Eighteen (18) years or is upon the completion of tertiary education provided that she is enrolled within a tertiary institution within Six (6) months after her Eighteenth birthday, whichever is later.

[60.] The husband and the wife shall be at liberty to have the children covered by medical insurance. That the party who has the children insured shall be reimbursed by the other party, one half of the monthly premiums and any co-pay when the said insurance is utilized for the children's benefit. That the parties shall provide each other with copies of their insurance card for the children's use.

[61.] The Husband and the wife shall share equally any medical, dental, and optical expenses which are covered by the insurance until each child attains Eighteen (18) years of age or upon the completion of tertiary education provided that each child is enrolled within a tertiary institution within Six (6) months after her Eighteenth birthday, whichever is later.

[62.] The husband shall make all payments due under this order into a designated bank account.

PROPERTY ADJUSTMENT

[63.] That the wife shall purchase the husband's 60 % right, title and interest in the matrimonial home within Ninety (90) days from the date of this order and the wife shall indemnify the husband in relation to the same and that the wife and the husband shall execute the Deed of Release or any other documentation to facilitate the execution of the Deed of Release and that the Registrar shall be at liberty to execute the said Deed of Release or any other necessary documentation to facilitate the said purchase by and on behalf of the wife.

[64.] Further and in the alternative in the event that the wife fails and/or refuses to purchase the husband's interest of the matrimonial home within Ninety (90) days of the date of this order, that the matrimonial home shall be placed for sale with a BREAA agent and that upon sale of the same for a reasonable market value, that the mortgage be satisfied and the net proceeds be shared between the parties as to 60% to the husband and 40% to the wife and that the wife shall execute the Real Estate Agent's contract, agreement for Sale, Conveyance or any other necessary documentation to facilitate the said sale, failing her execution that the Registrar be at liberty to execute the said Real Estate Agent contract. Agreement for Sale, Conveyance or any other necessary documentation to facilitate the said sale by and on the wife's behalf.

[65.] That the wife shall pay to husband the sum of Three Hundred and Eighty-five (\$385.00) representing one half of the cost of the appraisal of the matrimonial home.

[66.] The wife shall pay to the husband the sum of \$997.07 representing half of the insurance premiums paid by the husband for the said children of the marriage.

[67.] That the husband shall pay to the wife the following sums which have been found to be due to her of the expense outlined on the spreadsheet;

a. The sum of #1,911.99 representing mortgage payments for the months of February, 2024 and March 2024.

b. The sum of \$3,295.00 representing half the dental and optical expenses incurred for the children of the marriage provided the wife presents the husband with invoices and/or receipts from the attending physicians.

c. The sum of \$983.07 representing the husband's half contribution to the purchase of the air conditioning unit for the apartment unit.

[68.] The parties are at liberty to offset the sums owed to each other during the finalization of the transfer or sale of the property.

[69.] Until the matrimonial property is purchased by the wife or until sale of the property the wife shall be at liberty to collect the rents from the husband's apartment unit and apply those rents towards the monthly maintenance payments for both children herein. Upon her doing the same, the husband shall pay the balance owing thereafter out of his own pocket.

[70.] The Parties shall bear their own costs of and occasioned by this application.

[71.] The Parties shall have liberty to apply.

[72.] The Court Declares that pursuant to S.73 (1) (b) (1) of the Matrimonial Cause Act that the only children who are or may be the children of the family to whom the Section applies are KNTD born 9th May, 2009 and KNTD born 11th March, 2013 and that arrangements have been made for their welfare and those arrangements and are satisfactory.

Dated the 17th day of June, A.D. 2024.



C.V. Hope Strachan J.

