

The Judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

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

Cause No.: FAM 252 of 2013

BETWEEN



D.C.

Petitioner

AND

R.C.

Respondent

CHAMBERS (via Zoom link)

Appearances: **The Petitioner in person
Mr. Graham Hampson and Ms. Sulekha Tummala of Hampson
& Company for the Respondent.**

Before: **Hon. Justice Marlene I. Carter (Actg.)**

Heard: **16 October 2020**

Oral Ruling Delivered: **27 October 2020**

**Transcript of Oral Ruling
circulated:** **06 November 2020**

HEADNOTE

Matrimonial Causes Law (2005 Revision) - Application for variation of child maintenance

Transcript of Ex Tempore Ruling

1. By summons dated the 3rd of June 2020, the Petitioner ('P') sought variation of the Court order dated the 22nd March 2019 [**"the Maintenance Order"**] *"to increase the support from \$1000 to \$4550"*. While not precisely stated, the Court took this to mean an increase to the maintenance for the child of the marriage since that was the only matter in which an order in the sum of \$1,000.00 was made on that date. The variation summons is supported by two affidavits dated the 3rd June 2020 and 23rd September 2020.

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2. The relevant paragraph of the Maintenance Order for which the variation is sought reads as follows:

“Paragraph 1 of the previous Order of the Court, dated 1st December 2014 (“the 2014 Order” – and which ordered maintenance to be paid to the Petitioner for the maintenance and benefit of the Petitioner and T [child of the marriage] in the sum of CI\$2,100.00), is now varied downwards, with the effect from 1st November 2018. In view of the clean break referred to in the Consent Order of 11th April 2018, the Respondent shall pay (from 1st November 2018) interim maintenance (for the maintenance and benefit of T) in the reduced sum of CI\$1,000.00 per month, until the Relocation Application and other issues relating to T are finally determined by this Court. Exclusive of the sums referred to in paragraph 5 herein, the next instalment of the maintenance is payable on 1st April 2019.”



3. The present application was made during the time that P was in the United States with the child of the marriage [‘T’]. The parties had consented, due to the Covid-19 pandemic and the issue of Government Regulations relating thereto which enforced school closures in the Cayman Islands, to allow P to take the child with her during this period. The time between the filing and hearing of the application was determined by the changing Government regulations for re-entry into the Cayman Islands.

The background

4. The parties by consent order dated the 11th day of April 2018 (“**the Consent Order**”) agreed a full and final settlement of all ancillary matters (as between the Parties) and barring matters relating to the child of the marriage. In essence the Respondent [‘R’] paid P approximately \$125,000 for her share in the matrimonial property. The parties were both represented by Counsel and the recitals to that Order are relevant.

“UPON this matter being placed before the Honourable Judge to be dealt with administratively;

AND UPON the Parties agreeing that this Order represents the full and final settlement of the ancillary matters (as between them as Parties) arising out of their marriage;

AND UPON the Parties hereby releasing all rights, claims or interests, whether legal or equitable, which either of them may have against each other in respect of any assets or property of any kind whatsoever which either of them may have now or in the future, it being intended that the Parties should hereby achieve a “clean break” in respect of their financial affairs in relation to themselves;

AND UPON the Parties further agreeing that (as between them as Parties) there are no further outstanding ancillary issues to be resolved, nor any other claims by either of them under the Matrimonial Causes Law (2005 Revision) or the Married

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Women's Property Law (1997 Revision) (or otherwise) and that the only outstanding ancillary issues in these proceedings relate to the arrangements for the child of the marriage, ...



AND UPON the Parties hereby agreeing that any real and personal chattels not otherwise disposed of by this order shall be and shall remain the absolute property of the Party in whose possession they now are. The expression chattels shall specifically include personal effects, cars, boats, jewelry, furniture, art and clothing:

AND UPON each Party confirming that sufficient disclosure has been made and received to allow each of them to make the informed decision to ask the Court to approve the below terms, pursuant to the requirements of Practice Direction No. 1 of 2013;

IT IS HEREBY ORDERED.....”

5. In March 2018, P made an application to the court for relocation of the child of the marriage to the United States. At the hearing of that application in May 2018, it was agreed by the parties that the application would be adjourned for up to one year to enable P to address urgent medical issues which this Court determined may have hampered her application. Ultimately, upon P having dealt with her medical issues and after a full hearing, the Court by its order dated the 29th January 2020 denied the application for relocation.
6. The Final Ancillary Order was made by this Court on the 19th day of March 2020. By the terms of the Final Ancillary Order the child of the marriage spends approximately two weeks per month with each of her parents.

The position of the parties

7. Having heard oral submissions from P and had sight of her affidavits in support of the summons for increased maintenance for the child of the marriage, there were a number of issues raised in the affidavits and rehearsed before the Court which were relevant to the application.
8. There were issues raised relating to the Final Ancillary Order. It is useful to set out those paragraphs referred to.

“6. Until further order the Respondent is to be responsible for [T]’s reasonable, regular school fees at her current school in the Cayman Islands. Such obligation shall cease when [T] reaches the age of 18, unless extended by this Court. There is liberty to apply if it appears that either party’s financial

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circumstances have changed. If [T] shall continue in tertiary education, then the parties shall contribute to [T]'s school expenses in equal proportions, or in the absence of agreement in such proportions as this Court at that time shall then deem just.

7. *The Respondent shall continue to include [T] on the group health insurance plan provided by his employer (which is currently CUC) so long as [T] is under the age of 18, or if she continues in full time education up to the age of 21. In the event that such group health plan benefits are removed from the Respondent (for whatever reason) then there shall be liberty to apply to the Court for consideration of what health insurance arrangements for [T] shall then be implemented and the relative responsibility of each parent to contribute to premiums at that time.*
8. *The parties shall contribute equally (i)[T]'s agreed airline travel costs between parents (if such is ever necessary); and (ii) any uninsured medical costs.*
9. *The parties shall contribute in suitable proportions to the costs of [T]'s reasonable and agreed extra-curricular activities. In the absence of agreement there shall be liberty to apply.*
.....
11. *That the Respondent pay continue to pay child maintenance to the Petitioner (up to the age of 18 years) for the benefit of [T] in the sum of CI\$1,000.00 per month..."*

9. P agreed that R complied with the orders for payments for the child of the marriage as set out in the Final Ancillary Order. She stated however that with regard to the sharing of medical expenses not covered by R's health insurance, she had incurred expenses approximating \$50 over the three months immediately preceding this hearing for the child of the marriage. She related that she had incurred expenses for items relating to the child's extracurricular soccer activities in the form of soccer equipment, jerseys etc. These she calculated amounted to approximately \$150.00 per year.
10. The thrust of P's argument for an increase to the maintenance related to her inability to find work in the Cayman Islands. Although it was previously confirmed to this court that P continues to possess a Residency and Employment Rights Certificate¹, P again raised the spectre of her immigration status being a hindrance to her finding employment. She related that she had applied for various positions without success. She supplied copies of refusal letters for the court's consideration.

¹ Letter from Cayman Islands Immigration Department dated 19th February 2019

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11. Directly related to this inability to find work, P submitted that R should cover her rent and utility bills. Her affidavit of September 23, 2020 set out a number of expected expenses. These include matters not directly relatable to the child of the marriage including rent, utility bills, and credit card debts. She referred to the level of unemployment benefit in the United States as a basis upon which the Court may consider the required level of maintenance and to support the increase that she was now seeking. She also referred to attempts to have R increase the amount of maintenance beyond what the Court has ordered by sending emails during the time that she was in the United States with the child of the marriage.



“3. An increase in support is necessary to help cover the basic costs of living to provide a home for T. Please see attached budget which does not provide the quality of life that T enjoyed in the past or that she continues to enjoy with her father.”

12. R raised a number of issues in his affidavit in reply, R’s 12th affidavit. R stated that by virtue of the lump sum capital payment in settlement of the financials between the parties, that it was agreed that this was to be on the clean-break principle. He stated that his only obligation should be to support T.
13. R stated that the Court should view any disparity between households as being caused by P’s own choices. R referred the Court to his 5th affidavit which records interim payments made to R before the settlement evidenced in the Consent Order. He set out that at present he covers expenses approximating CI\$1,884.10 per month for the child of the marriage, payments made directly for the child of the marriage not including food and other expenses for her upkeep during the time that she is with him each month. These costs are apart from the \$1,000.00 in maintenance that he pays to P for the child per month.

14. R further stated as follows:

“24. D [first name of P] is unable to distinguish between my income and T’s needs. Rather than concentrate on T’s needs, D seems to intermingle her needs. I believe that what is important here are the needs of T whilst she is in her mother’s care. T splits the time between households in equal measures. I am confident that I am covering all of D’s outgoings for T with some left over, considering that I currently also pay for T’s schooling, extracurricular activities, uniform, musical instruments, hobby items and sporting equipment. The value of \$4.500 is far in excess of what T needs for monthly outgoings. D

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is obviously factoring her own living expenses into this value. This value represents more than half of my take-home pay whilst I continue to pay for T's direct payments as listed above. This begs the question: how can this be equitable?"

The factors for the Court's consideration

15. An application for variation of the Maintenance Order can be made pursuant to Section 23 of the *Matrimonial Causes Law (2005 Revision)* ("the Law"). Section 19 of the *Law* is also of relevance. At all times the Court remains guided by the interests of the child of the marriage. The Court may also consider a parent's circumstances or any change to those circumstances since the making of the order.
16. In *AL v NL Williams J.* endorsed and applied the following approach to be taken "*in cases brought in the Family Division and Summary Court... for the Courts and for the attorneys to take in child maintenance applications*"

*"The court has to treat each case on its own merits and to do what it can to achieve a just result. Practitioners often do not go into these applications armed with sufficient information. Bringing up children these days is the most expensive business and, if at all possible, the applicant should bring to court calculations of what they have actually spent on the child during a preceding period, rather than simply taking the approach that the court can be asked to imagine or speculate upon the cost of maintaining the children. Obviously, it will be very difficult, often impossible, to show what proportion of heating, lighting and general household expenses is referable to the children, but some items such as clothing, footwear, school expenses, holidays, pocket money, travelling expenses and so on can be specifically calculated and, where possible, this should be done."*²

17. This court is also mindful that in interpreting the relevant provisions of the *Law* that a court enjoys a wide discretion on these applications.

*"The starting point of any analysis must be s.21 (f) of the Matrimonial Causes Law (para. 7 above). By it, the court was obliged to make an "appropriate" order "for the benefit of the children." Those latter words seem to me to provide the judge with a wide discretion. They do not mean that the order has to be solely for the children's benefit. It is sufficient if it can reasonably be said of the order that it fulfils needs of the children which would otherwise not be met."*³

² Butterworths Family Law Service, Issue 90 ("Butterworths"). At paragraph [860]-[870]

³ *AK v TK*, per Goldring P, at paragraph 37

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18. In some instances, a court may find upon its consideration of the facts before it on an application for variation of child maintenance, that there may be some overlap between the needs of the applicant party and the child of the marriage. However, the court must always be mindful that even in its consideration of such factors that the purpose of child maintenance is not to provide the mother with a personal lifestyle similar or proportional to that which she believes the father to have.
19. With regard to the clean break principle as it relates to the division of matrimonial property referred to in the recitals to the consent order, there are a number of authorities that seek to convey what its effects are. In *Minton v Minton*⁴, Lord Scarman stated:

“There are two principles which inform the modern legislation. One is the public interest that spouses, to the extent that their means permit, should provide for themselves and their children. But the other – of equal importance – is the principle of ‘the clean-break’. The law now encourages spouses to avoid bitterness after family break-down and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down.”

20. In *McTaggart v McTaggart*⁵ the Court of Appeal noted that “a court should not make a spousal periodic payment order without good reason as that would be inconsistent with the clean break principle which applied to the Cayman Islands...”

Court’s decision

21. The Court is mindful that it is now some 2 ½ years since the financial affairs between these parties were determined by the Consent Order.
22. The Court is conscious that it must maintain the integrity of the Court before these parties and the principle of a clean break must not be lightly regarded when as it does in this case come after full disclosure and advice by competent counsel on both sides.
23. The authorities referred to above and pronouncements on the clean break principle are especially relevant in the instant case. It is to be noted that despite the determination of those financials by

⁴ [1979] AC 593, [1978] FLR Rep 461

⁵ [2011] 2 CILR 366

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Consent Order, P continued to receive financial support until this court varied the interim order of 1st December 2014 by which the R was ordered to pay the sum of CI\$2,100.00 for the support of the wife and child of the marriage. On the 22nd March 2019, this Court discontinued the component of the 2014 Order which related to spousal maintenance for P retroactive to the 1st November 2018. However, P received the full sum of \$2,100.00 from March to November 2018.

24. Despite the parties being able to arrive at the Consent Order and the settlement of the final ancillaries in this case in March 2020, there is still obvious animosity between the parties.
25. I accept that the R has made financial provision for the child of the marriage beyond that which may usually be ordered and that this in in large part due to the position of P. This is reflected in the provisions in the Final Ancillary Order referred to above by which R is ordered to have sole responsibility for the cost of the educational expenses for the child of the marriage, and the provision of health insurance to cover medical, dental and optical expenses. The costs of extra-curricular activities were to be shared between the parties. However, I accept that R has covered all of these expenses himself. The expenses for the child of the marriage as set out in the R's 12th affidavit range up to approximately CI\$1,884.00. P did not seek to dispute the sums set out by the R in that affidavit.
26. I accept that these expenses do not include the amount of CI\$1,000.00 for maintenance and also are not reflective of everyday expenses including food for the half of the month that the child of the marriage resides with the respondent. R's salary is approximately \$8,501.00. Applying an approximate sum of CI\$500.00 for everyday expenses, this amounts to approximately 40% of the R's salary.
27. P's position is not straightforward. I accept that she had made efforts to find employment in the Cayman Islands. R in his 12th affidavit stated that he is of the belief that because she holds a Residency and Employment Certificate that she can now apply for naturalisation as a British Overseas Territory Citizen and that this could improve her employment prospects. The fact remains however that she is now unemployed. Even taking this fact into account this Court cannot ignore that there is now no impediment to P being employed.



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28. The Court has considered the position of the parties upon the settlement of the financials. R has increased the amount of his contribution to the child of the family in real terms since that period to the present. From P's own evidence, the expenses that she related per month for the child were for medical copayments and football gear apart from food and other essentials. She had not shown that the present maintenance order for CI\$1,000.00 for the child of the marriage is inadequate to cover the child's expenses and upkeep per month during the two-week period that she remains with P.
29. The court must be mindful that although a father may have a greater income and/or income capacity than the mother, in this case R has been paying and will continue to pay the substantial expenses that are required to meet the majority of needs of the child of the marriage as set out above. A mother also has a duty to arrange her finances in such a way so that she also financially contribute to the meeting of the child's needs.
30. In *AL v NL Williams J* stated: "*It is not a father's responsibility to fund a mother's capital interest in her home, save to the limited extent that there is an overlap for provision of a home or base for any relevant child. It is definitely not a father's responsibility to fund a mother's personal lifestyle, especially if she has financially overstretched herself by the decisions made and by how she has chosen to utilise her capital resources.*" The last sentence of this statement is applicable on this application.
31. During the course of this hearing, P stated that it is because R opposed her application for relocation that she finds herself in her present financial position and therefore he should, on that basis, pay for her to live in the Cayman Islands with the child of the marriage. This of course is not a proper legal basis upon which an order for maintenance can be made. However, it bears mentioning here that the exact situation that P now finds unbearable to contemplate, of the child living in another jurisdiction with R, with access to her only during planned holidays, is the position in reverse that would have resulted if her application for relocation had been successful.
32. This Court has much sympathy with the position in which P now finds herself. However, the principles by which this Court must be guided on an application for variation of maintenance are clear. This is not a case where the ancillary matters relating to the parties' financials are pending. These have been determined. The welfare of the child is the paramount consideration. P must now

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seek to maximize her earning potential. She is still at an age where that earning potential is significant. While it may be difficult for her to contemplate, she may have to seek employment elsewhere not only for her own welfare and standard of living but also so that she too can make a financial contribution to the maintenance of the child of the marriage where it warrants. The application for variation of child maintenance from C\$1,000.00 per month to C\$4,550.00 per month is denied.



Hon Justice Marlene I. Carter.
JUDGE OF THE GRAND COURT (Actg.)