

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 FAMILY DIVISION
3

4 CAUSE NO. FAM 0221/2019
5

6 BETWEEN:

DS

PETITIONER

7
8 AND:

9 GE

RESPONDENT

10
11 AND:

YM

PERSON NAMED

12
13 Appearances:

Mrs. Sheridan Brooks-Hurst QC of Brooks and
Brooks Attorneys at Law for the Petitioner

15 Mr. Dennis Brady of Brady, Attorneys at Law for the
16 Respondent

17
18 Before:

The Hon. Justice Cheryll Richards Q.C.

19
20 Hearing:

18th and 26th June 2020; 10th and 27th July 2020; 25th
21 September 2020

22
23 Judgment Delivered:

27th October 2020

24
25 HEADNOTE

26 *Family Law – Interim Maintenance Order - Sections 19 and 20 of the Matrimonial*
27 *Causes Law (2005 Revision) - Principles to be applied.*
28

29 JUDGMENT
30
31

1. By Summons dated 15th May 2020, the Petitioner (“the wife”) applies for Interim Orders pending the Final Ancillary Hearing in this matter. In addition to periodic payments for herself and the child of the marriage, O, in such sum as the Court may deem fit, the wife also seeks an order for restraint of the matrimonial assets to prevent dissipation and orders either that the Respondent, “the husband”, vacates the matrimonial home until the conclusion of the proceedings or refrains from interfering with or harassing her.

2. The husband is 51 years old, and the wife is 46 years old. The parties have been together for some 20 years. They were married on the 31st July 2015. They have one child, a daughter, O who was born on the 20th August 2009. She is 17 years old and is in her final year at a local private school. She is currently preparing for examinations, which will determine whether or not she will be able to enroll in tertiary education early next year. The wife petitioned for divorce on the 12th September 2019. The Petition was ordered proved on the on the 7th October 2019.

The Law and Applicable Principles

3. Section 20 of the *Matrimonial Causes Law* (2005 Revision) provides as follows:-

“Orders pending suit

20. *The Court may make orders pending the outcome of any suit in respect of which a petition has been presented providing for-*

- (a) *the care and control of the children of a marriage;*
- (b) *the use of a matrimonial home;*
- (c) *periodic payments to be made by one party to another pending suit;*
- (d) *an injunction for the protection of settled and other property in which either spouse claims an interest;*
- (e) *the protection of one spouse from interference by the other; and*
- (f) *security for costs.”*



1 4. Section 19 of the said Law provides that in dealing with all ancillary matters arising
2 under this Law, the Court shall have regard first of all to the best interests of any children
3 of a marriage and thereafter to the responsibilities, needs, financial and other resources,
4 actual and potential earning power, and the deserts of the parties.

5
6 5. The wife's application includes finances for the child of the marriage who though more
7 than 16 years is still in school. I must therefore have regard firstly to her best interests
8 before considering the responsibilities, needs, financial and other resources, actual and
9 potential earning power and the deserts of the parties.

10
11 6. Guidance has been provided by Williams J. in a number of cases in this jurisdiction as
12 to how these matters should be approached. In *JS v. WS*¹, the *dicta* from the Learned
13 Judge is stated as follows:

14 *"When considering maintenance pending suit for a spouse, the court's*
15 *primary aim is to make an order, if possible, which will give a spouse*
16 *sufficient money to discharge day-to-day outgoings and to feed, clothe and*
17 *keep a roof over his or her head until the final adjustments and orders are*
18 *made in relation to the matrimonial assets and the finances after decree nisi.*
19 *Where there are sufficient assets, the court will usually balance needs*
20 *against resources, (Butterworth Family Law, Issue 90, para. 4A, at 711; T*
21 *v. T (Financial provision), [1989] Fam. Law 438, referred to)."*
22

23 7. The Learned Judge applied the guidelines as set out in *TL v. ML and Others (Ancillary*
24 *Relief: Claim Against Assets of Extended Family*²:



- “(i) The sole criterion to be applied in determining the application is 'reasonableness' (s 22 of the *Matrimonial Causes Act 1973*), which, to my mind, is synonymous with 'fairness'.
- (ii) A very important factor in determining fairness is the marital standard of living (*F v F*). This is not to say that the exercise is merely to replicate that standard (*M v M*).
- (iii) In every maintenance pending suit application there should be a specific maintenance pending suit budget which

¹ [2018] 1 CILR Note 5

² [2006] 1 FLR 1263



excludes capital or long-term expenditure, more aptly to be considered on a final hearing (*F v F*). That budget should be examined critically in every case to exclude forensic exaggeration (*F v F*).

(iv) Where the affidavit, or Form E disclosure by the payer is obviously deficient, the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources (*G v G, M v M*). In such a situation, the court should err in favour of the payee.

(v) Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed, but where the position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial (*M v M*)."

8. Additionally, in *J(D) v. J³*, further dicta from Williams J. is stated:

"When ordering a spouse to pay maintenance pending suit, the court is to ensure the other spouse is provided with sufficient funds to feed, clothe and house herself until an order for ancillary relief is made subsequent to the grant of a decree nisi (*T (Divorce: Interim Maintenance: Discovery)*, [1990] 1 FLR 1, considered). The court is also to determine the amount to be paid according to fairness, taking into account the marital standard of living and the paying spouse's finances, and is to critically assess the amount claimed by the other spouse (*TL v. ML (Ancillary Relief: Claim against Assets of Extended Family)*, [2006] 1 FLR 1263, dicta of Nicholas Mostyn, Q.C. considered)."

9. This matter is approached with the Law and these principles in mind.

THE EVIDENCE

10. In addition to Affidavit evidence, the parties gave oral evidence over a number of days.

The oral evidence was interrupted or postponed on occasion amidst complaints as to the failure of the husband to provide adequate financial information. There was also a complaint as to non-receipt of the wife's financial information. It appears that this had previously been provided but had not been received or reviewed by Counsel on behalf

³ [2015] (2) CILR Note 9

1 of the husband prior to the start of the hearing. Throughout the hearings, I endeavored
2 to remind the parties that this was not a final hearing and that given the nature of these
3 proceedings the Court was not and would not be making any determination on what
4 constituted matrimonial property. Any decision made in this case is a temporary holding
5 position until conclusion of the matter. It does not foreshadow the final outcome.
6

7 11. In her Affidavit evidence⁴, the wife attests that there are four properties in the Cayman
8 Islands which are potential matrimonial properties:

- 9 i. Block 25 B Parcel 266 Spotts - Land only
- 10 ii. Block 24D Parcel 120
- 11 iii. Block 25 B Parcel 100 - Prospect
- 12 iv. Block 48C Parcel 144 - Breakers
- 13



14 12. The title to the Prospect property is in their joint names although the husband's evidence
15 is that this was for convenience only and that the wife made no contribution.
16

17 13. The wife says that she discovered that just prior to the filing of the Petition the husband
18 purchased Block 48 C Parcel 144, a property in Breakers, jointly with the co-respondent
19 YM. The husband's oral evidence about this, is that this property was purchased as an
20 investment property, with him paying 70% of the purchase price and YM paying 30%.
21 In cross examination, he said that this was a cash purchase in the total sum of \$189,
22 823.00.

23
24 14. There are also three properties located in St Elizabeth, Jamaica in New Town, Fillers
25 Wood and Montpelier. The husband's evidence is the three properties in Jamaica are
26 not matrimonial properties. One is jointly owned by himself and his mother. The other

⁴ Affidavit filed 19th May 2020



1 two by his mother. His evidence further is that only one of these is rented - the New
2 Town property which is rented for J\$80,000.00. This has a mortgage loan with a monthly
3 repayment of J\$233,697.34 so that all of the rental income goes towards these payments
4 per month and the husband pays the balance.

5
6 15. It is his position that all the properties, with the exclusion of Block 25 B Parcel 100, are
7 in his sole name and were purchased and paid for by him, with his money and that these
8 do not constitute matrimonial property.

9
10 16. The wife states that they also own a number of businesses - a retail establishment which
11 she operates, two landscaping businesses, a construction business and an event-planning
12 business, which are all operated by the husband. The wife attests that the husband has
13 refused to provide her with details as to exactly how much he collects in rental income
14 and that he fails to disclose the income from the businesses.

15
16 17. There is agreement between the parties that the longstanding arrangement is that from
17 the income from the rental properties and from the businesses operated by the husband,
18 he would pay the mortgage, O's school fees and household utility bills. She would buy
19 groceries and take care of any other household expenses.

20
21 18. The wife says that she has been asking for some time now for the husband to provide a
22 greater level of financial assistance because it is difficult for her to manage on the small
23 income which she makes from the retail business. She meets all of O's additional school
24 expenses including lunch, books and uniforms.

25
26 19. The husband denied any such discussion between them. He also made it abundantly clear
27 in his oral evidence that he does not consider that he should have to provide much more
28 to the wife that he is presently providing. In graphic terms he explained that he prefers

1 to teach a man how to fish and that he provided funding, in the sum of \$45,000.00 from
2 his account and made the wife's retail business operational. He said that he did this in
3 order that he would not have to give her money all the time and he expected that she
4 would be able to earn from the business in order to maintain herself sufficiently.

5 **THE LEVEL OF RENTAL INCOME**

6 20. The wife initially asked that the husband provides her with periodic payments or one-
7 half of the rental income which he collects from the rent of properties in Cayman and
8 Jamaica so that she can financially survive with O.

9
10 21. The husband's evidence from his First Affidavit⁵ filed in this matter is that the Prospect
11 property, Block 25 B Parcel 100 is rented out to four tenants. On a monthly basis one
12 pays \$1000.00, two pay \$450.00 each, and one pays \$500.00, bringing the monthly total
13 to \$2,400.00. He stated that the said tenants had not been able to pay rent since March
14 because of having employment issues during the primacy of the pandemic and that he
15 was only collecting \$1,000.00 per month from one tenant.

16
17 22. In her Second Affidavit dated 3rd June 2020, the wife asserted that it is not true that the
18 husband is only collecting \$1,000.00 per month in rental income because of the
19 economic effects of the pandemic. She carried out inquiries at the rental property and
20 produced signed letters from five of the seven tenants as to the level of the monthly rent
21 paid. Her evidence is that the total monthly rent contracted to be paid by the tenants
22 amounts to \$3,700.00. She therefore says that given the agreement of the husband that
23 she is entitled to one half of the monthly rental, she should therefore be entitled to receive
24 \$1,850.00.



⁵ Affidavit dated 20th May 2020



1 23. In response to this, the husband admitted that he had provided incorrect information to
2 the Court. In his Second Affidavit dated 8th June 2020 he said that he had in error and
3 confusion omitted to advise in his earlier Affidavit of two additional tenants, due he says
4 to the fact that the other persons are extended family including the brother of the wife,
5 who owes rent. He says that while the tenants have contracted to pay at the sums
6 indicated they have not been paying rent since March.

7
8 24. The wife was cross-examined about the nature of her inquiries in an effort to show that
9 the husband had provided correct information and that he had not in fact been collecting
10 rents at such levels. The wife responded that she had received affirmative answers to the
11 question as to whether the tenants were paying their rents. She did not answer the specific
12 question as to whether she had inquired of them when last they had paid rents. None of
13 these persons provided Affidavits or were called to give evidence.

14
15 25. The husband's Affidavit evidence is that the agreement with the tenants is that while
16 they are unemployed as a result of the pandemic they would not pay rent until they re-
17 commence employment at which point they will pay the outstanding arrears.

18
19 26. In answer to questions from the Court he said that the six tenants pay \$1000.00, \$500.00,
20 \$500.00, \$450.00, \$450.00 and \$450.00 for a total of \$3,350.00 monthly.

21
22 27. In relation to possible deductions from this amount, the husband stated⁶ that he made an
23 additional error in failing to indicate that he has utility bills for this property. He said
24 that these amount to \$800.00 per month on average. He also says that the realistic
25 income following on from utility deductions would be one half of \$2,900.00 per month,
26 thus \$1,450.00 each month.

⁶ Affidavit dated 8th June 2020

1 28. This level of utility payments was not borne out by the documents which he produced.
2 The electricity bill which he produced as an attachment to his Affidavit had an
3 outstanding balance notice. The current bill was \$259.47. When combined with amounts
4 outstanding, the bill was \$509.56. The water bill which he attached had past-due amounts
5 of \$77.34 and \$663.76. The bill amount was \$285.56. From these bills, there is no
6 evidence of average monthly payments of \$800.00. It appears that the combined
7 monthly average is no more than \$500.00. I conclude that the monthly rental income
8 from this property after deduction of utilities is \$2,850.00.

9
10 29. The wife gave evidence of a second rental property from which she says that the husband
11 receives rental income of \$2,800.00. She produced no documentation in support of this
12 assertion. The husband gave oral evidence that this second rental property is the
13 investment property which is jointly owned with YM. He said that the rental income
14 from this property is \$1,900.00 from which he is entitled to 70% or \$1330.00. There are
15 monthly payments of \$100.00 for water and internet of \$105.00. He has to pay 70% of
16 these expenses. His net income from this property is thus \$1,186.50.



17 **OCCUPATION OF THE FORMER MATRIMONIAL HOME ("FMH")**

18 30. In relation to the exclusion from the FMH, the wife seeks his exclusion on four grounds:

- 19 i. O's health concerns;
20 ii. Interference with and harassment of the wife as recently as April 2020;
21 iii. That the husband is already resident elsewhere; and
22 iv. Has in writing to the Court and previously to the Police expressed the view that
23 they cannot reside in the same premises.

24 31. She states that she is willing to move out of the FMH but does not wish to move O out
25 of familiar surroundings.
26



1 32. The husband in response says that there is no proper basis to exclude him from his own
2 home. He denies interfering with the wife or posing any health risks to O and states that
3 this assertion by the wife is a complete falsehood.

4
5 33. The wife says that her primary concern is that O suffers from respiratory problems which
6 are known to the husband and that O would be particularly vulnerable to the Covid-19
7 virus. She produced medical notes from O's visits to the Doctor. These indicate
8 complaints as to breathing difficulties and ongoing medication of Ventolin among
9 others. One assessment concluded that she had acute bronchitis.

10
11 34. The wife describes the husband as exhibiting careless and reckless behavior in relation
12 to pandemic issues. He refuses to take the appropriate precautions as to masks or
13 sanitization for protection from the virus and behaves as if it does not exist and often
14 jokes about whether or not he may have been exposed to it. The wife states that she is
15 presently afraid for O's health and her own safety as the husband has been residing for
16 most of the time with the co-respondent YM and there is no certainty as to the exposure
17 risk which he presents.

18
19 35. The wife's evidence that the husband spends most of his time elsewhere, other than at
20 the FMH, appeared for the most part to be accepted. The husband agreed that he does
21 not sleep at the FMH every night. He disagreed that he has removed most of his personal
22 belongings from the home but appeared to accept that at least some of his belongings are
23 no longer kept there.

24
25 36. As to interference with her, the wife stated that although they have been residing in
26 separate rooms, he has, on a number of occasions, come into her bedroom and touched
27 her intimately and inappropriately, causing her to have to change the lock on the door.



- 1 37. She said that she has made a number of reports to the Police and produced three incident
2 reports as attachments to her Affidavit.
- 3
4 38. Police report number ending in 851 records that on the 14th April 2020, the wife reported
5 that they had an argument over the husband missing his slippers, during which he
6 threatened to throw her out of the FMH and that he would begin throwing out her
7 belongings. She said that she called the police to prevent the matter from escalating. She
8 reported that on the day before he had threatened to kill her but she had not reported that
9 incident because she had not felt threatened.
- 10
11 39. The husband denied threatening to kill her but admitted threatening to throw out her
12 property as he was upset because he could not find his slippers. At the request of the
13 wife, the husband was warned against making any threats and both were warned to keep
14 the peace.
- 15
16 40. Police Report number ending in 685 records that on the 9th April 2019, the wife reported
17 to the police that the Husband had been removing a part from the air-conditioning unit
18 so that it would not work. The husband was advised to turn on the unit which he did.
- 19
20 41. Police Report number ending in 275, records that on the 13th February 2019 the wife
21 reported that they had been separated from 2017 and that the husband had been coming
22 into her room usually when he gets home from work at about 1am and touching her
23 inappropriately. The Police contacted the Husband by speaker phone. The husband
24 stated that they both cannot live in the house the way they are presently living. He was
25 warned as to the inappropriate touching.
- 26
27 42. In her further Affidavit of 3rd June 2020, the wife says that the reason she has not
28 proceeded with charges against the husband is not because the allegations made against

1 him are not true but because they have a child together and she would not wish the child
2 to be embarrassed. The wife then refers to an assault by the husband upon her in May
3 2015 and produces photographs of bruising which she said she had received to one of
4 her arms. This happened during the year they were married. In response to questions in
5 cross-examination she said that he had apologised and that she had forgiven him for it.

6
7 43. The husband's evidence⁷ is that the house which they occupy has separate bathrooms for
8 each bedroom. He lives and stays on the opposite side of the house and thus has no
9 contact with the wife or O and could not therefore pose any medical danger to them. He
10 denies being careless and or reckless with respect to pandemic issues and says that he
11 always wears a mask. He says that since April 2020 when the wife made what he said
12 was a false complaint against him he has not spoken with her. He believed that she
13 moved his slippers from where he had left them and says that he told her that if his
14 slippers could not be in the house then she could not have her things there either.

15
16 44. He says that he has done nothing to deserve being denied the right to sleep and live in
17 his home and the wife is simply bitter towards him. He points out that the police report
18 which she produced to support her claim of interference refers to a report dated 13th
19 February 2019 and is not a recent event, and is now being raised more than a year later
20 as a basis for an exclusion order. He says that he poses no threat to her or to his own
21 child.

22
23 45. In cross-examination the wife agreed that they occupy separate bedrooms on either side
24 of the house. However, she also testified that there has been recent harassment. She
25 stated that the husband has abused her in front of O, uses his foot to trip her up and only

⁷ Affidavit of 20th May 2020

1 comes to the house when he wants to aggravate her, or cause problems, and that he has
2 on numerous times come into her bedroom and harassed her. She said that this has
3 happened not only before they were married but since then and as recently as early May
4 2020 - despite the fact that they are residing on separate sides of the house.

5
6 46. The husband is recorded both before and in the course of the proceedings as stating that
7 they cannot continue to live in the same house. He told the Police this and in the
8 statement of information for a consent order filed on behalf of the husband, he offered
9 to move out of the FMH to reside at the Prospect property, and for the wife to continue
10 to reside in the FMH.

11
12 47. In cross-examination, the husband said that at the time he made the statement there was
13 accommodation available at the Prospect property. This is no longer available to him
14 because his mother, nephew and brother are now living at the property. They are not
15 paying rent. The brother of the wife lives there and has to pay rent.

16
17 48. He was asked in cross-examination about this:

18 **"Mrs. Brooks:** *The loan is also in joint names. Am I correct?*

19 **Mr. E.:** *I don't think so.*

20 *Yes, it is.*

21 **Mrs. Brooks:** *So what I'm saying to you is, here, she is as a joint owner*
22 *with you, why is it that her brother has to pay rent, but you*
23 *have three relatives there not paying anything.*

24 **Mr. E:** *The reason is because the house belongs to me. So I made*
25 *the decision to say who live and who I put in it and who pay*
26 *rent from who don't pay rent.*

27 *If it were her house and she has involvement in it, don't you*
28 *think, she could make the decision to say if it was both of us*
29 *house that her brother, not to pay rent?*

30 **Ms. S:** *I did and you told him if he don't he will have to leave.*





Judge: *Ms. S. stop please.*

Mrs. Brooks: *Mr. E do you understand the concept of marriage and matrimonial assets and matrimonial money.*

Mr. E: *No, I don't.*

Mrs. Brooks: *So you'll feel like, despite the fact that the two of you all are married, whatever you get and you perceive to be yours is yours?*

Mr. E.: *Ms. Brooks, that house, long before we get married, I purchased that house, and the only reason why [her] name is on that house, when I went to the bank to get the loan, I was working at ...and the bank told me that my salary could not pay the mortgage. I asked her if I could put her name on it, just to show the bank there is a next salary that can pay the loan. So it wasn't like she was joint as such, is just to show the bank that's the only reason why I add her name to it."*

49. He agreed that he had told the Police that the two of them could not continue living in the house together. He said that he did so because if his property could not stay in the house then both of them could not live there.

50. The wife says that he has other homes in which he can reside, that he has been renovating a home in Midland acres and paying cash for the renovations. She produced three invoices evidencing this. They have a combined total of \$8,250.00.

51. The husband said that this is the same property at Breakers which he purchased with YM and that the reason he is not able to go and live there is that it is an investment property.

52. Towards the end of the cross-examination, the husband said that from the 14th April 2020, he has not had an argument with the wife and has kept away from her at the house.

He believes that she wants to send him to jail. He also said that he is afraid to eat

1 anything at the house because he does not trust the wife. He said that he is concerned
2 that if he has to reside somewhere other than the FMH, he will not have access to his
3 three store rooms there (at the FMH) where he has 250 chairs, and all the rental
4 equipment for his business.

5
6 **ALLEGATION OF DISSIPATION OF ASSETS**
7

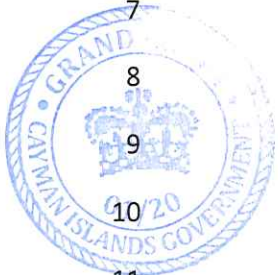
8 53. The wife requests the restraint of the bank accounts in the husband's name except for
9 allowing him funds for his day to day expenses.

10
11 54. In support of this request, it is her evidence that the husband has told her that he will use
12 all of the funds which are available to them and will see that she receives nothing. It is
13 also her evidence that:

- 14
15 i. Breakers property, 48 C Parcel 144 was registered in the joint names of the
16 husband and co-respondent on the 12th July 2019, two months before she
17 filed for divorce; and
18 ii. Since the commencement of these proceedings the husband has told her that
19 he has purchased two trucks, a bucket truck for \$60,000 and a Ram Truck
20 for approximately \$50,000.00.

21
22 55. The husband denied dissipation of the assets but it was patently clear from his oral
23 evidence and the cross-examination of him that he does not believe that the wife is
24 entitled to any assets. He was at times forceful and angry in his responses to Counsel
25 and declared that all the money he had belonged to him, he had worked hard for it and
26 he was free to buy what he wants, when he wants to.





1 56. He says any freezing of his accounts would lead to unnecessary hardship because the
2 funds are used for his landscaping business which he operates from his accounts and
3 personal savings.

4
5 57. The wife complains that the husband has failed to provide adequate financial disclosure
6 including bank statements in relation to his various businesses and that this is in an
7 attempt to hide his actual income. She produces:

- 8 i. Copy receipts of funds paid into the construction business accounts in 2019;
- 9 ii. Copies of invoices and receipts showing renovation of a home;
- 10 iii. Copy of a cheque paid to a firm of Attorneys in June 2019, in the sum of CI
11 \$189,823.00.

12
13 58. The husband was cross-examined extensively about the bank account records which he
14 had eventually provided.

15
16 59. He was asked about an account for the construction business which he said he also used
17 for event-planning. This had been marked by him as not operational. He said that the
18 account was not being used because he does not presently have any ongoing construction
19 work. On the 30th September 2019, that account had a balance of \$310,385.78 and in six
20 months on the 31st January 2020, the balance was \$529.67. In response to a specific
21 question, he said that he could not remember what the money had been spent on. He was
22 then taken to specific withdrawals. He said that he could not recall what the amount of
23 \$220,008.25 withdrawn by way of a draft on the 26th November 2019 had been spent on,
24 neither could he recall the purpose for which withdrawals of \$16,740.00 on 14th
25 November 2019 and \$30,000.00 on the 20th November 2019 were made.

1 60. He said he was the only person who used the account so he knows that the money was
2 spent, most likely it was on payroll or to buy equipment. It is possible some of it may
3 have been used on the house at Breakers. He was asked about a withdrawal of \$20,000.00
4 made on the 1st October 2019. He said that he is the one that deals with all the financial
5 matters. He pays the bills and sometimes forgets, but pays them as soon as he remembers.

6
7 61. It was put to him that his Acknowledgement of Service of the Petition was filed on the
8 24th September 2019. Seven days later he withdrew the \$20,000.00. He said that he
9 cannot recall for what purpose the withdrawal was made.

10
11 62. When it was suggested to him that he was moving money so that the wife could not
12 access it, he replied loudly and angrily that the wife cannot claim from his account. It is
13 his money and she did not put any money in there. He said that most of the money in the
14 account came from events.

15 63. In a second account, this one for the Landscaping business, the balance as at August
16 2019 was \$128,149.43. He said that monies came from the gardening service and that
17 he had been saving this for a long time. As at the 4th February 2020, this had been reduced
18 to \$29,451.86. He said that he spent the money to buy equipment, including gardening
19 equipment and that on the 15th October 2019, he bought a truck for \$66,000.00, a Dodge
20 Ram. The truck is used for different occasions. He drives it and sometimes his workers
21 drive it when he sends them to do errands. He said that the wife could drive this truck
22 and that it is not an issue that she did not have a grade 3 license.

23
24 64. He said that he did not allow the wife to drive the truck while her own vehicle was in a
25 state of disrepair because they were not on good terms with each other. He said that he
26 had bought her a vehicle for \$22,000 cash, a fairly new vehicle, it was only 2 years old





1 at the time it was bought. He did not agree that this vehicle was now in need of repairs
2 and had become unreliable.

3
4
5 65. It was pointed out to him that on the same day that he had withdrawn approximately
6 \$200,000.00 from the first bank account, he had withdrawn \$50,000.00 from another
7 account, and that this was payable to a law firm. He denied that this had anything to do
8 with the transaction of purchasing a house with YM but said that he believed that this
9 was repayment of money to his brother.

10
11 66. He explained that the large amounts reflected in his accounts were earned mostly from
12 the events business. He would earn up to \$30,000.00 per month or more when the events
13 business is going well.

14
15 67. He was asked about his income statement form submitted to the Court in February 2020.
16 He gave his income therein as \$5,000.00 and his expenses as \$8,693.00 per month. He
17 said that he paid the shortfall of his expenses out of his savings. He was challenged about
18 this given his further evidence that the event season went up until about February, with
19 peaks in March and April. As the event season was continuing before the impact of the
20 pandemic began in March, it was put to him that he must have therefore understated his
21 income significantly when he provided the form.

22
23 68. He agreed that from a third bank account over the six-month period he had spent
24 \$15,071.00 from a personal account for personal expenses.

25 **INCOME AND EXPENDITURE OF WIFE**

26 69. The wife provided schedules of expenses as follows: O's Monthly Expenses (excluding
27 Utility and other household costs):

	\$	
School fees	1090.00	Paid by H
Additional School expenses	105.75	
Lunch	275.00	
Allowance	120.00	
School Trips	125.00	
Family vacation	250.00	
Hair and personal supplies	210.00	
Clothing and Shoes	100.00	
Birthdays, outings and gifts	185.00	
Health Insurance	245.00	
Food/groceries	600.00	
Total	2,215.00	



1

2

70. W's Monthly Expenses:

	\$	
Food/Groceries	600.00	
Hair & Personal expenses	370.00	
Family vacation	400.00	
Lunch	300.00	
Social Expenses	100.00	
Gasoline/car/insurance	341.66	
Health Insurance	160.00	
Life Insurance	63.10	
Pension	60.00	
Hospital bill	250.00	
Phone	80.00	
Medication	50.00	
Clothing/shoes	250.00	
House Mortgage	841.34	Full amount is \$1,241.34
House insurance	288.16	
Utilities-Electricity	133.34	
Water	58.00	
Gardening/Yard maintenance	150.00	
Cooking gas	82.00	
Total	4,977.60	

3

4

5

6

71. She gives her monthly expenses for the store as \$1,967.00 to include rent, utilities part-time worker, trucking service advertising, storage unit rental and business licenses.

7

8

72. In oral evidence, she detailed her gross earnings for the business as being about \$3,800.00, deducting rent for the store and storage, utilities, phone, life insurance,

1 regular insurance and a hospital bill for total expenses of \$2039. 00, with net earnings
2 of about \$1,761.00 per month. From this is a further deduction of an amount for re-
3 stocking of about \$800.00 per month - leaving her with about \$1,000.00 per month.

4
5 73. The husband's position is that the business earns significantly more than this. He puts
6 the earnings at \$13,674.00 per month. The wife was cross-examined about her bank
7 statement which appears to show earnings between December 2018 and January 2019
8 of \$6,702.00 she explained that this was seasonal and that earnings would be higher over
9 the Christmas and New Year period. There would also be higher earnings at seasonal
10 intervals throughout the year. She said that these higher earnings are used to defray her
11 overhead expenses for the store and to assist with expenses for O.

12
13 **INCOME AND EXPENSES OF THE HUSBAND**

14
15 74. By his Affidavit of 20th May 2020, the husband denied having several sources of income.
16 He said that the only business that he now has in operation is the landscaping business.
17 The other businesses – that is, the construction and event-planning businesses, are no
18 longer in operation and have not been for some time now.

19
20 75. He said that O frequently collects money from clients at the FMH and places it in the
21 living room in a jar from which funds can be accessed both by O and the wife. He also
22 makes periodic transfer deposits to O's account of \$300.00.

23
24 76. He gave his income from the Landscaping business as \$3,500 to \$4,000 per month, from
25 which he pays five full-time employees a total of \$2,365.00. Thus, his income and
26 expenditure was then given as:

	\$
INCOME	
Landscaping business	3,500.00
Rental income	2,400.00
EXPENSES	
Employees	2,365.00
Utilities	480.00
Health and Pension	150.00
Total	2,905.00



77. He offered the wife a maintenance payment of \$800.00, being \$500.00 from the rental income and the \$300 which he says he would regularly give to O. He offered to continue to pay utilities, mortgage and school fees for O and to do the landscaping work for the yard of the FMH. He asked the Court to note that the wife retains all her earnings for the retail business which is a business which he encouraged her to enter and for which he took out the trade and business license.

78. In the financial disclosure form dated 2nd February 2020, he listed five company trucks and a personal vehicle, gave the mortgage amount as \$2000.00 per month and overall income as \$5,000.00.

79. He listed overall expenses as \$8,698.00 consisting of the following:

	Amount \$
Mortgage or rent (two properties)	2,000.00
Home Insurance (two properties)	422.00
Electricity	650. 00
Water	600.00
Other utilities	100.00
Internet	100.00
Clothing and Shoes	150.00
Toiletries and cosmetics	75.00
Pharmaceutical and uncovered medical and therapeutic expenses	175.00
Hair dressing	30.000
Dental	50.00

Work lunches	200.00
Mobile phone	150.00
Automobile- licenses, insurances, gas, repairs	2,787.50
Overall Expenses	8,698.00

80. In cross-examination about these amounts he said that the amounts for the mortgage and insurance relate to both the FMH and the Prospect rental property. The electricity and water amounts are for the FMH as well as other utilities that he pays. He appeared to accept that the automobile expenses relate to the vehicles for the business and are not personal. He accepted that health insurance for O was being paid by the wife and says that he would be prepared to place her as a dependent on his company's health insurance.

COLLECTION OF RENTS AND PAYMENT OF UTILITY BILLS

81. Each party claimed that the other was inefficient at handling money. The wife is seeking an order that she collects the rental monies from both rental properties to be lodged to an identified bank account. The justification put forward by her is that she has no confidence that the husband is providing truthful accounts of the amounts being collected.

82. The husband said that he has no confidence in the wife collecting the rental monies from the properties as it is his view that she spends money carelessly. In support he referred to what he says were withdrawals from his accounts by her for unspecified purposes. The wife disagreed and states that these withdrawals were matters which had been discussed between the two of them.

83. My view is that in relation to the second property, allegedly bought as a joint venture between the husband and YM, it would be a recipe for confrontation for the wife to seek to be part of this collection process. In relation to the Prospect property, the wife's



1 objective of having information as to the level of rental payments appears to have already
2 been achieved.

3
4 84. The wife asks that she pays the utility bills for the home directly to the service providers.
5 She states that if the husband continues to pay the utility bills, he will continue to cause
6 her concern as to whether or not these utilities will be disconnected for non-payment as
7 he does not pay them on time and allows them to go into monthly arrears. She has
8 provided copies of recent bills showing unpaid amounts and outstanding balance notices
9 in April and May 2020. It is her belief that the husband is doing this to embarrass and
10 hurt her.

11
12 85. The husband explains that on one occasion, he got caught up in work matters and was
13 late paying the electricity bill. This meant that the electricity was disconnected for one
14 day. His evidence was that he paid the bill on the following day.

15
16 86. In cross-examination, the wife agreed that it was on only one occasion that the electricity
17 had been disconnected but claimed that she had been the one to pay the bill to secure
18 reconnection. It was her evidence that on more than one occasion, the husband would
19 turn off the electricity meter to the house, and remove the plug to the air-conditioning
20 unit for the home so that they would have no electricity and air conditioning in the house.
21 She did not accept the suggestion that this had been only one occasion when the husband
22 had been attempting to encourage conservation of electricity. In oral evidence the
23 husband stated that the air conditioning does not have to be on 24 hours a day.



1 **THE RAM TRUCK**

2 87. In relation to the purchase of the Ram truck the evidence of the husband initially was
3 that he would sometimes drive a Ram truck which is not his⁸ and he has a Noah vehicle
4 which is his personal vehicle. All other vehicles owned are used for the Landscaping
5 business. He denied refusing the wife the use of one of the vehicles at a time when her
6 own vehicle was not working. All those vehicles require a group 3 license to drive them
7 and she did not have that grade license.



8
9 88. In re-examination, he said that he purchased the Ram truck for work purposes. It is used
10 to carry workers, to go to meetings. It is a 2019 vehicle. Other than the Ram truck he
11 has five vehicles which he uses for work in addition to his personal vehicle. He testified
12 that he needed to replace one of the work trucks which had been damaged in an accident
13 and so was using the Ram truck to assist.

14
15 89. The wife has provided a Fourth Affidavit dated 24th September 2020 which sets out
16 events which have occurred more recently.

17
18 90. The Court was advised that the wife's vehicle continued to be in a state of disrepair and
19 a request was made for temporary use of the Ram truck. The husband's response was
20 that the truck was essential for his landscaping business and he subsequently said that
21 the wife did not have the proper category of license to drive the truck.

22
23 91. The wife made inquiries of the Department of Vehicle Licensing which did not affirm
24 this position. On the 15th September 2020, the Court made an Interim Order that the
25 Husband either provide the wife with temporary use of the Ram truck or with a rental

⁸ Affidavit of 20th May 2020, paragraph 34



1 vehicle of similar size. This would allow her to transport O to and from school and also
2 goods and supplies for the business which she operates.

3
4 92. Regrettably despite the presence of the Police at the time of service of the Order, the
5 husband refused to hand over the vehicle to the wife.

6
7 93. The Order was amended to include a Penal Notice and to specifically authorise the Police
8 to assist. At this point the husband handed over the keys for the vehicle to the Police.
9 Upon receipt of the keys from the Police, the wife went to retrieve the vehicle from
10 where it had been parked. She was unable to do so. By this time the husband had blocked
11 access to it by parking one of his larger trucks directly in front of it. The wife produced
12 pictures showing this.

13
14 94. On the morning of a further hearing on the 25th September 2020, the husband provided
15 a further Affidavit in which he attempted to explain his conduct by stating that he was
16 at his brother's house when he first received the Order, he did not read it and threw it
17 down inside the truck. He said he was upset at the circumstances because he needed the
18 vehicle for work the next morning. He said that on the advice of his Attorney, he
19 thereafter rented a small car for the wife which was not accepted by her. It was not until
20 some two days later when the Police again came to see him at his brother's residence
21 that he then attempted to rent a vehicle of a similar size to the Ram truck for the wife's
22 use.

23
24 95. At the further hearing, Counsel on his behalf acknowledged the appearance of an attempt
25 to frustrate the Order of the Court but urged that the Ram truck was needed by the
26 husband for his business and that he had now rented an appropriate sized vehicle for the
27 wife.

1 96. It was also said for the first time in these proceedings that the instructions now are that
2 the truck was part of a lease-to-own arrangement and did not in fact belong to the
3 husband.

4 **THE SUBMISSIONS**

5 97. Counsel on behalf of the wife submitted that the financial information provided – which
6 included the high level of unexplained withdrawals - indicates that the husband has
7 access to substantial funds. He was able to make a cash purchase of a house with YM.
8 Counsel submitted that he should be able to pay the monthly maintenance at the level
9 requested and would still have more than sufficient funds for his own expenses.

10
11 98. Counsel submitted that the test at this stage is not whether the property is matrimonial
12 property but whether either spouse is making a claim in relation to that property and
13 whether action is needed to ensure that any asset that may be claimed is protected from
14 dissipation. Counsel conceded in her written submissions that based on the bank
15 statements it may already be too late to prevent dissipation of a substantial portion of
16 assets but urged that the remainder of the funds in the accounts should be restrained.

17
18 99. Counsel on behalf of the husband submitted that the background to the husband's
19 position is that the wife has never supported his quest to operate businesses and to make
20 money and has in the past always criticized him as being obsessed with land and
21 acquisitions. He urged that the six vehicles owned were bought to advance the interests
22 of the businesses and that the vehicles other than the Ram truck are all older vehicles.
23 He submitted that while the husband understands and does not object to the wife seeking
24 to be totally independent of him, the amount that she is seeking is not reasonable; this in
25 light of the fact that the husband has been the one to acquire assets with minimal





1 participation from the wife. It was also submitted that any decision made should not
2 exclude the husband from the FMH, given the personal effort which he had made to
3 acquire it. Counsel submitted that the husband would prefer to remain in the home even
4 if it means that the Court requires a wall to be built to separate the parties.

5 CONCLUSIONS

6
7 100. This is not a hearing for the Court to make findings as to the credibility of the parties.
8 This is an endeavor to determine broadly the factual position in a limited way in respect
9 of the specific issues raised by the wife and to arrive at a short term interim order which
10 is fair to both parties.
11

12 101. Unfortunately there has been much disagreement between the parties and the
13 information provided as to income levels has had to be corrected and re-assessed. The
14 husband initially gave incorrect evidence as to the level of contracted rental income for
15 the Prospect property, only revising this after the wife took practical steps to obtain more
16 accurate information. He claimed that the utility bills for the property were on average
17 \$800.00 per month but the documents which he produced did not support this.
18

19 102. The husband's concluding position after further examination was that he would be
20 prepared to continue to pay all the expenses and to offer the wife an additional \$1,000.00
21 for a total of \$4,200.00, per month. I have noted that his record of paying bills on time
22 does not appear to be a good one. The bills for the house and the bills which he himself
23 produced for the rental property all showed accounts in arrears. Additionally, the
24 evidence as to his disconnecting the electricity, dismantling the air conditioning unit and
25 disputes as to conservation, all point towards the better course being that the bills be paid
26 directly by the wife to the service providers.

1 103. It was also of particular concern during the hearing that the school fees for O had not
2 been paid since December 2019 and that her continued attendance at school could not
3 therefore be guaranteed. While the husband agreed at the end of the hearing to make the
4 outstanding payments immediately, this does perhaps evidence a casual approach to his
5 responsibilities.

6
7 104. In the face of his unfortunate conduct with respect to the Ram vehicle and the apparent
8 history of non-payment of bills on time, the better course cannot be for him to rent a
9 vehicle for the wife's use. The wife is to continue to have exclusive use of the Ram truck
10 pending the conclusion of this matter. If in addition to the other five work vehicles which
11 he presently owns, he requires another vehicle for his work, he must make the necessary
12 temporary arrangements. Given his evidence in cross-examination, as to the funds
13 withdrawn, there can be no dispute that this vehicle was purchased by the husband using
14 funds from his account.

15
16 105. With respect to the occupation of the home, while the wife appeared, on occasion, to
17 avoid answering direct questions and appeared to seek to inflate past incidents which she
18 had previously viewed as minor, I accept the evidence of the wife that she is presently
19 concerned that there is a risk for the health of O amidst pandemic issues. I also accept
20 the evidence of the wife that there has been interference with her at least up to May 2020
21 and that in large measure the husband no longer resides at the home. I was initially
22 inclined to consider that he could be asked to provide the appropriate undertaking to
23 exercise greater care, not to interfere with the wife and to remain in his side of the house
24 if he does visit the premises. His recent conduct with respect to the Ram vehicle has
25 caused me some hesitation evidencing as it does an inclination to ensure that his
26 objectives are met above all others. More importantly I also formed the view that other





1 than the position of principle that it is “his house” and he should not be excluded
2 therefrom, his real concern is access to the three storerooms and his equipment stored
3 therein rather than access to the house itself. I also noted that at the continuation of the
4 hearing in July the wife asserted that he had not in fact been residing at the house in the
5 intervening month.

6
7 106. Given all the circumstances, I consider that it is in the best interest of O and also of both
8 parties that they should reside independently of each other. The requested vacation order
9 is made on a temporary basis subject to the husband having access to the three
10 storerooms during daylight hours.

11 107. The wife now seeks a monthly maintenance payment of \$7,500.00 per month. I have to
12 consider whether this is a reasonable sum in light of the responsibilities, needs, financial
13 and other resources and earnings of the parties.

14
15 108. The documentary evidence from the husband’s own bank accounts shows that the
16 husband may not have accurately reported his earning levels in February 2020 on the
17 Statement of Means Form. He admitted in cross-examination that he earned significantly
18 more from the Event planning business although he said that this business was no longer
19 operational. He offered to pay \$4,200.00 per month which on any view is more than his
20 declared levels of income. It does not appear to date that there is accurate information as
21 to his actual earnings. I do draw an adverse inference against him from the
22 documentation which he has provided. This indicates access to significant funds.

23
24 109. The wife’s accounts do not show earnings of over \$13,000.00 per month as the husband
25 asserts but they do show that on occasion she is able to earn significantly more than the
26 \$1,000.00 per month which she claims. Following the Christmas period in 2019, her

1 account balance was as high as \$37,000.00. On the 29th November it had been \$8,515.67.

2 I was left to conclude that the earnings of the wife were possibly understated and that
3 net earnings of \$1,000.00 or \$12,000.00 per annum are very likely incorrect.

4
5 110. The total expenses claimed by the wife excluding the school fees of O are \$7,913.35.

6 From this amount I have deducted \$400.00 for a portion of the amount of family
7 vacations. These can be reduced in order to save costs. The total remaining would be
8 \$7,513.35. Using an adjusted income figure for the wife to include pro-rated, high-
9 season earnings after expenses for a total of \$24,000 per annum or \$2,000.00 per month,
10 the total claimed would be \$5,513.35. There will likely be other areas in which small
11 savings can be achieved.

12
13 111. The husband has offered to continue to pay the school fees for O and should do so
14 directly to the School. Given this payment by the husband I consider the sum of
15 \$5,000.00 to be a reasonable sum to be paid by way of interim maintenance to the wife.
16 This amount taken together with her earnings will allow her to pay the mortgage on the
17 FMH and to meet utilities and other expenses.

18
19 112. I am satisfied that the husband is able to meet this monthly payment from the rental
20 income and from his earnings which appear to be more than he has disclosed and from
21 his savings. However I bear in mind that he will also now need to meet the expenses of
22 his own separate household. While the proposed monthly figure is \$800.00 more than
23 his final offer, he will not now need to meet multiple expenses for the FMH which will
24 be paid directly by the wife.

25
26 113. The Court is entitled to make interim spousal maintenance orders even though at the
27 final hearing, the issue of whether such an order is appropriate will be considered.



1 114. There appears to have been significant dissipation of assets. As at February 2020, there
2 were almost no funds remaining in the accounts of the husband. In the six months
3 following service of the Petition, the husband appears to have spent close to half a
4 million dollars. While it is not possible at this stage to make any finding on the
5 legitimacy or purpose of the spending, given the absence of evidence and of supporting
6 documentation, as a practical matter it is not clear that restraining the accounts *after* the
7 funds have been removed will serve any useful purpose.

8
9 115. The husband says that these accounts are used for the day to day operation of his
10 businesses. This is evident from the descriptions of some of the transactions on the bank
11 records. There appear to be multiple payments to employees and work-related expenses.
12 I accept the evidence of the husband as to the likely hardship that restraint will cause to
13 the operation of the businesses. The wife seeks restraint of all of the husband's accounts
14 and that they be allowed to operate the businesses together with a view to each party
15 being informed of all income and expenditure relating to them.

16
17 116. Having observed the interaction between the parties, I have grave doubts as to whether
18 continued interaction would be in the best interests of the parties or be of any benefit.
19 Restraint of the accounts of the husband will require an increased level of interaction
20 between them as to the operation of the various businesses and mutual agreement as to
21 business expenditure. This does not appear to be practically workable given the nature
22 of the businesses themselves and the relationship between the parties.

23
24 117. Overall, it appears to me that the better course would be to require the husband to provide
25 on an ongoing basis a strict accounting of all expenditures with supporting documents.

26
27 118. Having considered all of the evidence and submissions made, the decision is as follows:

- 1 i. The husband is to pay interim maintenance to the wife of \$5,000.00 per
2 month through the Court Fund's Office on or before the 28th day of each
3 month.
- 4
5 ii. The husband is to pay the monthly school fees for O, the child of the
6 marriage directly to the Service provider.
- 7
8 iii. The wife is to have the exclusive use of the Dodge Ram Truck registration
9 number 195 377 until the conclusion of the Final Ancillary proceedings.
- 10
11 iv. The husband shall forthwith vacate the former matrimonial home at Block
12 25B Parcel 100 which shall thereafter be exclusively occupied by the wife
13 and O until the conclusion of the Final Ancillary proceedings.
- 14
15 v. The husband shall forthwith disclose and identify the banks at which he has
16 business and personal accounts and the account numbers for these accounts
17 and shall provide on a periodic basis, records of all sums withdrawn and
18 documents evidencing the purpose for such withdrawals.
- 19
20 vi. The application for the restraint of the husband's bank accounts is refused.
- 21
22 vii. The application for the wife to collect the rents for the rental properties is
23 refused.
- 24
25

26 119. The parties should clearly understand that this is a temporary holding position. Any
27 order made should not be seen by them as reflective of the final determination of this
28 matter.
29
30

1 **COSTS**

2 120. Counsel on behalf of the wife applies for the wife's costs on an indemnity basis. Counsel
3 submitted that the wife had been mostly successful in her application and that the hearing
4 had been prolonged due to outstanding financial disclosure from the husband and the
5 husband's response in relation to the Ram truck. It was also said that the wife's small
6 amount of savings have now been exhausted in the payment of legal fees.

7
8 121. Counsel on behalf of the husband submitted there had been no malicious intent on the
9 part of the husband and that information from third parties had in some cases taken some
10 time to obtain.

11
12 122. In my view this is not a case where the conduct rises to the level of attracting indemnity
13 costs. Given the level of the wife's success in her application, the husband is to pay
14 forthwith 50% of her costs on the standard basis to be taxed if not agreed.

15 **DIRECTIONS**

16 123. This is a matter which would clearly benefit from a swift conclusion. Consequently
17 having heard from both Counsel, I give the following directions:

- 18
19 1. Both parties are to serve any Requests for Further and Better
20 Particulars by or on the 3rd November 2020.
21 2. Both parties are to reply to any Requests for Further and Better
22 Particulars by or on the 17th November 2020.
23 3. Both parties are to file and serve any further Affidavits (including
24 of any witnesses to be called) in relation to final ancillary relief by
25 or on the 9th December 2020.



- 1 4. Both parties are to fix the final ancillary relief hearing on the first
2 open date after the 4th January 2021.
3 5. The parties are to apply for any subpoenas requiring the attendance
4 of persons for the purpose of cross-examination.
5 6. The Practice Directions in relation to bundles and cost estimates
6 are to be complied with.
7 7. The matter is to come before the Court for a mention hearing on
8 the 17th December 2020.
9

10 **Dated this the 27th day of October 2020**

11 

12 **Honourable Justice Cheryll Richards Q.C.**
13 **Judge of the Grand Court**

