

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**2023/FAM/div/No. 00256**

**B E T W E E N:**

**P. A. D. T.**

**Petitioner**

**AND**

**B. G. T.**

**Respondent**

**AND**

**UNKNOWN WOMEN**

**Co-Respondent**

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

**APPEARANCES: Mrs. Marylee Braynen-Symonette Counsel for the Petitioner**

**Ms. Nicholette Burrows for the Respondent**

**Date: 10<sup>th</sup> March, 2025, 12<sup>th</sup> March, 2025**

**DECISION ON COSTS**

*Application for domestic violence protection order refused – principle that costs follows the event - should successful party be awarded costs? – courts' wide discretion - What factors must be taken into consideration when the court is exercising its discretion? - courts' ability to depart from principle*

**BACKGROUND**

[1]. On 29<sup>th</sup> January, 2025 the Petitioner (“the wife”) filed a Notice of Proceedings pursuant to s. 4 of the Domestic Violence (Protection Orders) Act for a protection order against the Respondent

("the husband"). At the conclusion of the hearing of the application this court issued its ruling wherein the domestic Protection order was refused and upon the court stating that it was intended to award the husband his costs of the application, Counsel for the wife asked leave of the court to address the issue of costs before a final determination on the issue was made. Leave was granted to provide written arguments/submissions within Seven (7) days of the date thereof. The court also delayed publication of the ruling to the date of the decision on costs when both rulings will be dated concurrent with that decision and accordingly published. Submissions were received from Counsel for the wife on 13<sup>th</sup> March, 2025. No submissions were received on behalf of the husband at all.

- [2] When submissions made by Counsel for the wife are crystallized they are:
- a. That the husband did not make application for costs and so he is not entitled to an order for costs.
  - b. That the fair and just order that the court should make is that each party should bear their own costs.

#### THE LAW

[3] It is well established in jurisprudence that the court has unfettered discretion when deciding the disposition of costs in legal proceedings. The maxim that costs follow the event is trite law. The rule is applied generally in matters of every discipline and no less in family proceedings. As in the decision making process on a variety of applications in family proceedings that court in exercising its' discretion will have regard to all of the circumstances of the case. The result is that each case will be decided on its merit and what the justice of the case requires. Counsel for the wife is of the view that the circumstances which should influence the court in determining that no costs should be ordered in favour of the husband even though he prevailed in the application is based on the Two (2) premises listed above.

[4] The wife's counsel commended the case of **The Attorney General of The Commonwealth of The Bahamas et al v Westmoor Limited et al** SCCivApp/143/2021 to the court to demonstrate the point where it was held:

"It is generally accepted, and the authorities confirm, that this discretion although wide is not to be exercised arbitrarily but must be exercised judicially. This requires the Court to act in accordance with established principles applied to the relevant facts of the case. The general rule, as I understand it, is that at the conclusion of a hearing, costs follow the event with the result being that a successful party is awarded his costs of the proceedings, unless there is a special circumstances which may militate against the usual order being made. Bernard

**Schulte Shipmanagement (Cyprus) Ltd. v Ritchie and another** [2015] 3 BHS j.  
No. 152.

[5] I accept the wife's counsel's submission that to do what is just here between the husband and wife, an examination of the parties' conduct which led to the wife making the application and the husband's conduct during the entire proceedings thus far must be undergone.

[6] In **Rawson McDonald and another v Paul R. Major** [2023] 1 BHS J. No. 12 –*Crane-Scott JA* set out the guiding principles for the exercise of the discretion which is respectfully adopted for this exercise. She opined quoting the principles in **Scherer and another v. Counting instruments Ltd and another** [1986] 2 All ER 529;

“After reviewing relevant authorities, on page 537 *Buckley LJ* (who wrote that Court's decision), derived ten (10) guiding principles which may be usefully reproduced. That Court said:

“From the cases which we have cited and from **Ottway v Jones** [1955] 2 All ER 585, [1955] 1 WLR 706, **Baylis Baxter Ltd v Sabath** [1958] 2 All ER 209, [1958] 1 WLR 529 and **William C Parker Ltd v F J Ham & Son Ltd** [1972] 3 All ER 1051, [1972] 1 WLR 1583, which were also referred to by counsel, we derive the following propositions. (1) The normal rule is that costs follow the event. That party who turns out to have unjustifiably either brought another party before the court or given another party cause to have recourse to the court to obtain his rights is required to recompense that other party in costs. But, (2) the judge has under s 50 of the 1925 Act an unlimited discretion to make what order as to costs he considers that the justice of the case requires. (3) Consequently, a successful party has a reasonable expectation of obtaining an order for his costs to be paid by the opposing party but has no right to such an order, for it depends on the exercise of the court's discretion. (4) This discretion is not one to be exercised arbitrarily: it must be exercised judicially, that is to say in accordance with established principles and in relation to the facts of the case. (5) The discretion cannot be well exercised unless there are relevant grounds for its exercise, for its exercise without grounds cannot be a proper exercise of the judge's function. (6) The grounds must be connected with the case. This may extend to any matter relating to the litigation and the parties' conduct in it, and also to the circumstances leading to the litigation, but no further. (7) If no such ground exists for departing from the normal rule, or if, although such grounds exist, the judge is known to have acted not on any such ground but on some extraneous ground, there has effectively been no exercise of the discretion. (8) If a party invokes the jurisdiction of the court to grant him some discretionary relief and establishes the basic grounds therefor but the relief sought is denied in the exercise of the discretion ... the opposing party may properly be ordered to pay his costs. But where the party who invokes the court's jurisdiction wholly fails to establish one or more of the ingredients necessary to entitle him to the relief claimed, whether discretionary or not, it is difficult to envisage a ground on which the opposing party could properly be ordered to pay his costs ... (9) If a judge, having relevant grounds on which to

do so, has on those grounds, or some of them, made an order as to costs in the exercise of his discretion, his decision is final unless he gives leave to a dissatisfied party to appeal. (10) If, however, he has made his order having no relevant grounds available or having in fact acted on extraneous grounds, this court can entertain an appeal without leave and can make what order it thinks fit.” [Emphasis added]

[7] On examining the factual circumstances relied on by the wife to ground her application the dilatory approach by the husband in the conduct of the proceedings is striking. Having obtained a Decree Nisi on 27<sup>th</sup> October 2023 and filing it on 23<sup>rd</sup> November, 2023 the wife filed her Notice and Affidavit seeking ancillary relief inclusive of property adjustment. The Respondent was served with the same on 20<sup>th</sup> June, 2024 as evidenced by an Affidavit of Service filed 21<sup>st</sup> June, 2024. The Respondent did not file an Affidavit to facilitate the hearing of the application until 17<sup>th</sup> March, 2025, notwithstanding that he has already been granted an adjournment previously for unpreparedness. The failure in filing that Affidavit is in contravention of the **Matrimonial Causes Rules, Rule 45 (2)** which provides;

“(2) Where a husband is served with a notice of an application for alimony pending suit, maintenance of the children, maintenance, a secured provision, permanent alimony, periodical payment or for securing periodical payments to a wife, he shall, within Fourteen days of the date of service of the notice upon him, or if he has not at the time of such service entered an appearance, after entering an appearance within fourteen days after expiration of the time limited for appearance file an affidavit setting out full particulars of his property and income, unless in the case of any such application, other than an application for alimony pending suit, the wife at the time of service of the application give notice to the husband of her intention to proceed with the application upon the evidence already filed on the application for alimony pending suit.”

[8] The Wife’s counsel submitted that, the husband by his own admission in his affidavit is culpable for the wife feeling motivated to bring the proceedings for the Domestic Violence Protection Order when he said:

“I verily believe that the Petitioner’s motivation for seeking a Protection Order is a means of retaliation for my delay in responding to the hearing of the ancillary matters...”  
[Emphasis added]

[9] Clearly the husband is cognizant of the delay in the proceedings and that he has caused such a delay. This statement also causes me to hearken back to an admission he also made in that affidavit where he said “The Petitioner has significantly contributed to the volatility in the matrimonial home.” Notwithstanding that this court has found the wife to be the provocateur of the incidents which occurred in the matrimonial home, and dismissed the wife’s application for an

ouster order under the Domestic Violence (Protection Orders) Act, the husbands' admission that there is volatility in the home, and his acknowledgement of the actual incidents, leads me to believe that the delay in his filings is deliberate and engineered to cause further delays in the final resolution of the ancillary matters. It has been Nine (9) months since service of the wife's Affidavit and Notice and the husband has yet to file and serve his Affidavit. I also find it remarkable that the husband promptly answered the wife's affidavit and vehemently defended the wife's application for ouster but has not complied with the rules as it relates to the filing of the Affidavit for the ancillary matters.

[10] While the first consideration in **Scherer** supra, causes me to look very closely at the fact that the wife was at fault for the incidents of violence which occurred in the home and as a consequence her application was dismissed, I cannot ignore her counsel's submission that her application was brought about by frustration about the husbands delay in helping to finalize the extant matters in the divorce. Given the nature of the proceedings and the admitted atmosphere in the home I find that to be a reasonable response. In those circumstances the application for the ouster order was not "unjustifiably brought." In applying the relevant guidelines in **Scherer** supra I can conclude the matters as follows;

**CONCLUSION:**

[11] The justice of the case demands that notwithstanding the reasonable expectations of the husband on the dismissal of the wife's application that costs would be awarded to him, and having considered all the facts of the case, the relevant grounds for the application, and the power given under the Court's wide discretion, I hereby order that the costs of the application taken by the wife for an ouster order/vacant possession of the matrimonial home, situated Winton Heights, Nassau, Bahamas be Costs in the Cause.

Dated the 26<sup>th</sup> day of March, A.D., 2025



---

The Honourable Madam Justice C.V. Hope Strachan,  
Justice of the Supreme Court of the Commonwealth of The Bahamas