

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2023/FAM/div/00691

B E T W E E N:

T.H.

Petitioner

AND

C.R.

Respondent

Before: The Honorable Justice C.V. Hope Strachan

Appearances: Lenise Bethel-Flowers for the Petitioner

Metta Macmillan-Hughes, K.C. and Mcfalloughn Bowleg for the Respondent

Hearing date: 18th September, 2025

Matrimonial proceedings, interlocutory application, case management, directions, revocation of s.68 of Matrimonial Causes Rules, replacement of s.68 by Bahamas Supreme Court Civil Procedure (Amendment) Rules.

RULING

C.V.H. STRACHAN, J

Background Facts

[1.] Challenges have arisen in the subject divorce proceedings. The Petitioner, TH (“the husband”), obtained a Registrar Certificate on 15th May, 2025, with every indication that the divorce would be uncontested. This conclusion would’ve been arrived at based on the assertion in the application for the issuance of the Certificate that the estimated amount of time needed for the trial was one hour. This was done by the husband’s attorney, notwithstanding that there was an Amended Answer on file from the Respondent CR (“the wife”), which suggested otherwise. Moreover, there were a myriad of missteps by both sides in the filing of the Petition and the Answer, which were cured either through agreement by the parties or through the obtaining of court orders, suggesting that the matter was contested. As required, a Notice of Hearing was filed on 28th May, 2025, and the matter was set for hearing on Wednesday, 18th September, 2025.

[2.] On 11th September, 2025 a Summons for Directions was filed on behalf of the wife seeking directions to schedule a trial date, directions of when each party should file and serve their List of Documents, when the inspection of documents should take place, when the parties should exchange witness statements, setting a pre-trial review, scheduling the exchange and laying over of skeleton arguments also when and in what manner are the bundles to be prepared and any further directions which the court deemed necessary.

[3.] The husband’s position is that the matter should proceed to be heard on an uncontested basis, while the wife objects to the matter proceeding as an uncontested divorce and has argued for the court to make the said order for directions. Arguments were advanced by both sides on 18th September 2025, the date initially set for the hearing of the Petition. For the purposes of ensuring that the court made the best use of its time and for the purposes of ensuring clarity, the court proceeded to hear arguments related to the propriety of the Summons for Directions, as the husband’s counsel indicated that she had preliminary objections to the Summons for Directions.

Submissions Made by the Husband’s Counsel

[4.] The Husband’s Counsel made several submissions negating the wife’s ability to rely upon several legislative authorities.

- i. Counsel contends that there was no jurisdiction for the filing of a Summons for Direction, given that the Petition was filed pursuant to The Matrimonial Causes Act (MCA). Apprehending that the wife was relying upon the Matrimonial

Causes Rule (MCR) Rule 27. She specified that the rule could not be applicable according to its definition:

“An application for Directions for the separate trial of any issue or, except in a case to which Rule 14(2) applies, any question as to the jurisdiction of the court shall be made to the judge.”

- ii. She submitted that the Summons before the Court does not raise any issues or questions as to the jurisdiction of the Court which would warrant a separate trial.
- iii. The husband’s counsel argued that the Rules of the Supreme Court (RSC) (repealed) are not applicable because the action was commenced after 2022. Therefore, there is no need to bridge the matter. The Supreme Court Civil Procedure Rules 2022 (CPR), which replaced RSC, does not refer to Family Proceedings under which proceedings under the MCA fall. Part II of the (CPR) does not apply to actions commenced under the (MCR), and further, the Matrimonial (Amendment) Rules 2022 (MC(A)R) does not affect the steps taken to bring the matter on for trial. Reiterating that the provisions of the MCR had been complied with, the matter is fit to be heard by the court. The husband’s counsel strongly argued that the trial should proceed on an uncontested basis.

[5.] A letter sent to the wife’s attorney, seeking an agreed date for trial, was pertinent to the manner in which the Registrar Certificate had been applied for and ultimately granted. The husband’s counsel submitted that the wife’s counsel failed to respond to her letter of request to agree on a trial date, notwithstanding that she had given a deadline for such response. She indicated that the failure to respond led her to seek a date without further recourse to counsel pursuant to MCR Rule 31. The wife’s current application for directions is an attempt to delay the proceedings. This, she says, is against the ethos of the overriding objectives of the CPR and the manner in which proceedings ought to be conducted. She made the point that the wife’s counsel’s response recommending that she file a Summons for Directions, having been served with the Notice of Hearing, confounded her. She failed to answer the letter.

[6.] Counsel Flowers further submitted that the wife and her counsel were given adequate notice, having been served on 2nd June, 2025, for the hearing on 18th September, 2025. The suggestion being that there is no acceptable reason for the wife seeking to delay the proceedings by filing this Summons for Directions. She also proffered that it is difficult to see that the wife was unable to get time off from her employer when she had six (6) months’ notice. She felt that the wife had a lack of interest in moving the matter forward. Counsel also submitted that the wife was forum shopping and felt that this was evidenced by a statement made by the wife’s counsel in a letter where she said:

“This is especially so given that the parties can secure a divorce in Luxembourg where they were married on a no-fault basis at an approximate cost of \$7,500.00 in six months.”

That statement, coupled with the fact that the wife did not cross-petition for a divorce, but only answered, further supports the husband’s theory that the wife wants a divorce; she just does not want it from the courts here in the Bahamas. She said the wife should not be allowed to sidestep the proceedings in this jurisdiction in favor of another. Moreover, counsel submits that since the wife filed an Answer which did not ask the Court for any relief, she is entitled to cross-examine the husband and nothing more.

[7.] Counsel informed the Court that the wife, through separate proceedings under the Child Protection Act, obtained an order to remove the child of the marriage from the jurisdiction to Luxembourg. Notwithstanding, pursuant to S. 67 of the Matrimonial Causes Act, this court is properly seized with jurisdiction to entertain these proceedings.

Submissions Made by The Wife’s Counsel’s

[8.] The wife’s counsel argued that she was not seeking to rely upon Rule 27 MCR and that the husband’s counsel’s argument was misconceived. She indicated that her argument was otherwise grounded in the Rules of the Supreme Court (RSC) 25. The court does, in fact, have jurisdiction to give directions for the further conduct of the case. She said that the Rules of the Supreme Court, Rule 25, provide for directions to be given in advance of trial. This is particularly so as it relates to witnesses at trial.

Rule 25: Subject to the provisions of The Supreme Court Act, and of the Act and this rule, the witnesses at the trial of any matrimonial cause shall be examined, provided that the judge or the Registrar may;

- (a) subject to the provisions of paragraph (2) of this rule, order that any particular facts to be specified in the order may be proved by affidavit;*
- (b) order that the affidavit of any witness may be read at the trial on such conditions as the judge or the Registrar may think reasonable.*
- (c) order that evidence of any particular facts to be specified in the order shall be given at the trial by statement on Oath of information and belief, or by production of documents, or entries, or otherwise as the judge or the Registrar may direct; and*

(d) order that not more than a specified number of expert witnesses may be called.'

These rules, she said, applied to the Matrimonial Causes Rules because it was specified in s. 68 of those rules that The Rules of the Supreme Court of England apply to any cause or matter to which the MCR apply, including the Summons for Direction.

S. 68. *"Subject to the provisions of these Rules and of any enactment. The Rules of the Supreme Court of England shall, notwithstanding the provisions of rule 1(3) of Order 1 thereof, apply with the necessary modifications to the practice and procedure in any cause or matter to which these Rules apply."*

[9.] Counsel then reiterated that her Application was properly grounded and appropriately made because, notwithstanding that the RSC was revoked, this jurisdiction was now subject to the CPR and the amendment to s.68 made in the MC(A)R passed only months ago on 1st July 2025. The Amendment made provision for the carry-over of the exact provisions under S.68 and provides:

"Rule 68 of the principal Rules is revoked and replaced with the following as a new rule 68: "68. Application of the Supreme Court Civil Procedure Rules. (1) Subject to these Rules and the provisions of any enactment, where — (a) these Rules do not adequately provide for a matter of practice or procedure; and (b) there is no practice direction issued covering the matter of practice or procedure pursuant to rule 68A, the Supreme Court Civil Procedure Rules shall apply with the necessary modifications. (2) Notwithstanding rule 2.4 of the Supreme Court Civil Procedure Rules, the court shall, where the circumstances permit, follow the practice and procedure observed in civil proceedings commenced in the court under the Supreme Court Civil Procedure Rules."

Counsel submits that trials of divorce petitions should be treated no differently than any other civil trial where there are directions given at Case Management. She found it curious that the husband's counsel objected to the Summons for Directions and suggested she may be seeking to push through a hearing in the absence of the wife.

[10.] In defending the suggestion that the wife was unable to obtain time off from her employer to attend the hearing on the 18th September 2025, when she was notified of the date in June, well in advance of the hearing date, counsel Macmillan-Hughes iterated that she was still on probation, having just acquired the job after she left the Bahamas with the couple's child after obtaining a Court Order not to do so. This, she said, came out of a necessity to work very hard to maintain herself and the child of the marriage in Luxembourg. This being the case, she is not in a position to just take time off from work.

[11.] Counsel further pointed out that the husband's counsel's confusion about the jurisdiction for the Summons for Directions did not afford an appropriate excuse for not answering her letter

notifying of the intention to file the Summons for Directions. Counsel needed only to state her position in that regard, which might have led to a discussion between them on the jurisdiction point. The wife's counsel stands on her request for directions as per her Summons for Direction, including Discovery, which is covered by Rule 28. There are also witnesses from overseas that the wife intends to give evidence at trial on her behalf, and directions need to be given regarding these witnesses. The wife and her witnesses are entitled to be heard at an in-person trial rather than by Zoom.

[12.] Counsel for the wife reiterated that she is not objecting to the jurisdiction of the Bahamian Courts, and the wife has responded to every allegation of cruelty the husband alleged, such that it consumed 33 pages and 40 paragraphs, which she describes as a comprehensive Answer. She rejects Counsel Bethel-Flower's assertion that the wife is forum shopping. The move to Luxembourg was necessitated due to the husband's reduced earnings from his changed employment status and the wife's prohibition, as a foreign resident, from working, who had exhausted most of her savings, had nothing to do with forum shopping.

Discussion and Analysis

[13.] Notwithstanding that the husband's Counsel did not specifically state it, there is an obvious rule in the CPR s. 3, which specifically provides, "*that these rules do not apply to family matters.*" Divorce proceedings fall within the family jurisdiction of the court. This is apparently what informed Counsel Flower's position and understanding of the proceedings. The opportunity for Case Management and Applications for Direction in contested divorces is rarely taken by Counsel. Although it is safe to say that the Court is required, in every case, to give directions. Notwithstanding, the fact that Case Management or formal Summons for Directions are not usually done or ordinarily practiced in divorce and matrimonial proceedings, does not preclude it from being available to Counsel for applications or, in fact, render it wanting of jurisdiction.

[14.] I am of the view that the arguments advanced by the husband's counsel about the wife's failure to obtain permission from her employer, whether deliberate or not, whether the wife is forum shopping or not, are not dispositive as to whether or not the court should give directions for the further conduct of the trial. The court can penalize such actions if found to be a deliberate attempt to frustrate the hearing of this matter at any point of the proceedings.

[15.] What is critical to this decision, though, is the husband's mistaken belief that there is no jurisdiction for the filing of a Summons for Directions. MC(A)R clearly revokes Rule 68, which invoked the British Rules, whenever there was a lacuna in the Rules. It was replaced by a corresponding Rule 68, which made the same provision except, instead of referring to the British Rules for guidance on any matter of practice or procedure, for which our MCR does not provide, or there is no practice direction issued covering the matter of practice or procedure, reference

must now be made to the Bahamian CPR. I find the wife's counsel to have proceeded correctly when she filed the Summons for Directions.

[16.] Counsel Macmillan-Hughes' argument that the Matrimonial Causes rules do not provide for directions of the nature given in Part 25, case management, or Part 27 concerning witnesses and the mode of receiving their evidence, and for the preparation and filing of Bundles, among other things, has merit, and I find that to be the case. If these are issues that are required by her for the conduct of her case satisfactorily.

[17.] The Matrimonial Causes Rules provide guidance and timelines as to what should occur with the filing of the Petition, the filing of Answers and Replies, it provides for the obtaining of the Registrar Certificate, and the filing and service of the Notice of Trial. The MCR does not address the issues that the wife's counsel says she requires for the proper conduct of her case. In the circumstances, the CP(A)R, s.68 must be invoked for the court's directions to be given.

[Emphasis Mine]

[18.] As I apprehended in paragraph [1] hereof, and what would be revealed on a review of the file, both parties have made mistakes in their filings based on not only what was filed and served on the party opposite but also on the missed deadlines for filing documents. The several missteps made by both parties led to the grant of the Registrar Certificate, which misapprehended that the matter was undefended, and the filing of the Summons for directions after the Notice of Hearing was filed and served. This directly impacts the exercise of this Court's decision on costs.

CONCLUSION AND DISPOSITION

1. Having regard to the facts of the case, the legislation, and the authorities, I reject the husband's counsel's submission that the trial should proceed undefended.
2. It is ordered that the Summons for directions should proceed.
3. Each party shall bear their own costs of the applications.

Dated the 5th day of November, 2025



The Honorable Justice Hope Strachan

