

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

CAUSE NO. 137 of 2018

BETWEEN: ALYSSA MARIE DODSON

Petitioner

AND **JOEL FREDERICK DODSON**

Respondent

Appearances: Ms. Kate McClymont of Broadhurst LLC for the Petitioner
Mr. Graham Hampson & Mr. Andrew Woodcock of Hampson and
Company for the Respondent

Before: Hon. Justice Richard Williams

Heard: 6 September 2019

**Draft Judgment
circulated:** 9 September 2019

Date of Judgment: 9 September 2019



HEADNOTE

Divorce – Ancillary relief – Application to adjourn 3 day final ancillary relief hearing - equality of arms and legal representation – Should a party inform the other party if they have instructed or intend to instruct a Queen’s Counsel?

JUDGMENT

Introduction

1. The Petitioner wife, by Summons with supporting affidavit filed on 5 September 2019, applied for an adjournment of the final ancillary relief hearing which has been listed since 3 May 2019 for a three day hearing. The Respondent husband

“strenuously” opposed the application. At the hearing I acceded to the Petitioner’s application and vacated the hearing due to start on 11 September 2019. I informed the parties that I would be providing them with this brief judgment setting out my reasons and observations.

2. I hope that the parties do not feel me ungracious if I now refer to them as the husband and the wife.
3. The wife contended that if the trial proceeded next week it would result in great unfairness and injustice to her. The reasons given as to why an adjournment is requested were:
 - a. That the matter is not ready for trial;
 - b. Continuing issues as to disclosure of relevant information by the husband;
 - c. The need for prior resolution of the wife’s immigration issues;
 - d. The need for/desirability of prior attempts to negotiate a mediated settlement; and
 - e. Representation and equality of arms.



Background

4. These proceedings were commenced by the wife presenting her Petition on 11 May 2018. The Petition was proved on 30 May 2018. The parties came before the

Court on 27 July 2018 for the First Appointment hearing. At that hearing comprehensive directions were given, thereby case managing to a maintenance pending suit hearing and a final ancillary relief hearing.

5. No maintenance pending suit hearing was then sought and the matter next came before the Court on 17 January 2019. At that hearing an issue was raised as to whether there should be a preliminary hearing about the status of the husband's partnership income. The wife was directed to file a skeleton argument on that issue by 8 February 2019 and the husband was directed to file a reply to that by or on 22 February 2019. The Court indicated that it would be willing to then make a decision on the papers as to whether the issue could be left until the final ancillary relief hearing or whether a preliminary issue hearing was required. On 8 February 2019, the wife's attorney contacted the Court indicating that there was no longer a need to ask the Court to determine whether a preliminary issue hearing was required.

6. On 8 March 2019 the Court approved the following consent directions sought by the parties:
- (i) The Petitioner is to file and serve any final requests for Disclosure within 14 days of the date of this Order;
 - (ii) The Respondent is to respond to the Request for Disclosure within 14 days thereafter;



(iii) In the event the Petitioner considers proper disclosure not to have been provided in accordance with her Request for Disclosure:

- a. The Petitioner shall file and serve a summons and affidavit seeking a disclosure order (the "Disclosure Summons") within 14 days of receipt of the Respondent's Response to the Request for Disclosure;
- b. The Respondent shall file and serve any response evidence to the Disclosure Summons within 14 days of service of the Petitioner's affidavit; and
- c. The Disclosure Summons shall be listed for hearing on the first available date that is at least 14 days after service of the Petitioner's affidavit in support of the Disclosure Summons, with a time estimate of half a day.

That hearing may come on before any judge;

- (iv) The matter to be listed for final hearing on the first available date that is (1) mutually convenient to the parties and their legal representatives; and (2) is after 30 June 2019, with a time estimate of three days. That hearing may come on before any Judge;
- (v) Final updating affidavits are to be filed and served by both parties, no later than 21 days prior to the first day of the final hearing;
- (vi) The Parties will comply with Grand Court Directions in relation to the preparation and filing of bundles, however the parties will in any event agree the index to the bundle no later than 14 days prior to trial;



- (vii) Both parties will serve a “statement of issues” (both in relation to the issues that are agreed and those that are not agreed) together with skeleton arguments, no later than four business days prior to the agreed trial date; and
- (viii) Liberty to apply for any further directions that might be required.

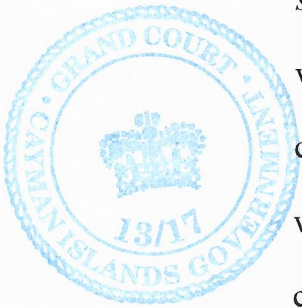
7. The purpose of the directions was to give clear structure and case management to ensure that the parties would be ready for the final hearing. The directions put in place the mechanics to resolve the issues that existed, including about disclosure. Unfortunately, the wife failed to take the opportunity to operate within the directions and not within the spirit of Practice Circular No. 1/2014 Requirement for Strict Compliance with Court Orders Made in the Family Division of the Grand Court. Although the wife still argues that *“the most critical issue is a lack of full and frank disclosure”* she failed to file and serve any final requests for disclosure within 14 days of the date of the directions Order. In fact it appears that she only raised the disclosure issues again in late August. Although the husband filed his updating affidavit as directed, the wife has failed to file an updating affidavit.

8. The reason given, namely the uncertainty about her immigration applications, for the wife not complying with or utilising the mechanism in the directions is not a meritorious one. Even if it had been, then one would have expected the wife to have communicated with the husband’s attorneys requesting an extension of the



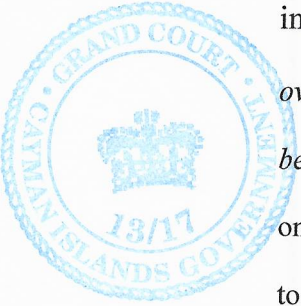
timings agreed in the directions order and setting out the reasons why. That was not done.

9. My preliminary view was that the wife's unresolved immigration situation was not a sufficient reason for adjourning the hearing. As the wife highlights at paragraph 17 of her affidavit sworn on 5 September 2109, it is a "*chicken and egg situation*." Although it would be preferable to have more certainty about the wife's longer term immigration status and the impact that would have on the children's place of residence, it is evident that the immigration authorities are not willing to make a decision about her residency application until they have clarification about her financial position, which may only become clear after the conclusion of the ancillary relief proceedings.



10. I would not adjourn a substantive hearing at this late stage on the basis that the parties could attend mediation, unless both parties consented to such a course.
11. The issue that primarily troubled me concerns the legal representation of the parties and the principle of equality of arms. It appears that the husband, despite retaining an experienced family practitioner in Cayman, had from around May 2019 decided to instruct a Queen's Counsel ("QC") from England and Wales. Although I am not clear about the precise date, it appears that around that time a decision was made to instruct Mr. Cusworth QC. Unfortunately, that decision was

never communicated to the attorneys for the wife. The wife only became aware of that last week because Mr. Cusworth QC is instructed in an upcoming case which they are involved in and which is also before the Courts next week.

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12. The husband argues that if the wife had wanted to have a QC representing her then she could have done that. He highlights that the wife's attorney had been informed him that the wife had earlier "*engaged Nicholas Yates QC to give advice, over the phone, in respect to whether the husband's partnership interest in KPMG could be a matrimonial asset.*" It is submitted on behalf of the husband that it was incumbent on the wife to make a request for funding in good time before the trial if she had wanted to instruct a QC.

13. The reality in this case is that if the wife had applied for a costs allowance order to enable her to instruct a QC and the husband had no intention to instruct a QC himself, then such an application would have been unlikely to succeed. If the husband had notified the wife that he was intending to instruct a QC and if the wife, with that knowledge, then applied for a costs allowance order to enable her to also instruct a QC, she may well have been successful if there was no Sears-Tooth arrangement. In this matter the husband is clearly the dominant party when it comes to the family finances. If he, being in such a position, chooses to use family finances to instruct a QC as he believes that he requires one to enable him to properly present his case, then he would find it difficult to argue that family



finances should not also be made available to the wife to enable her to also instruct a QC.

14. The final ancillary relief hearing is an important hearing for the parties and for the children. Both parties are entitled to a fair hearing. To ensure that there is a fair hearing there must be equality of arms. This means that both parties are entitled, in the circumstances of this case, to representation at a similar level. Although I hold in high regard both of the local attorneys who have been retained, the wife may understandably feel that she could not have a fair hearing unless she had the benefit of leading counsel of similar quality to the one instructed by the husband to present her case.
15. The wife indicates that Mr. James Turner QC has agreed to represent her at the final hearing. Understandably, due to the short notice, he is not available to appear next week. Mr. Turner QC has indicated that he would be content to act on a deferred fee basis, with his fees only falling due at the conclusion of the proceedings, which means that there should be no further delay in his retention and him starting to give advice.
16. This is a case where I would expect the attorneys, along with the Queen's Counsel, to be having meaningful discussions with the aim of reaching a comprehensive consent order prior to any final hearing. I am hopeful that the



introduction of Mr. Cusworth QC and Mr. Turner QC to this case may make such a timely and more cost efficient outcome more likely.

17. I am satisfied that it would only be right and proper in the circumstances of this case for the wife to also have legal representation from a QC. Accordingly, albeit with some regret and paying regard to my obligations under the Overriding Objective, I am satisfied that on balance an adjournment is the fair decision.
18. The hearing for next week will be vacated. However, this case requires further structured case management to a final hearing, and therefore I will list a hearing for next Friday, 13 September 2019, when any disclosure and other issues can be canvassed. I adjourn the case to Friday and not before to provide the parties with an opportunity to consult with their leading counsel prior to the hearing.

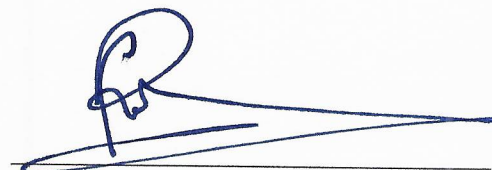
Observation

19. I accept that there is no formal rule that a party must inform the other party if they intend to or have instructed Queen's Counsel. That said, I am of the view that it would be good practice and consistent with professional etiquette for that to be done. In matters that come before the Court in the Family Division, where the Court endeavours to make proceedings less adversarial and considers the children's welfare as being paramount or first, I hope that such a professional practice will in the future be voluntarily adopted as a matter of course.

20. The difficulty that might occur if such a practice is not followed has been vividly highlighted by this case. It is in neither party's interest that this case has had to be adjourned, and I hope that the Court is not put into a similar position in the future in other cases.
21. I understand that there may be situations in which an attorney may wish to inform the other party that a QC may be or has been instructed, but has instructions from his client not to divulge that fact to the other party. In such circumstances the attorney is bound by his instructions. However, his/her client should also be made aware about what the consequences of non-disclosure may be, including the possible cost implications if an adjournment is deemed necessary by the Judge.

Costs

22. My preliminary view is to make no order for costs, however if either party wishes to make submissions, they should inform the Court at the hearing on 13 September 2019.



Richard Williams
Justice of the Grand Court

