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

CAUSE NO: FAM0018/2017

BETWEEN: RD PETITIONER
AND: YY RESPONDENT

**Appearances: Ms. Louise Desrosiers from Travers Thorp Alberga for the Petitioner
Mr. James Kennedy from KSG Attorneys for the Respondent**

Before: Hon. Mr. Justice Richard Williams

Heard: 29 August 2023

**Date of circulation
of draft Judgment: 6 September 2023**

**Date of circulation of
revised draft Judgment: 8 September**

Date of Judgment: 21 September 2023

HEADNOTE

Financial provision - Ancillary relief - Case management hearing relating to a Summons seeking a lump sum payment pending an appeal of an ancillary relief order - Parties agreeing unopposed final ancillary relief order - Judicial observation about the bringing and listing of applications - Judicial observation about Listing Forms - Judicial observation about parties sending correspondence to the Judge - Judicial observation about the distinction between the approach to be taken if a party disagrees with a Judge's case management of a case and when a party has an issue about a Judge's personal conduct.

JUDGMENT

23 09 21 RD v. YY Judgment

The Application

1. These proceedings concern the ancillary relief claims made by RD, the Petitioner husband, and YY, the Respondent wife. I hereafter refer to them, for convenience, as the husband and the wife.
2. This hearing was listed, on my own motion, to case manage the wife's Summons in which she seeks an order for the husband to pay to her within 3 days the sum of US\$1,000,000 ("the Summons"). The wife filed a supporting Affidavit sworn on 26 July 2023 in which she asserts that the sum sought is less than 50% of the award made to her in the Court's Ancillary Relief Judgment.

The relevant procedural background

3. The Ancillary Relief Judgment was handed down on 2 May 2023 with further errata on both 16 June 2023 and 19 July 2023 ("the Judgment"). There is no certificate of dissolution, so the parties remain married. On 19 July 2023, the Court approved the Order arising from the Judgment with errata issued 16 June 2023 which had been drafted by the wife's attorneys. That Order provided:

- “1. The total value of the Matrimonial Assets is as follows:
 - a. Personal Matrimonial Assets as particularised at paragraph 196 of the Judgment in the sum of US\$7,224,992; and
 - b. Business Matrimonial Assets as particularised at paragraphs 275 to 278 of the Judgment of US\$2,505,685 (together, the **Matrimonial Estate**).*
- 2. The Matrimonial Estate is to be divided equally between the Petitioner and the Respondent, subject to the following set-offs to be applied post division:
 - a. \$200,000 set-off in favour of the Petitioner, in relation to a loan of US\$400,000 made by the Respondent to her sister;
 - b. \$10,345 set-off in favour of the Petitioner, in relation to the costs of property valuations and translation of documents; and
 - c. \$5,000 set-off in favour of the Petitioner, in relation to the Order of the Chief Justice dated 21 December 2022.*
- 3. All other assets contained in the Asset Schedule are non-matrimonial assets belonging to the Petitioner (the **Petitioner's Non-Matrimonial Assets**).*
- 4. This Order represents a final ancillary order as to the matters set out at 1 to 3 of this Order.*
- 5. All other matters with which the Judgment is concerned shall be dealt with either by the consent of the parties or by further Order of the Court with liberty to apply. These include:*

- a. *The allocation of the Matrimonial Estate as between the parties;*
 - b. *The child maintenance order to be made in respect of the two children of the marriage; and*
 - c. *Whether there is to be an order for spousal support following the division of the Matrimonial Estate.”*
4. On 26 July 2023, the wife sent the Summons, supporting Affidavit and draft Listing Form by email to the husband’s attorney (for her to complete), copying in Ms. Miller (the Judge’s Personal Assistant) but not the Listing Officer. In the draft Listing Form the wife stated that another Judge could hear the Summons if I was not available. I note that, pursuant to Practice Direction No. 1/100, in all applications governed by the Matrimonial Causes Rules, all requests for Court dates must be accompanied by a completed Listing Form. To date, a Listing Form properly completed by both parties has not been submitted. I was shown the email and, on 26 July 2023, I informed Ms. Miller that the content was noted and that the Listing Officer could consult with me after the Listing Form had been submitted to her. The wife’s email prompted an email reply from the husband. It is not clear why these two pieces of *inter-partes* correspondence were copied into Ms. Miller.
5. On 31 July 2023, the wife’s attorneys wrote to Ms. Miller asking her to proceed to list the matter for hearing. I note that the wife did not send or copy that email to the Listing Officer. On the same day, Ms. Miller informed me that she had to “chase” the Registry that morning as the Summons/Affidavit were still to be sealed. Then, upon my instructions, also on 31 July 2023, Ms. Miller emailed the attorneys and told them that the Listing Form had to be completed by both parties in the normal way before the Summons could be listed. She informed the parties that, once the properly completed Listing Form had been submitted, the Listing Officer could then consult with the Judge about listing the Summons.
6. The wife filed a Notice of Appeal from the Judgment on 1 August 2023. The wife then filed an Amended Notice of Appeal on 2 August 2023. The Amended Notice of Appeal contained detail about the orders being sought on the appeal. The first time that I was aware of the content of the Notice of Appeal was when copies were provided to me by the Registrar of the Court of Appeal on 14 August 2023. The first time that I became aware that a Notice of Appeal had been filed was from an email sent by the husband’s attorney to Ms. Miller and copied to the wife’s attorney on 4 August 2023. On 15 August 2023, the

husband's attorney filed a Notice to Rely on a Preliminary Objection based on the grounds that:

- (i) leave to appeal was required and no such application had been made; and
- (ii) the appeal was filed out of time. On 22 August 2023, the wife has since filed a Summons for extension of time which has not yet been considered.

7. In the Friday 4 August 2023 email, the husband's attorneys set out details about open negotiations the parties had been having relating to draft final ancillary relief orders and invited the Court to list the matter for consideration of assets and to make an attached proposed draft order as a final order reflecting the Judgment. It is evident from that correspondence that the attorneys had spent a great deal of time attempting to reach a final ancillary relief consent order. In fact, they appeared to have reached a comprehensive agreement save for an issue about wording in the preamble. I note that no draft summons was attached to the email and no Summons has since been filed concerning such applications. The husband indicated that he would be willing to file a Summons and/or Listing Form if so directed. The attorney indicated that they strongly objected to any other Judge hearing the Summons.
8. The 4 August 2023 email continued the pattern of both parties writing to the Court to rehearse their positions in these proceedings. It appears that the husband's attorney recognised that such an approach was unusual, but she sought to justify it by stating that because:
"KSG have been corresponding with the Court and have issued a Summons regarding an interim payment of \$1M without reference to their appeal, we write directly to the court so that the related matters can be dealt with simultaneously and/or in the round".
9. On Monday 7 August 2023, having read the husband's attorney's above email, I instructed Ms. Miller to email the parties. They were informed that I did not intend to litigate matters arising in the case by correspondence. The parties were informed that it was a matter for them as to which applications they seek to make and that any such applications must be made in the normal way by Summons with Listing Form. I am not aware of any such Summons being filed. As I will be absent from the jurisdiction for personal reasons and

professional commitments from 4 September to 9 October 2023, the parties were informed that:

“Any contentious matters which the parties wish to come before me will likely not be able to be heard or determined until my return in October 2023.”

The email mentioned that I was surprised to hear for the first time about any Appeal on 4 August 2023 and that no mention of a proposed appeal was set out in the supporting Affidavit. I mentioned that I had not seen a copy of the Notice of Appeal and that in such circumstances I stated that:

“I am uncomfortable with the proposal that I rule on non-agreed substantial order(s) for the division of the assets when there is an appeal which may, in a case of the nature of this one, undermine (i) the whole basis of the Judgment made and (ii) any orders that might flow from that challenged Judgment. My preliminary view is that the Appellant should progress any appeal promptly and then the matter could revert, if required, to the Grand Court for the Court to consider what may be appropriate orders flowing from the Court of Appeal’s ruling.”

10. It is important that the preliminary view expressed in the above email without sight of the Notice of Appeal¹ did not prevent the wife from seeking to progress the Summons. In fact, in the email I commented:

“If the parties wish any summonses flowing from the Grand Court Judgment to be case managed, then it would be sensible to list them for the same time and I could try to find a slot for that case management hearing before I leave.”

When I made that observation, I had in mind that a party could seek to have the Summons (or any additional filed Summonses) case managed to come on before me upon my return to the jurisdiction or to a possible hearing before another Judge during my absence. Despite my suggestion, neither party requested a case management hearing.

11. On 18 August 2023, the wife’s attorney wrote to Ms. Miller copying in the husband’s attorney and the Listing Officer.² The attorney rehearsed the wife’s case in relation to the order sought in the Summons. The attorney commented about the effect of an appeal being issued and expressed a concern about *“the Judge’s reaction to the fact of the appeal”*. The

¹ Copies of the Notice of Appeal had been requested but not received from the Registrar of the Court of Appeal prior to my instructing Ms. Miller to send my comments in an email to the parties on 7 August 2023.

² I did not see a copy of that email until 25 August 2023.

attorney stated that a request for the hearing to release funds had been “*rejected out of hand until October*”, which amounted to a denial of the wife’s right to access of justice. The letter stated that if no date was provided for the Summons then “*a formal complaint*” would be filed “*with respect to the difficulties we are facing in having the judge deal with the case*”.

12. On 24 August 2023, the husband’s attorney who was covering the file during Ms Desrosier’s leave emailed Ms. Miller copying in the Listing Officer and the wife’s attorney³. That attorney acknowledged the content of Ms. Miller’s email dated 7 August 2023. Despite stating that they did not “*intend to litigate matters with opposing counsel by way of email correspondence with the court in copy*” the attorney went on to rehearse why there was “*no justification and/or legal basis for the Court to award the relief*” being sought.
13. On 28 August 2023, on my instruction, Ms. Miller informed the parties by email that, due to my upcoming absence, I had fixed a case management hearing for 9:30 a.m. on 29 August 2023.

The Hearing

14. The benefits deriving from the listing of a case management hearing soon became apparent. The consequence of the parties holding negotiations prior to the hearing was that the wife’s Summons no longer needed to be pursued. The husband submitted a draft final ancillary relief order arising from the Judgment which had been drafted by the husband’s attorney on the basis that it was not a consent order, but it was an order that was not opposed by the wife. The order was not opposed on the basis that the order:

“is made without prejudice to the...applications connected to the appeal and it is recognised that the making of this Order is not intended to affect the outcome of the Appeal and/or any applications made therein”.

The wife’s attorneys made it clear at the hearing that the Court could and should go on to approve the draft order. The parties submitted that, no matter what the outcome of the appeal, the draft ancillary relief order could still be made and would not be made redundant.

³ I did not see a copy of that email until 25 August 2023.

I commend the parties and the attorneys for being able to submit that order, as clearly a great deal of careful negotiations had occurred and many hours had been spent to enable them to reach that stage. The terms of the order meant that the wife would receive sufficient assets and that she would no longer need to pursue the application in the Summons. Having considered the provisions set out the draft ancillary relief order as well as the wishes of the parties shared with me at the hearing, I was content to approve the same. There is no need for me to fully set out the preamble and the terms of that order herein.

15. The order contained draft directions about the outstanding issue, namely child maintenance. I indicated that I was content to case manage that issue without the need for a Summons or Listing Form to be filed. I listed the hearing of the child maintenance application to 15 November 2023 at 9:30 a.m. with a one-day time estimate reserved to me. The wife was directed to file her Affidavit by 26 September 2023 and the husband was to file his Affidavit in response by 24 October 2023. The Affidavits, limited to the child maintenance issue, must set out succinctly any evidence upon which the parties may wish to rely with supporting documentation and the parties proposed resolution(s). The bundles for the hearing are to be prepared in accordance with Practice Direction 11/2014.
16. Having regard to the concerning level of costs already expended on this case by the parties, it is hoped that they will continue to negotiate to see if the issue of child maintenance can be resolved. It is an issue that the parties should be able to resolve without the need for the November 2023 hearing.
17. No order for costs is made in relation to the case management hearing or in relation to the Summons.

Observations

18. Due to matters that have arisen in the case, I feel it helpful to make the following observations.
19. The parties' approach to this case has involved the sharing of correspondence containing submissions about the merits of the case with the Court. Correspondence containing a

party's contentions about the merits of the case have also been sent in communications primarily addressed to the Court. Parties should have in mind Practice Direction No. 2 of 2014 and the sage words of Doyle J found at paragraphs 45-54 in his Judgment dated 25 January 2022 in the *Arnage Case FSD 105 of 2014*.

20. If a party wishes to make the type of application made by the wife in this case, they must file a summons with supporting affidavit via the portal in the normal way. As a matter of courtesy, they may wish to inform the Personal Assistant of a Judge seized of the matter that the application has been filed, but without rehearsing the merits of the application. Unless the Judge has otherwise indicated, the initial request about listing the Summons must be made to the Listing Officer and not to the Judge's Personal Assistant. A Listing Form must be provided to the other party and that other party should promptly complete the form and return it to the Applicant. It is not appropriate for the responding party to fail to complete the Listing Form and instead seek to argue in correspondence sent directly to the Court why the Summons is without merit. If a party fails to complete and return the Listing Form to the applicant within a reasonable period of time, the applicant may inform the Listing Officer of the problems being encountered and invite her to proceed with listing the matter. The common practice conducted by the Listing Officer in the Family Division, especially in a case where a Judge is seized of the matter, is that once a request to list a Summons has been received with a completed Listing Form, she reaches out to the Judge to discuss the listing and then issues the Summons.
21. In the email sent by the wife's attorney on 18 August 2023, he comments that:

"The judge's reaction to the fact of the appeal give some rise for concern with respect to his further conduct of the matter."

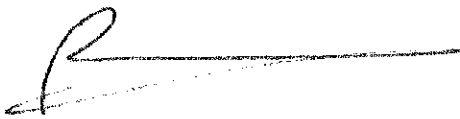
It is not clear what the intended purpose of making that remark in an email was. If a party wishes to pursue such an approach one would ordinarily expect it to be by a Summons for recusal supported by an Affidavit setting out the reasons and factual basis for the application. The Judge will then determine whether there is any merit in the application. It is not a matter to be canvassed or argued in correspondence with the Judge.

22. In the email sent by the wife's attorney on 18 August 2023, he states that unless the Summons is issued with a date forthwith that he:

"will proceed to file a formal company with respect to the difficulties we are facing in having the Judge deal with the matter".

It is not clear about whether this was intended to be a complaint about the Judge. If it is, then an important distinction must be drawn between a mistake by a Judge which could form part of an appeal and misconduct by a Judge which could form part of a complaint. When a party to litigation thinks that a Judge has made a mistake then that party may, subject to the necessary jurisdictional requirements being met, appeal such decision to a higher court. Appeal Courts can affirm, set aside or vary the decisions made by other Judges. The fact that an Appeal Court has overturned a Judge's decision does not mean that the Judge's conduct was improper. If a party wishes to make a complaint about the personal conduct of a Judge rather than about a Judge's judicial decision or case management then such complaint may be made in writing to the Chief Justice at first instance. If a party disagrees with a Judge's judicial decision or case management then the proper course to consider is an appeal.

23. When making the last two observations above, I acknowledge that, at the hearing, the wife's attorney highlighted the emotions that existed due to the position his client was in but went on to recognise that the comments may not have been appropriate and he kindly apologised to the Court for making them.



The Hon. Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT