

COMMONWEALTH OF THE BAHAMAS

2022

IN THE SUPREME COURT

FAM/div/00644

FAMILY DIVISION

BETWEEN

R C S SR.

Petitioner

AND

T S (NEE B)

Respondent

Before: The Hon. Madame Justice J. Denise Lewis-Johnson MBE

Appearances: Raynard Henfield of Counsel for the Petitioner

Regina E. Bonaby of Counsel for the Respondent

Hearing Date: 29th January 2024; 18th April 2024; 16th July 2024; 12th August 2024; 30th January 2025; 12th February 2025; 4th March 2025

Family Law- Division of Assets- Ancillary Relief- Matrimonial Property- Equal Sharing Principle- Maintenance of minor child-Paternity- Paternity Fraud

JUDGMENT

Introduction

By Notice of Intentional to proceed with Ancillary Relief filed the 23rd day of October A.D, 2023 the Petitioner made application for property adjustment and various declarations regarding the children of the marriage. The Respondent applied for custody and maintenance of the minor child of the marriage. Both parties filed Affidavits and were cross examined at trial. The only

matrimonial asset is property located at Lot. 24A Lexington Estates Subdivision conveyed to the parties as joint tenants. There is an existing mortgage over this lot.

The Petitioner's Evidence

1. That I was lawfully married to the Respondent on the 17th June 2001.
2. That at the time the petition was filed I was made to believe that the Respondent had given birth to three children. I discovered during the divorce proceedings that I am not the father of the minor child.
3. Sometime in December 2022 I conducted a paternity test and discovered that the minor child was not my biological son.
4. The Respondent was served with an Affidavit that provided the discovery of the paternity.
5. That sometime in April 2023 Counsel for the Respondent wrote to my Counsel requesting that a new paternity test be done and proposed a list of medical labs suitable to the Respondent.
6. That on the 28th April 2023, I attended Kelso Medical Laboratory with the minor child to conduct a second paternity test which results confirmed that I was not the minor child's father.
7. That I recall the Respondent telling me about her having conversations with another man during our marriage. It was clear that the Respondent had committed adultery and led me to believe that the minor child was my own.
8. That I believed that at all material times the Respondent knew that I was not the father of the said child and cruelly carried on this deceit for 12 years for her financial gain.
9. That I would wish the Court to order the Respondent to compensate or reimburse me for my maintenance contributions made for the said child at an average of \$300.00 per month for the past 12 years.
10. I also ask the Court to consider that my income was used to feed, clothe, educate and provide for the said child while the Respondent was fully aware that another man had parented the child.

11. That when the Respondent and I got married in 2001, the Respondent oversaw my income and had me open up a joint account with her, for income and expenditure to be shared equally.
12. That in 2005 we secured a mortgage to construct our home. As the Respondent was self-employed, I was forced to make mortgage payments through salary deduction in the sum of \$291.00 per week, I did this for the past 18 years. The Respondent ensured that I worked two jobs to settle what she made me to believe was, my share of the family's expenses, and to accumulate some savings.
13. An appraisal was conducted of the home and it was appraised at \$216,000.00.
14. That the Respondent led me to believe that she was equally contributing to our expenditure and savings. I discovered that the Respondent has never once contributed towards the monthly mortgage payments to my detriment.
15. That a further review of the account revealed that the Respondent has been using the ATM card for a lavish lifestyle leaving me to bear the burden of construction of a home, payment of the mortgage and utilities, construction material, educational expenses and maintenance of the family.
16. That the Respondent took the remaining funds over the years and applied them towards:
 - a. Beauty supplies;
 - b. Eating out two-three times per day;
 - c. Maintaining the child that was fathered by another man ;
 - d. Paying tuition for her sister in the USA;
 - e. Lending money to her brother from my savings; and
 - f. Purchasing appliances for an alleged co-worker from Furniture Plus, without my agreement or approval.
17. That I received \$45,000.00 from B.F.S. "BFS" after it was bought by "S". The Respondent indicated that she was paying the contractors \$10,000.00 for one of the construction phases. I never saw any work being done to the home.
18. That I asked the Respondent what she did with the money and she replied that she paid the man who never showed up and that she is unable to reach or locate him.
19. That as a result of this, I had to pay a further \$14,000.00-\$15,000.00 to have the very same work done.

20. That I believe that the Respondent took the \$10,000.00 and never paid anyone to do the work.
21. That it is apparent now that I alone financed the renovations, repairs and expansion of the matrimonial home save and except for a one-time input from the Respondent in the amount of \$12,000.00.
22. That in May 2023 a new appraisal was done on the home which is now valued at \$538,470.00.
23. That I am a 47 year old butcher and in recent years I started experiencing pain in my right arm and shoulder area. As a result of this, I informed the Respondent that I would be quitting one of the two jobs. I began suffering shoulder arthroscopy and I'm unlikely to be able to carry on manual labor much longer.
24. That the Respondent insisted that I keep both jobs despite my deteriorating health because my salaries were paying for the family's expenses. That prior to this I was of the view that my second job was permitting me to accumulate savings.
25. That I have no other way to make a living and have no experience in any other field. Neither do I have any other jobs or qualification. I am employed with "S" and not self-employed.
26. That due to my injury, I had to resign from my side job that very same month due to pain and discomfort.
27. That at present I cannot lift heavy boxes, carry out any overhead physical activities or need time off from work.
28. That on February 1st 2023 I was provided with a correspondence from the Public Hospitals Authority's Rehabilitation Services that noted my condition has not improved from August 2022 to present time. I am unable to properly heal because I have to work.
29. That I underwent surgery and have done countless and costly therapy sessions several times per week.
30. That I have a monthly expenditure of \$1,823.50.
31. That the Respondent professions lack any mandatory age of retirement and neither does the Respondent suffer from any physical or mental illness that inhibits her ability to work.
32. That the Respondent is a taxi driver, straw vendor and insurance agent.

33. That the Respondent is able to collect child support and maintenance payments from the minor child biological father.

The Respondents Evidence

34. That at the time of the presentation of the petition I lived and cohabited in a single family home off Malcolm Road west in a matrimonial property held between the Petitioner and myself as joint tenants

35. That I qualified for the property and had to pay off the Petitioner's loan at Commonwealth Bank in order for his salary to accommodate a mortgage payment of \$609.00 for the property alone.

36. That I paid the deposit and legal fees for the conveyance, mortgage and further mortgage charge at First Caribbean International Bank via an asue payout.

37. That from 2004 I paid the rent for Apartment No.1 Flamingo Gardens at \$550.00 per month while the Respondent paid the mortgage for the property.

38. That I am currently employed as a Taxi Driver.

39. That there are three (3) children of the marriage R.C.S. Jr., R.C.S. and R.C.S. R.C.S. Jr. and R.C.S. are sui juris.

40. That the Petitioner and I along with our three children currently reside in the matrimonial property.

41. That the matrimonial home was appraised on the 10th May 2023 and was appraised at \$428,670.00 inclusive of the incomplete addition.

42. That in June 2004 the Petitioner and I opened a joint account where only the deduction was deposited.

43. That in 2009, I worked at "F G" as a Sales Representative earning \$25,599.00 from January to September, I was commission based and my salary started to be deposited on the joint account.

44. That from 1995-2011 I rented a stall that generated \$900.00 per week after payment to my only staff member.

45. That the Petitioner and I agreed that he would cover the mortgage and groceries.

46. That I would pay for the medical insurance for the children, utilities for the home, school fees/baby sitter, savings for the family and vacations.

47. That in 2012 the Petitioners salary was also deposited into the joint account.
48. That in 2012 I supplemented my income by providing taxi services which generates \$3,600.00 per month.
49. That I joined numerous asues over the course of the marriage to allow for the building of the addition behind the matrimonial home, family trips and to take care of my family.
50. That the Petitioner moved his salary in April 2022 to which he only pays mortgage and buys personal groceries from himself.
51. That I have an account at First Caribbean Bank and Fidelity with approximately \$1,212.80 and \$12.92 respectively as of 23rd January 2024.
52. That I began building the addition in 2007 from the asue payouts and the addition was to belt course.
53. That the Petitioner received \$40,000.00 from a pension payout from BFS.
54. That the Petitioner went to Lot 24A of L E and sought Mr. G, a contractor who was building on that property.
55. That in November 2018, the Petitioner instructed me to withdraw \$10,000.00 to mobilize the contractor from the joint account. That in December 2018 the Petitioner instructed me to withdraw on two separate occasions \$10,000.00 and \$12,225.00 for the contractor from the joint account which were all done via managers cheques.
56. That after receiving the last cheque, Mr. G never brought material neither did he come back to the matrimonial property to complete the works paid for.
57. That Mr. G only pitched and shingle more than half of the roof.
58. That I contacted another contractor to finish the shingles and correct the leaking roof.
59. That the Petitioner only invested \$20,000.00 into the additions and never sought to recover the funds from Mr. G.
60. That on 16th April 2019 I received a personal loan from Commonwealth Bank in the amount of \$20,000.00 for further construction to the addition. Commonwealth Bank merged a prior joint loan balance of \$5,000.00 to my personal \$20,000.00 loan accounting for the \$40,000.00 payout.
61. That I have used monies from the loan, taxi services and asue to build the addition on the matrimonial home.
62. That I paid an estimated \$25,000.00 on labor alone.

63. That I am currently in default of the loan and have an agreement with Commonwealth Bank to pay \$500.00 per month on the said loan and that the majority of the monies spent on the addition was my personal monies from loan and asues.
64. That my monthly expenditure is \$4,435.33.

The Issues

- I. Whether both parties are entitled to an interest in the matrimonial home and if so at what percentage?
- II. Should the Respondent be made to reimburse the Petitioner for maintenance sums paid towards the minor child for the past twelve years? If so, at what rate?
- III. Should the Court make a declaration of non-paternity or rebuttal of the presumption *pater est quem nuptiae demonstrant*?
- IV. Should the Court make a declaration that the child of the family is sui juris, on the basis that said child is of adult age, in good health, working part-time, financing their own needs and in college part-time?
- V. Should the Respondent's equity be reduced in matrimonial property, where she misused the Petitioner's funds, failed to substantially contribute to the property purchase, the construction, the mortgage payments and the maintenance/utilities etc., despite leading the Petitioner to believe she was equally contributing?
- VI. Should cost follow the event in family proceedings when a party's conduct was unreasonable, reprehensible and when facts could have been admitted prior to a trial on the issue?
- VII. Should the Court order that the reimbursement for child support and any order for costs be deducted from the Respondent's reduced equitable interest?

The Law

65. Section 29. (1) of the Matrimonial Causes Act :

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.

Decision

Property Adjustment

66. The parties resided at an apartment in F G until they moved into the matrimonial home off M R W which they own as joint tenants. The Court relies on the case of **Jupp v Jupp** for the application of S. 29 of the MCA in property adjustment matters, where Justice Anita Allen, then President of the Court of Appeal stated:

“It must be remembered that authorities from the United Kingdom cannot trump what the Statute Law of The Bahamas says. It is only if these cases are consistent with the Statute that they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by

case law must be construed in this light. The statute requires that you look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reasons for the same.”

67. The Courts duty is to look at the unique and particular circumstances of the case when making determinations on the division of marital assets. The parties were married in 2001 and thus falls into the category of a long marriage with a starting point of 50/50 division of the assets.
68. The Court must consider the factors of Section 29 as it seeks to be fair to the parties in all the circumstances of their case.
69. The only marital asset is the home which is subject to a mortgage with an outstanding balance of \$58,195.30 to First Caribbean International Bank. The most recent appraised value of the property is \$428,670.00 according to the appraisal report dated 10th May 2023.
70. Although the Respondent has admitted that she does not contribute to the mortgage, the Court is satisfied that the parties made an agreement with respect to how the mortgage and other bills of the family would be paid.
71. It is clear from the evidence that under the arrangement made between the parties, the Respondent found herself in a financial deficit as there are bills outstanding and owing to Bahamas Power & Light, Water & Sewerage Corporation and Cable Bahamas. The Respondent claims that this is a result of the Petitioner neglecting to perform his part under the financial agreement. The Court does not fully accept this reasoning as it is the Respondents evidence that the agreement was for the Petitioner to pay only the mortgage and purchase grocery. I accept that she utilized family funds for her private purposes.
72. I accept the evidence of the Petitioner and I find that he was blinded by love and trust. He trusted his wife with all his finances and believed that she would use them for the best interest of the family. He was wrong. The Respondent betrayed this trust and used

the family funds, particularly those of the Petitioner for her personal benefit and that of her family and friends.

73. The Petitioner is a butcher but failed to disclose his monthly income. The evidence further reflect that the Petitioner received a pension payout from BFS in the sum of \$45,000.00, which both parties agree was used for the benefit of the family on the renovation of and additions to the home. Although the Petitioner continues to work he also faces health challenges limiting his future job capacity.
74. The Respondent is currently self-employed as a taxi driver. The current income of the Respondent was also undisclosed.
75. Considering the age of both parties they have earning capacity, however the Petitioner's work life could be shortened due to his health challenges.
76. *Sir Michael Barnett in S v C 2006/FAM/div/00478*, while citing the case of **DD v LKW [2008] 2 HKC 134** stated:-

“Those cases were decided in the context of a statutory regime identical to that found in the Matrimonial Causes Act. The Hong Kong Court of Appeal specifically considered the decision of Dart v Dart and Wachtel v Wachtel and the more recent house of Lords decisions in White v White and Miller v Miller. I followed those more recent decisions that held that the equal sharing principle should apply in the Bahamas unless there is a compelling reason to depart from it.

22. In DD v LKW, the Court of Appeal sets out the relevant principles the Court considers when hearing an application for ancillary relief. Referring to the relevant sections of the Hong Kong statute the authorities, it said:

(1) In the majority of the cases where the parties only have limited financial resources, the focus of the inquiry of fairness is to divide the assets of the parties so as to make provision for their housing and financial needs. It may be necessary to augment the available asset by making orders for periodical payments (Miller [11][12]).

(2) Where there are assets which are available beyond satisfying the immediate housing and financial needs, equality in division of the assets should be made unless there is good reason to the contrary (Miller [16], Charman [65]). This approach is not confined to “big money cases” but to cases where the assets are available beyond satisfying the needs of the parties...

(3) The inquiry should be conducted in two stages:

1) First, computation of the available assets of the parties such as property, income (including earning capacity) and other financial resources which the parties have and are likely to have in the foreseeable future (Charman [67]).

2) Second, distribution of the assets by reference to the three principles of need (generously interpreted), compensation and sharing. These principles can be gleaned from s. 7(1) and each of the matters set out in s7(1)(a)-(g) can be assigned to one or another of the three principles (Charman).”

77. While I accept Sir Michael Barnett’s assertion in **S v C** it must be subject to the caution and ruling of President of the Court of Appeal Anita Allen in **Jupp v Jupp**.

78. The Petitioner contends that most of the renovations and additions were done by him with the exception of \$12,000.00 contributed by the Respondent resulting in a depletion of his financial resources. The Court does not accept this as accurate as the evidence suggest that the Respondent used funds from supplemental income, asues, other jobs and obtaining another loan to assist with additions to the matrimonial home.

79. It is the Courts view that the contributions of both parties albeit different levels and methods allowed for the acquisition and development of the matrimonial asset. However of concern is the removal of \$32,000.00 from the joint account by the Respondent. This sum, the Petitioner believed was applied to construction cost. I accept the evidence of the Petitioner that it was not so used and that the Respondent conveniently obtained a loan for \$30,000.00, when it was discovered. The withdrawal by her of \$10,000.00,

\$10,000.00 and \$12,000.00 coincided with each of the Respondent's alleged "Asue draws."

80. Based on the evidence before the Court, the Petitioner is entitled to a 60% interest and the Respondent a 40% interest in the matrimonial home. The Petitioner to purchase the Respondent's interest within 120 days of this Order. Failure to do so, the Respondent to purchase the Petitioner's interest in 120 days. If the parties fail to purchase the others interest, the home is to be sold and the net proceeds divided per their interest stated above.

Maintenance of the minor child

81. A child born in a marriage is presumed to be the biological child of the husband, this is a rebuttable presumption.
82. Section 7(1)(a) of the **Status of Children Act** provides:-

"Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and shall be recognized in law to be, the father of a child in any one of the following circumstances –

(a) the person was married to the mother of the child at the time of its birth"

83. The Court found the Respondent to be untruthful. The depth of her determination to deceive the Court in the face of the facts to contrary is unsettling. It was only when facing perjury did the Respondent retreat to the truth.
84. It was at this point in the trial that the Respondent withdrew her Application for custody and maintenance of the presumed minor child of the marriage.
85. This is not a case where one party with full knowledge that a child was not his/her own, and that the child was his/her spouse's child, accepted and treated the child as a child of the family. This is a case where a spouse was misled into believing that he was the biological father of the child, and thus there was no voluntary acceptance "as a child of the family" by the Petitioner. He was deceived, defrauded and misled by the Respondent, and he wishes to be reimbursed for the financial support he gave to the child.

86. It is the Petitioner's position that he did not fathered the minor child of the marriage as a paternity test was performed at Kelso Medical Laboratory which indicates that the probability of his paternity was 0%. The Respondent has reluctantly accepted this.
87. The issue is whether the Petitioner is so entitled in law to reimbursement for maintaining the child, that he was led to believe was his own. Neither of the parties provided precedents/case law on this issue. The Court invited the parties to address it on paternity fraud.
88. In the ordinary course of things the Court would have considered the minor child, as a child of the family, had the Petitioner been aware at an early stage after the birth of the child, and he acquiesced knowing he was not the father of the minor child. From the evidence led, the Court does not accept that the Petitioner was aware of this fact and as such, there was no intention on the part of the Petitioner to treat the minor child as a child of the family. Upon finding out he was not the biological father, the Petitioner, ceased maintenance, and all other parental obligation save and except, he remained cordial with the child.
89. The Court finds that the Respondent knew or ought to have known that having unprotected sex with at least two men could result in her husband (the Petitioner) not being the father of the child. She willingly and knowingly took that risk or worse she acted with reckless abandonment. She had no regard for the consequences and the result of this actions and behavior has led to paternity fraud
90. Having so acted the onus was on the Respondent to have a DNA test done to determine who the father was immediately upon the birth of the child. This would have allowed the Petitioner to make a free choice of accepting the child, as a child of the family. The Respondent deprived the Petitioner of that choice and she knowingly deceived the Petitioner for 12 years.
91. The Court finds it is unfair that the Petitioner has unwittingly taken care of, emotionally been involved with, loved a child he believed to be his own for 12 years. While the Respondent knew otherwise. He is now, forever burdened with that deceit and will for years to come, be forced to relive the pain of explaining this occurrence. The Petitioner has asked the Court to have him compensated for his loss.

92. Paternity fraud is where a mother of a child allows/deceives her husband into believing he is the biological father of the child, knowing that he is not, allowing him to continue as the presumed father or where she knows that possibility exists and fails and/or refuses to tell the presumed father of that possibility and fails to take such steps [DNA testing] to definitively determine if he is the biological father.
93. Lexis Nexis in an article published 22 January 2013 in discussing paternity fraud suggests that paternity fraud exist:

“Where there is “representation by words or conduct” that the mother allows the ‘father’ to be involved in the child’s upbringing, claims maintenance and/or allows the man’s name to be put on the birth certificate.

- 1) *The mother must have knowledge at the time she told or allowed the belief to be made that it was false or could be false.*
- 2) *The representation must have been made “deceitfully, either deliberately or recklessly in not caring whether it was true or not.’*
- 3) *“The representation must be made with the intention that it would be acted on.”*
- 4) *“The father must have acted upon the deceitful representation and suffered damages.”*

The Court accepts these elements as required to prove Paternity fraud.

94. Whether ‘paternity fraud,’ which could be considered a tortious act, has a place in family law is likely to be continuous debate. In **FRB v DCA [2019] EWHC 2816 (Fam) [2019] All ER (D) 179** it was held that:

“the tort of deceit in respect of intimate matters, including ‘paternity fraud’, could exist between a husband and a wife. However, in circumstances where the husband alleged paternity fraud and brought a claim in the tort of deceit against the wife, which was listed alongside financial remedy proceedings, the Family Division ruled that the route that the husband took was plainly inappropriate and that the deceit claim could not survive. It held that Parliament had provided a statutory remedy for financial provision on the breakdown of marriage and that the allocation of the parties’ resources was to be covered by s 25 of the Matrimonial Causes Act 1973 and not by other common law remedies. Accordingly, the court

ruled that the claim form and particulars of claim, concerning the deceit allegation, disclosed no reasonable grounds for bringing the claim and that they were an abuse of the court's process or otherwise likely to obstruct the just disposal of the proceedings."

95. However in **A v B [2007] All ER (D) 49**, the Claimant and Defendant were unmarried but spent time cohabiting. The Defendant became pregnant and the Claimant asked if the child was his, the Defendant said she was not seeing anyone else. The Defendant stated many times that the Claimant was the natural father of the child. The Claimant made payments for education, recreation and other needs of the child. When the relationship ended the Claimant brought an action for parental responsibility and contact. The Defendant disputed paternity. A DNA test proved that he was not the biological father. The Claimant made no more payments. He then commenced proceedings in deceit and sought recovery of sums paid by him on the basis of misrepresentation that he was the father.
96. The Court held that the tort of deceit was made out as, representation were made, those representation were false and the Defendant knew they were untrue. She intended the Claimant to rely on them and he suffered damage. The Court found the Claimant was entitled to an award of general damages and such an award was not contrary to public policy. The award was limited, as the Claimant's devastation did not require medical attention.
97. I accept that the Matrimonial Causes Act provides for married persons to seek financial remedies against each other and under that Act, it is where the appropriate course of action lie. I note that the previous immunity from suit between married couples no longer exist, albeit Cohen J in **FRV v DCA** states that "*there is no remedy under the tort of deceit between a married couple.*"
98. The Court's determination here is that paternity fraud can exist between married parties. This application by the Petitioner is properly brought in the divorce proceedings in the Family Division and not in the tort of deceit.
99. Sir John Blofeld in **A v B 2007 2 FLR 1051** states:

“The real question is whether there should be liability in deceit in a domestic context, i.e. as between a cohabiting couple. I see no reason why a confidence tricker who obtains money or other property from a woman by lying to her and living with her, possibly for a short period, should be outside the scope of liability for tort; and the same must apply to a woman who fraudulently deceives a man in order to obtain his money and property. This reasoning is convincing to me, and I adopt and follow it.”

100. Sir Blofeld went on further to state that:

“I have considered the so-called “floodgates” submissions. That is, that if this action is allowed and it is successful, it would be likely to be followed by a flood of other similar cases. If this is a cause of action for which justice requires a remedy, then it is right that a remedy be granted, and I am unmoved by the thought that other similar cases may come forward....”

101. This court is satisfied that a cause of action exist, a remedy should be made available and I am equally unmoved by the possibility that other cases may follow and each case will be considered on its merits.

102. Both parties accept that paternity fraud is an available cause of action in Bahamian law once the elements are met.

103. I am satisfied that the Petitioner was misled into believing he was the father of R.C.S. and that the Respondent knowingly deceived him. She was fully aware that the child was not or likely not the child of the Petitioner, she was recklessly indifferent. The Petitioner relied on the trust and representation of the Respondent that he was the father. She actually continued this deceitful representation under oath at trial when the DNA test had factually shown the Petitioner not to be the father. The Petitioner supported the child financially (suffered damages) for 12 years.

104. The Petitioner has suffered public humiliation and embarrassment. The Petitioner submits that he relied on the “deceit to his financial, emotional and psychological detriment.”

105. While there is authority that suggest the joy that the deceived parent had from being a parent, balances out the deceit and thus should not be entitled to compensation. I do

not accept that position. The emotional trauma, pain and embarrassment will last long [if not a lifetime] after the settlement of this case. The Petitioner will relive this on each occasion that friends and loved ones who are unaware of the facts inquire about the well-being of the child. His response, no matter what it is, will forever be painful and for that, there is no adequate compensation.

106. I therefore find that a deceived parent would be entitled to compensation by way of reimbursement for actual sums paid for maintaining the child, including but not limited to educational expenses, tuition, day care, medical, dental, optical. The Petitioner seeks reimbursement for maintenance of \$300.00 monthly for 12 years being \$43,200.00. While this sum seems reasonable, the Court awards half of that amount to the Petitioner being \$21,600.00 as full compensation for paternity fraud. The Court recognizes that the Petitioner experienced some joy of parenting as stated above.

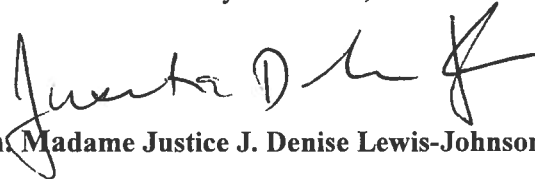
107. The parties were further invited to address the Court on the period of time this remedy should be available after knowledge of the paternity. The Court accepts that an application should be brought within one year of being aware of the fraud. The impact on the child ought not be prolonged and resolution should be quick, allowing for healing of the psychological scars. I order that the Respondent provide therapy for the child who is now losing his/her identity, and foundation, all for the unknown. This is the unfortunate consequences of divorce. The child's joy and innocence of childhood has been stolen and must live with the results of adult decisions, including that the Petitioner could have chosen to parent the child who no doubt, he would have developed a bond with over the 12 year period. He is the only father the child has known and the Petitioner's absence could be devastating emotionally.

108. For all the reasons stated above, the Court having considered the evidence and relevant law finds as follows:-

- I. The Petitioner has a 60% interest in the matrimonial home and the Respondent a 40% interest according to the appraised value.
- II. The Petitioner to purchase the Respondent's interest within 120 days of this Order, failing which the Respondent is at liberty to purchase the Petitioner's interest within 120 days thereafter.

- III. If the parties are unable or unwilling to purchase the other's interest, the property is to be sold and the net proceeds divided per the interested allocated above.
- IV. The Court declares that R.C.S. is not a child of the family or a child of the marriage. Thus a Declaration is granted pursuant to Section 73 (1)(a) of the Matrimonial Causes Act, Chapter 125 that there are no children of the family to whom this Section applies.
- V. The Petitioner is discharged from parental responsibility relative to the said child pursuant to Section 6(1) of the Child Protection Act.
- VI. The Court orders that the Registrar General corrects and amend the register of birth of the said child by removing the Petitioner as father pursuant to Section 15(1) of the Births and Death Registration Act.
- VII. The Respondent to provide therapy for the minor child.
- VIII. That the two oldest children of the marriage are declared sui juris.
- IX. The Respondent is to pay one third of the Petitioner's cost to be taxed if not agreed.
- X. The Respondent to compensate the Petitioner for Paternity Fraud in the amount of \$21,600.00

Dated this 25th day of March, A.D.2025



The Hon. Madame Justice J. Denise Lewis-Johnson MBE