

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**2023/FAM/div/00068**

**B E T W E E N**

**T.I.T. (nee J)**

**Petitioner**

**AND**

**T.R.T.**

**Respondent**

**Before:** The Honourable Justice C.V. Hope Strachan

**Appearances:** Ranard E. Henfield for the Petitioner

Ellen Serville for the Respondent

**Hearing date:** 4<sup>th</sup> December, 2024

*Matrimonial Causes Act, property adjustment, yardstick of Equality, respective contributions of the parties, whether to depart from equality*

**RULING**

## **Background Facts:**

[1.] The Petitioner, T.I.T. (nee J) (“the wife”) and the Respondent, T.R.T. (“the husband”) were married for Nine (9) years and Ten (10) months. The wife obtained a Decree Nisi on 11<sup>th</sup> October 2023, just about Two (2) months shy of the couples’ Tenth anniversary.

[2.] During the course of the marriage the parties had Two (2) children R.G.T., a male child born on 9<sup>th</sup> April 2015 and R.G.T., a female child born on 6<sup>th</sup> August 2020. At the date that the Decree Nisi was obtained the children were Eight (8) years old and Three (3) years old respectively.

[3.] The Application for the courts’ determination is ancillary to the divorce petition which was brought about by assignment of the file to this court and a Notice of Adjourned Hearing filed by the Petitioner on 21<sup>st</sup> August 2023 returnable on 4<sup>th</sup> December, 2024.

[4.] At the start of the hearing on the date in question Counsels for both parties confirmed that the majority of the issues had been agreed between the parties, which included the wife having custody, care and control of the children and the husband having access. The terms are defined. The school tuition, medical, dental and optical expenses of the children are also all agreed. It is expected that these agreed terms will be reduced in a Consent Order for approval of this court. However, while a part of the agreement between the parties is that the Respondent should pay a sum towards the monthly maintenance of the children, the parties differ as to the amount that should be paid. The wife proposes that the husband pay a total of One Hundred Dollars (\$100.00) per child per week or \$800.00 per month towards the maintenance of the children. The husband has offered to pay \$400.00 in total per month for both children. The court is called upon to resolve this issue.

[5.] The matrimonial home is a single-family residence situated Lot # 13, Reivax Subdivision, Southern District of the island of New Providence. It is the only property owned by the parties. It is common ground that the matrimonial home was mortgaged by the couple to The Bahamas Mortgage Corporation on 16<sup>th</sup> January, 2013, some Ten (10) years ago. Documents provided by the husband and wife show that the Mortgage was in the sum of \$169, 417.00. The balance due as at 17<sup>th</sup> July, 2024 was \$74,696.45. The appraised value is \$ 220,450.00. These figures signify that as at the date of the hearing, the husband and wife’s equity in the home was approximately \$145,753.55 and if divided equally each would be entitled to \$72,876.78. However, the wife is resisting the equal division of the property on the basis that her contribution to the welfare of the family was greater than the husband’s entitling her to a larger interest in the matrimonial home. She posits that \$50,000.00 should suffice to satisfy his interest. She wants to purchase his interest for that amount. The husband does not object to the wife purchasing his interest but is of the view that the split of the equity should be 50%/50%. He feels that his contributions to the welfare of the family was equal to the wife’s. This is the other matter for the courts’ resolution.

[6.] Petitioner's Evidence

The Petitioner's Affidavit filed on 1<sup>st</sup> February 2024, stated as follows:

"6. Where the parties do not agree is as follows:

- a. Maintenance payment amount: The Respondent proposes \$300.00 per month in maintenance, whereas the Petitioner seeks \$100.00 per week, per child. Said maintenance is to go towards transportation, grocery, housing expenses and school lunch for the respective child.
- b. Purchase price of equitable interest: The Respondent had the home appraised in the last year at \$215,000.00. As the mortgage balance stands at approximately \$79,000.00, the equity in the home is thus \$136,000.00. Divided equally, each party's equity is approximately \$68,000.00. The Petitioner proposes purchasing the Respondent's interest at \$50,000.00 in light of the fact that she will have day-to-day care of the minors, the mortgage payments, utilities, home insurance, home repairs, yard maintenance, tutoring expenses and other incidentals incurred by the staying parent.
- c. Throughout the marriage I was financially burdened as the Respondent sought to minimize his contributions towards the family's expenses and responsibilities, leaving me to bear the brunt of parenting inclusive of educational expenses, school drop offs and pick-ups, the grocery bill, homework, more than half of the mortgage, out-of-pocket medical expenses and incidentals etc.
- d. To make ends meet, I've had to work two jobs, while being a wife, mother, father, chauffeur, tutor and more within the family structure as the Respondent failed or refused to consistently and proportionately contribute to the family's expenses.
- e. My current monthly expenses average as follows:

Item	Avg. Amount
a. Mortgage contribution	\$755.00
b. Our son's heart out-of-pocket medical expenses	\$300.00
c. Tuition (Son)	\$264.50
d. Tuition (Daughter)	\$250.00
e. Cable and Internet	\$ 95.68
f. Grocery	\$800.00
g. Personal grooming	\$100.00
h. Kids grooming	\$ 40.00
i. Car insurance	\$ 25.00
j. Car licensing and inspection	\$ 16.25
k. Car gas	\$300.00
l. My lunch	\$200.00
m. Kid's lunch	\$ 60.00
n. Incidentals for kids and home	\$200.00

Average monthly expenditure

\$3,406.43

Attached and marked as “Exhibit TT-3a to 3e” are the aforementioned evidence.

I am a pharmacist by profession and currently working for Commonwealth Drugs & Medical Supplies and on occasion, in a part-time capacity, at Princess Margaret Hospital’s pharmacy, I earn a combined monthly income of \$4,984.00 after NIB deductions. From that amount, I am left to foot most of the family’s expenses, and must ensure that I have cash on hand for our son’s out-of-pocket medical needs and all incidentals for school and groceries. Attached and marked as “Exhibit TT-4a & 4b” are copies of my pay stubs.

I have qualified for a further charge to purchase the Respondent’s interest in our matrimonial home at \$50,000.00. My mortgage payments will accordingly increase from approximately half to more than double, and I will still have the brunt of the family’s expenses, in addition to any expenses the Respondent had for the home. Additionally, I will have the day-to-day responsibilities for the two minor children and every expense that comes with it.

The Respondent has contributed \$500.00 per month towards the mortgage via salary deduction for approximately eleven years. That is the equivalent of \$66,000.00 The Respondent has enjoyed the benefits of said mortgage payments. In the circumstances, I urge the Court to Order that the Respondent’s equitable interest be reduced to \$50,000.00 and that I be permitted three months to secure the loan and pay him the same.

Additionally, I seek an Order that the Respondent be made to contribute \$100.00 per child, per week to assist with the following weekly expenses:

- |  |         |
|--|---------|
| a. Grocery and lunch money per child                     | \$55.00 |
| b. Transportation contribution per child                 | \$15.00 |
| c. Living expenses (light, water, internet, cooking gas) | \$30.00 |

The Court is asked to Order a general clothing allowance of \$350.00 per child, every May 30<sup>th</sup> and November 30<sup>th</sup>, commencing May 30<sup>th</sup> 2024.

#### [7.] Respondent’s Evidence

The relevant parts of the Respondent’s Amended Affidavit of Means filed on 6<sup>th</sup> March 2024 are outlined below:

That my expenses calculated on a monthly basis are as follows:-

#### Monthly Expenses

Mortgage Payment	\$500.00
National Insurance	\$110.64
Jr. Rate Mess (Defence Force)	\$ 5.00
Bahamas Law Enforcement Credit Union (Savings)	\$100.00
Life Insurance (BAF)	\$ 39.46
Private Medical Insurance (BAF)	\$283.75

Bahamas Power & Light	\$200.00
Water & Sewerage	\$ 60.00
Satellite (\$70.00 + Vat)	\$ 77.00
Landscaping	\$ 70.00
Drinking Water (House)	\$ 20.00
Lunch	\$200.00
Prepaid Cell Phone	\$ 60.00
Vehicle Insurance (\$320.00 per year/ 12)	\$ 26.67
Vehicle Licencing (\$195.00/ 12)	\$ 16.25
Vehicle Maintenance/ Repairs (\$1,000.00/12)	(\$250.00 every 3 months) \$ 83.33
Grocery	\$300.00
Personal Grooming	\$100.00
Entertainment	\$200.00
Annual Family Vacation (\$3,000.00/ 12)	\$250.00
Education	
(Ramone's School Fees (1/2 of \$352.00/ 12)	\$ 14.67
(Rameka's School Fees (1/2 of \$250.00/ 12)	\$ 10.42
Books & Uniforms (\$400.00/ 12)	\$ 33.33
School Lunch	\$ 60.00
 Total	 <u>\$3,140.52</u>

[8.] In the Respondent's second Affidavit filed 9<sup>th</sup> September 2024 it was stated as follows:

- That I stand by the Statements made in my Amended Affidavit of Means filed on 24<sup>th</sup> March, 2024 ("my said Affidavit") save and except for the monthly breakdown of my one-half contribution towards the children's educational expenses which should in fact be One hundred & Seventy-six Dollars (\$176.00) toward Ramone's school fees and One hundred & Twenty-five Dollars (\$125.00) toward Rameka's school fees and not provided there.
- That I earn a salary of Three thousand & Eighty Dollars & Seventeen cents (\$3,080.17) as exhibited in my said Affidavit and am employed as a Defence Force Officer serving as a Communication Technician. I can also earn approximately Three hundred Dollars (\$300.00) per month to assist me in meeting my family expenses by assisting my cousin in his limousine business on Saturdays if need by him and also if my job demands permit.
- That I do admit here that in availing myself of this opportunity to earn this extra money I do so at my own professional risk as I can be sanctioned as a Defence Force Officer for doing this since any outside employment is strictly prohibited under the Defence Force Act unless with the consent of the Minister.
- That as a part of the normal division of monthly expenses budgeted by myself and the Petitioner, it was agreed when we first took out our Mortgage that I would pay Five hundred Dollars (\$500.00) of the actual Bahamas Mortgage Corporation Mortgage payment and she would pay Five hundred & Ninety nine Dollars (\$599.00). It was also agreed at that time that she would pay the insurances related to the said Mortgage totaling an additional sum of One hundred & Fifty six Dollars (\$156.00) making a final total of Seven hundred & Fifty-five Dollars (\$755.00) paid by the Petitioner. The Petitioner's only other responsibility was for grocery and internet to complete her share of the agreed household expenses.

-That at paragraph 21 of her Affidavit the Petitioner gives as her reason for purchasing my interest in the matrimonial home for Fifty thousand Dollars (\$50,000.00) is the fact that she only qualified for that said amount at the Bank. This reasoning should certainly not be a factor in determining what is fair and just in these circumstances.

- That in addition to meeting my fair share of the above-mentioned household and family expenses, I have been solely responsible not only for all general home maintenance and also the major improvements to the matrimonial home carried out over the years which have greatly increased that value of the matrimonial home. These improvements include but are not limited to the following:-

- i) The installation of an electric gate
- ii) The construction of a storage shed in the yard
- iii) The construction of the driveway and the patios
- iv) The installation of the chain link fence, the cost of which particular improvement was shared with the Petitioner.

- These improvements were also itemized in the Appraisal that was done of the home in March 2023 and noted as improvements that significantly increased the value of the matrimonial home. There is now produced and exhibited hereto and marked "TRT-1" a copy of the said Appraisal.

- That based on the above, I believe at the very least, a fair determination of our respective equity interests in the matrimonial home should be assessed at 50/50 calculated at the following amount:-

Appraised Value of Home	\$220,450.00
Current Balance owing on Mortgage (as at 17 <sup>th</sup> July 2024)	<u>\$ 72,048.34</u>
	\$ 148,401.66
50/50 Equity (As at 17 <sup>th</sup> July 2024)	<u>\$ 74,200.83</u>

### The Issues

[9.] What sum of money should the husband pay to the wife on a monthly basis towards the maintenance of the children?

[10.] Should the husband and wife share the matrimonial property equally as to 50/50 % or is one party entitled to a larger interest in the matrimonial home?

### The Relevant Legislation

[11.] The Child Protection Act (CPA) and the Matrimonial Causes Act, (MCA) empowers this court to decide the appropriate sum of periodical payments the husband should pay to the wife towards the maintenance of the children of the family. Using the established guidelines in s. 29(2)

MCA buttressed by precedent a just determination is attained in Discussion and Analysis - Monthly Maintenance for the Children – S 27 (1) (d)

[12.] In determining the appropriate maintenance for the children, the court will consider s. 29 (2) of the MCA. The children are fairly young, but still have financial needs common to every child, for example, food, shelter, school and extracurricular activities to entertain them. Specifically, the parents have them enrolled in private fee-paying schools and the son has a medical condition that warrants expenditure on medicines and treatments here and abroad. These children have only the financial resources that their parents are capable of providing and luckily aside from the son's condition have no other physical or mental challenges. Thus far in their lives they have enjoyed a typical working to middle class lifestyle through their parents and thus far the provisions agreed by their parents demonstrate an intention to ensure that the manner in which they are being educated and/or trained will continue.[Emphasis added]

[13.] Notwithstanding these considerations much hinges on the factual circumstances surrounding the parent's ability to pay.

[14.] The wife is holding down Two (2) jobs for a combined income of \$4,984.00. The husband alludes to her having another job but other than a bald statement he does not expand his allegation. The wife ignored this allegation. This court will not embark upon a speculative exercise concerning this. In any event, the wife will have her hands too full with the day-to-day care and control of the children to contemplate a third job.

[15.] The husband's works in Communications at the Defence Force. He earns \$3,080.17/month but disclosed a side job driving a limousine for his cousin from which he earns \$300.00 give or take. Total income \$3,380.17 per month. He posits that this is risky as the second job is prohibited by the Defence Force and I believe him. It cannot be deemed a reliable source of income.

[16.] Neither party has challenged the other as to their monthly expenses. A comparison shows the wife's expenses totaled \$3,406.43 while the husband's totaled \$3,140.52. There is very little daylight between them. In each case, most of the listed expenses can be attributed to the family as a whole. Those that are personal to either of them is fairly easy to select. I note that some personal items of the husband, like his rate mess bill, his Credit Union, Lunch, Prepaid cell, Personal grooming, and Entertainment detail a degree of disposability and if trimmed, will increase his ability to meet a reasonable monthly maintenance for the children.

[17.] However, the \$800.00 requested by the wife does seem impractical if not impossible. *Barnett, J. (Actg.)* as he then was In **Black v Black BS** 1996 SC 72, demonstrated that the court will guard against unreasonable requests where the demand outweighs the capacity to

meet those demands and refused the wife's request for \$1,500.00 per month as a request that could not be met based on the security guard/ fisherman's salary of the husband. I view the present circumstances similarly.

[18.] All the circumstances considered, which includes maintaining the children's standard of living , continuing their private school education and for their overall financial needs and welfare, I am satisfied that attributing One Third (1/3) of the wife's monthly expenditure to the children, for their general maintenance is reasonable, appropriate and fair. This averages \$400.00 per month. With the compendium of items already agreed between the husband and wife the husband is ordered to pay the sum of \$400.00 per month to the wife towards the general maintenance of the children.

#### Property Adjustment

[19.] A summary of the respective counsel's submissions are as follows:

#### Petitioner's Submissions

- (i) The salient points in the submissions for the wife that her monthly mortgage payments surpasses her husband's and that she also bore most of the household expenses and medical expenses for the children. She also emphasized the fact that she thought the husband's limited financial support was deliberate. Moreover, she had the day to day responsibility for the children while the husband spent inordinately long periods of time out to sea. Payments to the monthly mortgage - Counsel relied on *Lord Nicholls* in the case of **White v White** [2001] 1 All E R to demonstrate that equality of interest in the matrimonial property applies except where there is a compelling reason to depart from it.
- (ii) The wife wants to keep the home for herself and the children. This will mean an increase in mortgage payments because she'll need an increase in the mortgage to pay the husband for his interest. She proposes to pay him 34% of the value which equates to \$50,000. She is even prepared to forego child maintenance payments if necessary if that would facilitate her keeping the home.
- (iii) Counsel relied on the authority of **Cedric Smith v Scarlett Smith**, [2022] SC FAM/div/00557 to demonstrate the capacity of the court to depart from the equal sharing principle.

#### Respondent's Submissions

- (iv) Counsel for the husband submitted that the wife has not provided any compelling reasons for the Court to depart from equality. The surplus the wife paid on the



mortgage was as arranged between the parties. The extra \$99.00 the wife is paying was the annual proration of insurances. The husband's contribution, which included medical and health insurance, electricity and water utilities, the day to day maintenance around the house as well as the improvements made thereto, for which he was solely responsible should be seen in the same light as the payments for which the wife was solely responsible.

- (v) The husband's counsel further submitted that the exigencies of the husband's job as a Defence Force Officer were known to the wife when she married him. In any event, the quoted six months out to sea was not the regular. When available, the husband does assist with the day to day care of the children, with drop offs and pickups when his job permits.
- (vi) The \$50,000 offered by the wife is based solely on what the wife qualifies for at the bank. The husband is prepared to purchase the wife's interest as he would also like to provide a home for the children where his parents can visit and look after the children if his job demands take him away. The alternative, he says, is that the home be sold and the proceeds split 50/50.
- (vii) Medical expenses not covered by medical insurance has been provided for in the agreement between the parties so there is no credence to the wife using these expenses as an excuse for reducing the husband's interest in the home.
- (viii) The Husband's Counsel submits further that the considerations enumerated in section 29 of the MCA provide the guideline for determining the issue of property adjustment as confirmed in **Jupp v. Jupp** [2013] 1 BHS J. No. 131 -Bahamas Court of Appeal- SCCrApp No. 37 of 2011, irrespective of any other court decisions brought outside of the country. Every case should be judged on its own merit.
- (ix) Counsel noted that the matrimonial increased value of \$220,450.00 in the matrimonial home, as per the appraisal, came about as a result of the husband's singular improvements.
- (x) A just and equitable distribution would be 50/50.

## **DISCUSSION AND ANALYSIS**

[20.] S. 29 MCA encapsulates the guiding principles to be used to determine the party's respective interests;

**Jupp v. Jupp** supra, where *Justice Allen*, in delivering the Judgment stated;  
"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.”

[21.] That sharing principal referred to by *Justice Allen* was enunciated in the case of **A v. B** [2010] 2 BHS J No. 18 by *Barnett C.J.*

“The objective of the court is to be fair.

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.” “The yardstick of equality of division”, first identified by *Lord Nicholls* in **White** at p. 605G, filled the vacuum which resulted from the abandonment in that decision of the criterion of “reasonable requirements”. The origins of the yardstick lay in s.25 (2) of the Act, specifically in s.25 (2) (f), which refers to the parties’ contributions: see the preceding argument of *Lord Nicholls* at p. 605D-E. The yardstick reflected a modern, non-discriminatory conclusion that the proper evaluation under s.25 (2) (f) of the parties’ different contributions to the welfare of the family should generally lead to an equal division of their property unless there was good reason for the division to be unequal. It also tallied with the overarching objective: a fair result.....

It should be noted here that our local S. 29 MCA parallels the English MCA S. 25.

[22.] I accept the uncontroverted fact that the wife’s monetary contributions to the bank payments for the mortgage was greater than the husband’s by about \$200.00 to \$300.00 monthly. I also accept that the wife bore the financial responsibility of the day to day care of the children.

[23.] By contrast the husband paid \$500.00 per month to the mortgage as was agreed between the parties. I also accept that the husband was responsible for the significant improvements to the property over the years, except the chain link fence which cost was shared with the wife. These improvements increased the value of the home according to the appraisal report by some \$16,640.00.

[24.] Basing her claim on the amount she qualifies to borrow from the bank is not a novel approach. This method harkens back to “reasonable requirements” which was the approach used by the judge at first instance and led to the Appeal to the House of Lord’s in the Seminal case **White v White** [2001] 1 ALL ER\_1 where your Lordships held that “reasonable requirements”

should not be the determinative factor in arriving at a fair financial arrangement. It is nonetheless a factor to be considered. [Emphasis added].

[25.] The wife's suggestion that she relinquish the payment of general maintenance for the children, from the husband as an alternative to paying him 50% of the property value, is unsupported by authority and untenable in my view. I consider the payment of monthly maintenance important to the husband fostering continued positive participation in the children's lives.

[26.] The wife calculates that she contributed to the mortgage some Ninety-six Thousand Six Hundred and Forty (\$96,640.00), when compared to the husband's Sixty-four Thousand (\$64,000.00), the difference is Thirty-two Thousand Six Hundred and forty Dollars (\$32,640.00). The husband has not challenged these figures. I accept them as accurate.

[27.] Of the S. 29 considerations, ss. 29 (c), (d), (e), and (g) are not particularly momentous to the decision. I am content that dispatching these considerations initially does no violence to the exercise;

In **Work v Gray** [2017] EWCA Civ 270 –the Court of Appeal confirmed that no consideration ranks higher than the other but the facts of the case determines which consideration would be of greater weight;

“As Lord Hoffmann pointed out in **Piglowska v Piglowski** [1999] 1 WLR 1360 at p. 1370H: “Section 25(2) of the Act of 1973, while listing the various matters to which particular regard should be had, does not rank them in any kind of hierarchy. Which of them will carry the most weight must depend on the particular facts of the case.

#### S. 29 (1) (c) – Standard of Living

[28.] The husband and wife enjoyed a modest standard of living, typical of working professionals, before the breakdown of the marriage. The evidence from both the husband and the wife suggests that neither contemplate an appreciable change in the standard of living they enjoyed in parting ways.

[29.] Halsbury's Laws of England Matrimonial and Civil Partnership Law (Volume 72 (2019), paras 1–460; Volume 73 (2019), paras 461–940), (v) Standard of Living of the Parties, 641. Court's duty to have regard to family's standard of living.

“It is the duty of the court, in deciding whether to exercise its powers to grant financial relief and, if so, in what manner, to have regard to, among other matters, the standard of living enjoyed by the family before the breakdown of the marriage or civil partnership or other relevant event.

It will usually be unavoidable that the standard of living of both parties will diminish following their separation. However, the qualitative assessment of the parties' standard of

living during the marriage or civil partnership may influence the court's determination of the appropriate provision that should be made after separation. Even where the assets are not divided equally between the parties, it may be appropriate to ensure that the parties' standards of living are not wholly unequal, particularly where there are children. Where the parties have adopted a frugal standard of living during the marriage or civil partnership in the expectation of future wealth, this should not act as a limiting factor within the proceedings for relief. Equally, extravagance will not bolster a claim. The standard of living during the marriage or civil partnership may give a true indication of the financial resources and power of the parties. The standard of living during a marriage or civil partnership of short duration may, however, be a factor of little significance."

S. 29 (1) (d) - The age of each party to the marriage and the duration of the marriage;

[30.] There is no more than Two (2) years difference in the age of the parties. The marriage subsisted for just over Ten (10) years. A term which might be described as "not as desperately short ...as some but still not lengthy" per the judge at first instance discussed in **White v White** supra. Neither party has disputed the joint ownership in the legal title of the matrimonial property. Therefore, the duration of the marriage does not impact the decision of whether to depart from the principle of equality in any significant way.

S 29 (1) (e) any physical or mental disability of either of the parties to the marriage;

[31.] Neither party suffers from any physical or mental disability.

S. 29 (1) (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.

[32.] In this case neither the husband nor wife has expressed any concern regarding a loss of pension entitlement. I suspect that neither have addressed their minds to the possibility since they are relatively young and a distance away from retirement. I will not speculate on this issue.

ss. 29 (1) (a), (b) and (f) are the most pivotal considerations in deciding the issue.

S 29 (1)(a) – (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;

It was distinctly expressed in **Charman supra**;

“Even if, however, a court elects to adopt the sharing principle as its “starting point”, it is important to put that phrase in context. For it cannot, strictly, be its starting point at all. As *Coleridge J* himself stated in the passage cited in para 59 above, the starting point of every enquiry in an application of ancillary relief is the financial position of the parties. The enquiry is always in two stages, namely computation and distribution; logically the former precedes the latter. Although it may well be convenient for the court to consider some of the matters set out in s 25(2) other than in the order there set out, a court should first consider, with whatever degree of detail is apt to the case, the matters set out in s 25(2) (a), namely the property, income (including earning capacity) and other financial resources which the parties have and are likely to have in the foreseeable future.

*Lord Nicholls of Birkenhead – White v White supra;*

.....’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 recognized, there is some overlap between the factors listed in s 25(2). In a particular case there may be other matters to be taken into account as well. But the end product of this assessment of financial needs should be seen, and treated by the court, for what it is: only one of the several factors to which the court is to have particular regard. This is so, whether the end product is labelled financial needs or reasonable requirements. In deciding what would be a fair outcome the court must also have regard to other factors such as the available resources and the parties’ contributions. In following this approach the court will be doing no more than giving effect to the statutory scheme.’

The referenced cases are relevant as S. 25 (2) of the British Act mirrors our S.29 (1) (a)-(g).

[33.] As a pharmacist, the wife’s income is considerably more than the husband’s. Her earning capacity holds promise of increase when compared to the husband’s. The husband earnings now or contemplated for the future looks less positive. It is un-likely that the husband as a government employee, unless promoted, would see an increase in salary before the wife, if at all. Neither the husband nor the wife have indicated that they own any other property now or are likely to in the foreseeable future. The existing or foreseeable futuristic comparative incomes or earning capacity of the husband and wife does not without more present a compelling argument for a departure from the equal sharing principle but is part and parcel of the overall evaluation.

s. 29 (1) (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;

[34.] The marital unit now being divided in two means the financial needs, obligations and responsibilities for the foreseeable future, are now multiplied by Two (2). Two households must now be maintained. I find the wife's suggestion that the husband should 'rent a one bedroom apartment for Seven Hundred and Fifty Dollars (\$750.00), eat out and have no need to buy groceries is particularly condescending and not worthy of serious consideration. The arrangements made for the children here are tailored to put the wife in the best position possible upon the significant change in the party's lives. Her \$50,000.00 offer to the husband is selfishly based on the needs she portends for the foreseeable future, and this is understandable. However, this is not in and of itself a compelling reason to depart from the equal sharing principle but it does factor into the compilation of the existing circumstances.

S. 29(1) (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;

[35.] Both the husband's and wife's focus on their respective contributions are typical. *Lord Nicholl's* yardstick of equality should "generally lead to an equal division of their property." But here this exercise is likely to defy the premise. The fact that the husband paid less on the mortgage installment does not necessarily negatively impact his interest, but it might. The view was discussed in **Charman v Charman** [2007] All ER (D) 425.

"In *Miller Baroness Hale* said, at [146], "Section 25(2)(f) of the 1973 Act does not refer to the contributions which each has made to the parties' accumulated wealth, but to the contributions they have made (and will continue to make) to the welfare of the family. Each should be seen as doing their best in their own sphere. Only if there is such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account (Emphasis added).

[36.] The court has also to be mindful not to discriminate against a party who earns less than the other. In **Work and Gray**:

As *Lord Nicholls* said (at p. 605 D/E):

"... whatever the division of labour chosen by the husband and the 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) ... 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."

[37] In attempting to make the case for a larger share of the matrimonial property the wife demonstrated that she paid Thirty-two Thousand Six Hundred and forty (\$32,640.00) dollars more of the mortgage installments than the husband. In his defense the husband pointed to improvements he solely made to the home. Giving him only half the value for the chain link fence, the cost of which he admits was shared with the wife, these improvements value Fourteen Thousand Seven Hundred and Forty (\$14,740.00) dollars. Clearly the wife paid Seventeen Thousand Nine Hundred (\$17,900.00) dollars more than the husband towards the mortgage/insurance. Half of which Eight Thousand nine hundred and Fifty (\$8,950.00) dollars should have been paid by the husband. I am also mindful of the apparent burden imposed upon the wife during the marriage, spending considerable periods with sole responsibility for the children when the husband's job took him away for long periods of time. She also paid the extra medical expenses of the child who suffers from a chronic illness.

[38.] The wife stepped up to the plate and sacrificed to pay the insurance on the home, which I am confident was necessary to procure and sustain the mortgage. This was exceptional. In **Work v Gray** supra the effect of exceptional circumstances was discussed:

“In **Lambert Bodey J**, in a passage specifically endorsed by *Lord Nicholls* in **Miller**, said that, in order to justify a departure from equality (para 70), (the) characteristics or circumstances clearly have to be of a wholly exceptional nature, such that it would very obviously be inconsistent with the objective of achieving fairness (i.e. it would create an unfair outcome) for them to be ignored.”  
[Emphasis added]

[39.] The wife is now calling in the marker for the sacrifice made in paying that extra amount on the mortgage every month. Facing the uncertainty of the future and being understandably insecure about the living arrangements for her and the children she has already approached the bank about borrowing the money to pay off the husband. It occurs to me that the husband will recover the value of his contributions for the improvements he made to the home solely. This will be subsumed in the appraised value of the home. I see no reason why the wife should not recover the excess paid on the mortgage.

## **CONCLUSION:**

[40.] I am prepared to take into consideration the wife's payment of the husbands' portion of the insurance payments for the house in the sum of Eight Thousand Nine Hundred and Fifty (\$8,950.00) dollars. Due to the disparity in their respective payments, I am satisfied that the wife's contribution to the welfare of the family exceeded the husband's. I am also mindful of the past and the future mental and psychological strain placed on the wife and which is to continue upon the wife with a husband whose job kept/keeps him away frequently. This comes with juggling a busy career of Two (2) jobs, with the day to day care of Two (2) young children, maintaining the mortgage, maintaining the home, ensuring utilities are paid, keeping the home insured, ensuring

maintenance and home repairs are carried out, ensuring the yard is maintained , doing daily school drop offs and pick-ups, shopping for groceries and ensuring breakfast and lunch are provided for the children each day, helping with homework, keeping the children entertained, being a first responder to any medical emergencies, especially as it relates to their son, along with any other miscellaneous expenses or activities as the staying parent. The wife will continue to bear the brunt of the children; a responsibility that is almost impossible to quantify. I find the peculiar circumstances of this case to be of a wholly exceptional nature justifying a departure from equality. The husband's job will continue to keep him somewhat insulated from the melee.

[41.] In all the premises I find that the wife's past contributions to the welfare of the family and those contemplated regarding the children surpasses that of the husband. There are compelling reasons to depart from equality and I am satisfied that to divide the interest in the matrimonial home on a 60% to the wife and 40% to the husband basis is fair and just.

**IT IS ORDERED THAT:**

[1] The Husband shall pay to the wife the sum of Four Hundred (\$400.00) Dollars per month towards the maintenance of the children of the marriage namely R.T. born on 9<sup>th</sup> April, 2015 and R.T. born 6<sup>th</sup> August, 2020 until the said children attain the age of 18 or completes a first degree of tertiary education, if enrolled within Six (6) months of graduating high school. Payments to begin on or before the last day of April, 2025 and continuing in like manner monthly thereafter.

[2] The party's respective interests in the matrimonial home being a single family residence on Lot No. 13, Reivax Subdivision, Southern District on the Island of New Providence, The Bahamas, shall be divided as to 60% to the wife and 40% to the husband.

[3] The wife shall pay a sum equal to 40% of the appraised value of the said matrimonial home to the husband within Three (3) months of the date hereof, whereupon the husband shall transfer all his right title and interest in the said home to the wife. Until then, the Parties shall continue Payment of the mortgage as presently arranged.

[4] Should the wife fail or refuse to purchase the husband's interest within Three (3) months from the date hereof, the husband shall have Three (3) months from when that date expires to purchase the wife's interest for a sum equal to 60% of the appraised value of the said matrimonial home, whereupon the wife shall transfer all her right, title and interest in the said matrimonial home to the husband. Until such time, the parties shall continue to pay the mortgage on the home as presently arranged.

[5] The costs associated with the transfers in either No. 3 or 4 shall be divided on the same 60% to 40% ratio.



[6] Further or in the alternative and after the time given in [3] and [4] has expired and the same has not been accomplished then the matrimonial home shall be sold and the net proceeds therefrom shall be divided between the husband and wife as to 60% to the wife and 40% to the husband.

[7] Should either party fail or refuse to execute the necessary documents to effect the relevant transfer then the Registrar of the Supreme Court is appointed to execute the said documents.

[8] Each party shall bear their own costs of these ancillary proceedings.

[9] A Declaration is granted pursuant to S. 73(1) (b) (i) of the MCA that the arrangements made for R.T. and R.T. the children of the family are the best that can be devised in the circumstances.

Dated the 2nd day of April A.D. 2025



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