

COMMONWEALTH OF THE BAHAMAS 2020/FAM/div/00573

IN THE SUPREME COURT

FAMILY DIVISION

B E T W E E N

MJT

Petitioner

AND

SET

Respondent

Heard Before: The Honourable Madam Justice Ruth M. L. Bowe-Darville

Appearances: Lillith Smith for the Petitioner

Arnold Forbes for the Respondent

Hearing Dates: 26th May, 8th June, 21st June, 29th June 2021

******RULING******

Ancillary relief/Lump sum provision/contribution and compensation/Adequate provision for spouse

1. This matter has had several stop and starts due to the Respondent's liability to properly instruct Counsel.

2. The Petitioner filed his Notice of Intention to Proceed with an Application for Ancillary Relief on 19th May, 2021 and which was surprised by his Affidavit of Means of the same date.
3. The Respondent filed her Affidavit of Means on 24th June, 2021.
4. While there seems not to much contention about the provisions for the children of the marriage, the Respondent has made application for a lump sum settlement pursuant to Section 27 of the Matrimonial Cause Act.
5. The Respondent claims the following in respect of a lump sum settlement:

\$250,000.00 (payable in installments) rep: her in claim in the following:

- i. \$41,943.11 – balance from the sale of the vacation home in Italy;**
- ii. Interest thereon;**
- iii. \$60,000.00 being 50% of rental income from home in Italy for last 10 years;**
- iv. Interest thereon;**
- v. \$80,000.00 from the sale of the Indigo property;**
- vi. Interest thereon;**
- vii. GB \$10,000.00 from the savings scheme; and**
- viii. Interest thereon**

6. The Respondent is a stay-at-home mother (her description), who claims she sacrificed her career (life) to care for the Petitioner and children. She claims to suffer from several illnesses namely, asthma and cataracts. There is no medical evidence, save for that tendered by the Petitioner, that the Respondent is “bipolar” or that she was admitted to Sandilands Rehabilitation Centre as she claims. The Respondent is unemployed and claims that she is unemployable.

7. The Petitioner is a Contractor/Construction Executive and is employed as a Managing Director with a leading construction firm. He earns \$16,660.67 monthly. He has no other source of income. His monthly expenses include those for himself, the Respondent, children and the family home.
8. The parties herein separated since 2012 and, as the Petitioner claims, the Respondent's behavior became rather erratic since the separation. Despite the Respondent's behavior, the Petitioner continued to maintain the home and family. It is notable that prior to the COVID 19 pandemic the Petitioner transferred \$600 per week to the Respondent – being \$200 for each son and \$200 for herself. Since the pandemic the Petitioner's salary was reduced and he advised the Respondent that the weekly sum would be reduced to \$400 per week. The Petitioner pays 100% of rent and utilities for the family's residence in Treasure Cove.
9. There are two (2) children of the marriage namely Liam Christopher Todd and Kyle Robert Sinclair Todd.
10. The Court has as its guide the considerations for settlement as set out in S.29 of the Matrimonial Causes Act.
 - 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 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 case of the proceeding for divorce or nullity of the 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”.**

11. The Court is prepared to accede to the terms as found in the Petitioner’s Affidavit of Means at paragraph 60 items (a – g) in relation to the children of the marriage:-

- a. The Petitioner and Respondent have joint custody of the minor child of the marriage namely: - Kyle Robert Sinclair Todd (m) born on the 14th day of December, 2004 with care and control to the Respondent and liberal access to the Petitioner.**
- b. The Petitioner shall be responsible for the school fees at St. Andrews and educational expenses of the minor child until he attains the age of 18 or completes tertiary level education.**
- c. The Petitioner shall be responsible for the tertiary level education and expenses for Liam Christopher Todd until he completes tertiary level education.**
- d. The Petitioner shall maintain the children of the marriage on his group medical insurance. Dental and Optical expenses not covered by the insurance shall be the responsibility of the Petitioner until the children complete tertiary level education.**
- e. The Petitioner shall contribute the sum of \$400.00 per week towards the day-to-day expenses of the child and the Respondent. This payment shall continue until Liam physically attends university in Canada. Thereafter, the Petitioner shall contribute the sum of \$300.00 per week towards the day-to-day expenses of the child and the Respondent until Kyle commences tertiary level education.**
- f. The Petitioner shall contribute the sum of \$100.00 weekly for Liam’s day-to-day expenses until he completes tertiary level education. The contribution shall cease once Liam completes tertiary level education up to his first degree.**

g. The Petitioner shall contribute the sum of \$100.00 weekly towards Kyle's day to day expenses until he completes tertiary level education up to his first degree.

12. The Court has considered the relevant sections of the Matrimonial Causes Act, namely section 27 and 29. The guidelines for settlement of financial matters arising on divorce are rather instructive. These guidelines have been applied to the instant case.
13. Counsel for the Respondent submitted that the Court should exercise its powers for granting a lump sum settlement as stated by **Allen J.** in ***Jupp v Jupp 2011 SCCiv Appeal No 37*** further emphasizing the MCA section 29.
14. In dealing with the matrimonial assets the Court considered firstly, the acquisition of the asset/s, its value, its disposition and the Respondent's interest therein.

i. Vacation home in Italy

This home was purchased in the joint names of the parties. The home was sold for \$180,000 Euros. According to the Petitioner the net proceeds were shared equally. The Court accepts the Petitioner's account of the disposition of the funds. Notable, there was an agreement for the retention of sums from the Respondent's share for the older son's university tuition. Any claim in respect of the former asset cannot be sustained as the parties have already settled the same. Likewise, the claim for rental income therefrom.

ii. Indigo

The Court accepts that this property is no longer a matrimonial asset. It was, as the Petitioner claimed an investment from which no profit was made. The Respondent's assertions that the Petitioner had a pseudo-

mortgage from his employers cannot be substantiated. The Court is also aware of the Petitioner's continued indebtedness in respect of this property for which he entered into a repayment plan and has since satisfied. The Petitioner provided evidence of the same. The Respondent made no contribution to this acquisition either and it is clear that she was not aware of workings of this transaction. If properly adjusted the Respondent will have to bear fifty percent (50%) of the \$23,549.00 which the Petitioner has had to repay. The Court is not minded to make such an order.

iii. Vehicle

The Respondent has already had the benefit of insurance monies to purchase a car.

iv. Salary Schemes

The Respondent seemed to barely be aware that the Petitioner contributed to a saving scheme on her behalf. She produced no evidence of the same or the past or present status.

v. Lump Sum Payment

The parties are non-Bahamian and own no assets with the jurisdiction. They are both in their fifties. The Petitioner is employed; the Respondent is unemployed. The Petitioner, as breadwinner uses more than 85% of salary towards the maintenance of the Respondent and the children of the marriage. Already, as asserted the Petitioner, he has included accommodation rental for the Respondent for the next eight (8) years. It is a fact that the Petitioner afforded his family a reasonable standard of living and paying 100% of the expenses connected therewith. It is also a fact that the parties have been separated for nine (9) years.

The Respondent claims her asthma and mental issues as her physical and mental disabilities. It is notable, however, that the Respondent has given no evidence as to her possible employment efforts, other than she has deemed herself unemployed. The Court is uncertain as to the Respondent's pre-family occupation or calling and her income, if any.

15. The Respondent relies on S.25 of the Matrimonial Causes Act (MCA).

25. (1)The financial provision orders for the purpose of this Act are the orders for periodical and lump sum provision available (subject to the provisions of this Act) under section 27 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceeding for divorce, nullity of marriage or judicial separation and under section 31(6) on proof of neglect by party to a marriage to provide, or to make a proper contribution towards, reasonable maintenance for the other or a child of the family, that is to say;

(a) any order for periodical payments in favor of a party to a marriage under section 27(1)(a) or 31(6)(a) or in favor of a child of the family under section 27(1)(d), (2) or 31(6)(d);

(b) any order for secured periodical payments in favour of a party to a marriage under section 27(1)(e), (2) or (4) or 31(6) (e); and

(c) any order for lump sum provision in favour of a party to a marriage under section 27(1) (f), (2) or 31(6)(f)".

16. The Respondent also prays in aid the provision of Section 27 of the MCA as it relates to lump payments for the purpose of enabling her to meet any liabilities or expenses reasonably incurred by her in maintaining herself, provisions having already been made for the children.

17. The Petitioner has proposed the following by means of meeting those needs, namely:

“i. The Petitioner shall continue to pay the Respondent’s rent which shall not exceed the sum of \$2,000.00 monthly until Kyle commences university. Thereafter all maintenance, rent and utility expenses shall cease and that the children of the marriage shall reside with the Petitioner when they return to the Bahamas during their school breaks or otherwise;

ii. The Petitioner shall be responsible for the Respondent’s utilities bills each month not exceeding the sum of \$700.00. The payment shall continue until Kyle commences university”.

18. The Respondent submits that the Petitioner earns enough salary to afford to pay her a lump sum of \$250,000.00. She submits that she sacrificed her life for her family, all her infirmities and missteps aside. It is very difficult to apply the sharing principle as set out in the cited cases of ***Miller v Miller /McFarlane v McFarlane (206) UKHL 24***. This was definitely not a marriage of equals nor one of partnership.

19. The Respondent’s role in this marriage was mother than wife. The Petitioner, by his offer, will meet the immediate needs of the Respondent. As for any compensation arising out of the marriage arrangement, this will only be realized when considering the economic disparity between the parties. This can be resolved by the settlement on the Respondent as proposed. Any such award is however, discretionary. The Court must assess the contribution of the Respondent in this case. Unless the Respondent’s contribution was exceptional, and no such evidence has been presented, the Court is minded to follow the findings in ***Charman v Charman (No. 4) (2007) (1FLR) 1280 and Cooper Hohn v Hohn (2014) EWHC 4122 (FAM)*** as to the definition and threshold to be applied when considering contribution/compensation.

20. In the instant case the Respondent has done nothing exceptional neither has she shown that there is some action/s for consideration. Her role as wife and mother was real but, in truth of fact, she could not have done more as a wife or homemaker to make her contribution exceptional and thus deserving of an award. The Respondent has not shown any prospect of employment and lives solely off the Petitioner. She has not shown herself in a good light. The Petitioner has not displayed any effort of trying to help herself, not even to exhibit some talent or enterprise.
21. In the premises therefore the Court accedes to the Petitioner's proposal for the continued care of the Respondent and so orders as set out above.
22. No order as to costs.

Dated this 6th day of August, 2021

**Ruth M. L. Bowe-Darville
Justice of the Supreme Court**