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**Neutral Citation Number: [2025] CIGC (Fam) 2**

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

**CAUSE NO: FAM 59 OF 2023**

**BETWEEN: JJ PETITIONER**

**AND: HJ RESPONDENT**

**Appearances: The Petitioner and the Respondent in person**

**Before: Hon. Mr. Justice Richard Williams**

**Heard: 21 January 2025**

**Date of Judgment: 7 February 2025**

*Financial provision - child maintenance - variation application by mother - enforcement of arrears of contributions towards school supplies and school uniforms application by the mother*

## **JUDGMENT**

### **The Application**

1. This hearing is required to determine child maintenance proceedings involving JJ, the Petitioner mother, and HJ, the Respondent father. I hereafter refer to them, for convenience, as the mother and the father. The proceedings concern two children of the parties' marriage, namely M aged 12 and C aged 6.
2. Before the Court is the mother's Summons dated 4 October 2024<sup>1</sup> in which she seeks the following Orders:

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<sup>1</sup> Issued on 29 October 2024.

- (i) A declaration of the quantum of the debt owed by the father to the mother pursuant to the terms of the Order made on 10 November 2023 and subsequently amended on 22 November 2023, in relation to 50% contribution towards the children's school supplies and uniforms<sup>2</sup>;
  - (ii) The father shall pay to the mother the above debt calculated within 21 days of this order; and
  - (iii) An increase in the monthly child maintenance payments of \$800 per month.
3. At the outset of the hearing the father accepted that the mother had expended CI\$1,069.12 on school uniforms and school supplies for the children and that he had failed to make his ordered 50% contribution which amounted to CI\$534.56. At the hearing he paid the mother CI\$500 in cash. **Therefore, arrears as of the date of the hearing were assessed at CI\$34.56 and, at the hearing, the father was directed to, and agreed to, pay that sum by the end of January 2025. If it has not been paid by that date it must be paid within seven days of the parties being provided with a sealed copy of this Judgment.** This disposed with paragraph one in the mother's Summons and meant that the only outstanding issue for determination at the hearing was her application to vary the monthly child maintenance payments.

#### **The relevant procedural background**

4. The parties were married on 2 June 2012. The mother's Petition for Dissolution of Marriage was filed on 20 February 2023. The unopposed Petition was proved on 8 March 2023. The Certificate of Dissolution was granted on 8 June 2023.
5. The parties attended mediation and that resulted in them submitting a Consent Order, which included provisions for both ancillary relief financial and children arrangements. The Court approved that draft Order on 8 June 2023 ("the Order"). The Order included provision for a Shared Residence Order in relation to both children. The child arrangements under that order were for a two-weekly contact cycle with the father, as well as holiday and 'special day' contact arrangements. On a clean break basis, the Order reflected that there were no assets to divide, but it provided that the wife retained the dog day care business. Relevant to the mother's Summons are the child maintenance orders which provide that:

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<sup>2</sup> See paragraphs 3 and 5 below.

- (i) The father was to pay child maintenance to the mother at the rate of CI\$250/month (total \$500);
- (ii) Each party was responsible for the health insurance policy of one of the children. When only one child is covered by health insurance then the parties will be jointly responsible for the cost of the coverage. If the father is provided with CINICO coverage through his work, then both children shall be placed on that policy;
- (iii) The parties will equally share any uncovered medically related expenses including but not limited to doctor and therapist visits, prescriptions, co-pays, ocular, orthodontics and dental;
- (iv) The parties will equally share the costs of school uniforms, school shoes, school supplies and other school mandated fees; and
- (v) The parties will equally share mutually agreed extracurricular activities.

These orders are payable until the respective child reaches 18 years of age or up to aged 21 if the respective child remains in fulltime education.

6. At the time that the Order was agreed, the Court was informed by the content in the Statement of Information for a Consent Order form (“the SOI”), signed by the mother on 27 May 2023 and by the father on 1 June 2023, that the mother’s net income was CI\$250 per week and the father’s net income was CI\$2,000 per month.<sup>3</sup> At the present hearing, the mother indicated that she was running a dog day care business at the time of the Order and that the gross monthly income from that varied, depending on the time of the year, between CI\$4,000 to CI\$10,000 per month. She said that the figure she put in the SOI was the net figure after deducting the costs of running the business. During the hearing she gave evidence that the expenses on the business alone<sup>4</sup> amounted to at least CI\$4,483. This meant that on the worst months that there were no funds left for non-business expenses (-CI\$483), but in the best months there may have been a CI\$5,517 surplus. These net figures do not include what the mother had to outlay for her and the eldest child’s health coverage premiums. The mother said that some of the monies that she received for the best months would be

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<sup>3</sup> The father’s figure is consistent with the figures shown in pay slips attached to his later Affidavit sworn on 14 March 2024 which show his net monthly pay including overtime payments to be CI\$2,086.67 in October 2023, CI\$2,216.62 in November 2023 and \$2,401.34 in December 2023. The December 2023 pay slip showed his total annual including overtime payments to be \$26,317.46, which gives an average net monthly figure for 2023 of CI\$2,193.12.

<sup>4</sup> This includes the monthly car petrol amount as the mother said that she used the vehicle for both work and personal journeys. The figure does not include the other running costs of the vehicle, so the monthly figure of business outgoings would likely be higher than CI\$4,483.

stored up to cover the household expenses for the ‘down’ months or be used to pay any arrears arising during the quieter months. The mother said that her non-business outgoings at the time, which were for just accommodation and utilities, amounted to CI\$2,235 and she said that these were also paid by the business. The father was at the time, and remains, working at the Turtle Centre as an assistant butcher.

7. On 9 October 2023, the mother filed a Summons dated 3 October 2023<sup>5</sup> seeking:
  - (i) a declaration of the quantum owed by the father pursuant to the terms of the Ancillary Relief Order;
  - (ii) payment of the found debt within 21 days of the Order; and
  - (iii) an Attachment of Earnings Order (“AEO”) against the father.
  
8. That Summons came before the Court on 10 November 2023, at which hearing the Court heard oral evidence from the mother. The father stopped his cross-examination of the mother and he conceded that he had only made three of the five monthly maintenance payments. In light of his concession, the Court found that the maintenance payments were CI\$1,000 in arrears at the time of the hearing, with the next payment being due on 28 November 2023. As the father paid over \$500 in cash to the mother during that hearing, the arrears were reduced to \$500. The Court ordered that the \$500 balance be paid in two instalments of \$250, the first by the end of November 2023 and the second by the end of December 2023. The Court made an AEO requiring the deduction from the father’s salary of:
  - (i) \$750 on 28 November and 28 December 2023 (\$500 being maintenance, \$250 to reduce the arrears); and
  - (ii) \$500 per month (\$250 per child) for the ongoing Child Maintenance Order.

The mother was informed that the Court was not in a position to deal with her other claims relating to medical, education and extracurricular expenses due to the lack of meaningful supporting evidence provided by her. The parents were advised that moving forward:

- (i) the parent seeking payment from the other parent for such expenses should provide that parent with a schedule of payments/expenses made and of the 50% figure claimed with verifying receipts; and

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<sup>5</sup>Replaced by an Amended Summons dated 24 October 2023 correcting the hearing date.

- (ii) the party should make the payment within 14 days of receiving the schedule and verifying receipts. I reminded the parties at the present hearing that such a procedure should continue to be followed.
9. Although no formal Children Act application was made, the mother indicated at the November 2023 hearing that she wished the child arrangements to be reviewed. The mother highlighted that one of the children had neurological disorders. She sought a variation of the Order to a sole residence order in her favour. As a consequence of the mother's comments, a referral was made for a court welfare officer's report to be filed by 10 February 2024. A report was filed by Ms. Kai Matthews Mowatt on 13 February 2024. In the report the Welfare Officer highlighted:
- (i) the acrimonious relationship that the parents had leading to the father not being integrally involved in the children's lives;
  - (ii) the challenges that eldest child was having with her behaviour and multiple diagnoses; and
  - (iii) the children's "*yearning for their father's attention*" and desire to see him. The Welfare Officer did not make a recommendation about residence, but she suggested that the parties would benefit from mediation.
10. On 6 February 2024, the mother filed an Affidavit seeking to increase maintenance from C1\$250 per child per month to C1\$400 per child per month. In that Affidavit, sworn on 31 January 2024, the mother said that the reasons for the increase were:
- "The fact that I have a daughter (self-explanatory due to the female system) but also because she has ongoing several medical needs."*
- The mother had failed to file a Summons.
11. When the matter came on before the Court on 16 February 2024, having regard to the Overriding Objective, the need for the mother to file a Summons concerning her variation application was dispensed with. The Court directed:
- (i) the mother to file, by 1 March 2024, an affidavit setting out any change of circumstances since June 2023 and the details of her income and outgoings; and
  - (ii) the father to file his Affidavit in reply by 16 March 2024, with supporting salary income documents setting out:
    - (a) his income and outgoings; and

- (b) his wife's income, outgoings and her contributions to his household expenses.

The parties were directed to consult with the Listing Officer to obtain a date for the variation application to be heard on the first open date after 1 April 2024.

12. A Notice for a Mention hearing to be held on 27 September 2024 was issued on 16 August 2024. This was done because the variation hearing could not be listed, despite the directions given on 16 February 2024, due to the father's failure to provide his dates to avoid before August 2024. The mother again sought orders in relation to the failure by the father to make ordered wider expenses payments for the children. At the September 2024 hearing, the mother was directed to file a Summons outlining the orders she sought by or on 11 October 2024. The mother was directed to file an updating Affidavit setting out her income and outgoings by or on 11 October 2024. She was directed to file a schedule itemising how she reached the \$534.56 arrears figure that she was seeking payment for. The father was directed to file his Affidavit in reply with details about his updated income/outgoings by or on 1 November 2024. The parties were directed to consult with the Listing Officer to obtain a hearing date to deal with the mother's variation application and her arrears application, to be heard on the first open date after 8 November 2024.
13. On 4 October 2024, the mother filed her Summons and supporting Affidavit which included the schedule clearly setting out a breakdown of the expenses that had been made by the mother. On 21 October 2024, the father filed his Affidavit in reply. On 29 October 2024, the mother's Summons was issued with a hearing date of 21 January 2025.

#### **The Variation hearing**

14. This mother's Summons was heard on 21 January 2025. Both parties gave oral evidence and were available for cross-examination. During the cross-examination of the father, the mother requested him to produce evidence about the expenditure showing on his payslips to the Splash Retail (a store located at the Turtle Centre) and about the entries on his payslip showing a large increase in the deductions for health insurance. The father said that he could produce that within seven days. On that basis the variation hearing was adjourned and the parties were directed that, following receipt of the information, they were to indicate to the Court whether they wished:
- (i) the Court to consider the material and write its Judgment; or
  - (ii) to file Written Submissions before the Judgment was written; or

- (iii) to attend again before the Court for further oral evidence to be given and for submissions to be made.
15. The father sent an email on 24 January 2025 to which he attached a number of receipts and a Statement from the Turtle Centre. On 26 January the father sent an email to which he attached his and his wife's Medical Insurance Card and details from the insurer about the insurance plan's features.
16. On 28 January 2025 at 9:39 AM, on my instructions, my Personal Assistant emailed the parties to acknowledge receipt of the information provided by the father and asked the parties to indicate by 12:00 PM on 29 January 2025 whether they were content for the Court to go ahead and draft the Judgment without the need for them to make any further oral or Written Submissions.
17. On 29 January 2025 the father wrote in an email:
- "Please go ahead and draft your decision maintaining things as they currently stand."*
- I am not sure what he meant when he used the words *"maintaining things as they currently stand"*, because the legal position that currently stands is that, under the current governing order(s), he is still responsible for providing and paying for the health insurance premiums for one child. If he meant that the current position is the one that he unilaterally, and in breach of the Order, put in place in July 2024 when he removed a child from his work health insurance policy, then he has still failed to file any formal application to vary that provision.
18. The wife also replied on 29 January 2025 and indicated that she was content for the Court to go ahead with the Judgment when she wrote:
- "I look forward to receiving the final ruling if possible, via email."*
- She remarked in the email that the exhibited insurance documents did not explain about the health premium variance deductions shown on the husband's pay slips as those salary deductions varied from \$622.00 to \$155.50. She is correct in making that submission and therefore I will be treating that figure as only a CI\$155.50 deduction/month. In any event, such an approach seems to be the more accurate one because the initial health insurance premium variance deduction was the high CI\$622 figure and thereafter the following two exhibited wage slips show exactly the same deduction figure of CI\$155.50.

19. The wife highlights in the email that the Respondent's own monthly health insurance deductions as the enrolled employee increased from \$242.50 in April, May and June 2024 to \$382.00 in July, August and September 2024. She says in the email that a full explanation for the increase has not been sufficiently submitted. However, she did not ask for that to be done. That said, the husband did explain in his evidence that his employer had changed the health insurance provider. There is nothing in the evidence to suggest that there is anything improper in the cost declared for the cost of the father's health insurance coverage. The content of the payslip speaks for itself, and I am satisfied that it accurately reflects what must be deducted by his employer for his coverage. I note that the mother herself has not provided significant verifying detail about her and, in particular, the children's health insurance payments. Despite her, for the children, relying only on the content of a very brief email from the agency that recruited her for her current job, I accepted the figure given in that email.
20. In her email, the mother also comments that the receipts provided by the father do not contain any Splash Retail receipts showing meat-related items and do not identify non-meat items. When I look at the receipts, although the ones for the meat items and for what might be regarded as being gift ship items (i.e. "9" hatchling sea turtle" or "sandy mug boho beach sand and sea") do not have the Splash Retail logo on the top it is clear that they are all transactions made at the Turtle Centre. There are 6 receipts for turtle meat totalling CI\$550. When I see the statement dated 01/22/2025 provided from the Turtle Centre it includes entries which are clearly for turtle meat as the figures therein correspond with some of the provided turtle meat receipts. The statement also includes entries for non-meat items such as the CI\$51 necklace shown on the Splash Retail receipt dated 12 June 2024. I am satisfied that statement and the receipts show the amounts that have been expended by the husband from retail at the Turtle Centre which have been deducted from his salary. I am satisfied that some of them are for meat (for which he says he gets refunded by the persons for whom he is buying the meat), for gift items and possibly for snacks to consume when he is at work.
21. I have read and considered the content in the Affidavits of the mother sworn on 4 October 2024, 31 January 2024, and 6 October 2023 as well as the content in the father's Affidavits sworn on 18 October 2024, 14 March 2024, and 9 November 2023. I have considered the oral evidence of the parties given at the hearing. At the close of the hearing, the matter was adjourned for me to receive and consider the emails with attachments which were submitted after the hearing and to thereafter deliver this Reserved Judgment if the parties did not wish to comment further.

**Parties' positions and change of circumstances**

22. The mother indicates that the change of circumstances requiring a variation is that at the time of setting the maintenance figure in June 2023 she was running a dog day care business<sup>6</sup>. The father says that they owned that business together but, when they divorced, he did not *“fight for one-half of our business, because I wanted to ensure the Petitioner had all the money to care for the children”*. She informed the Court that she closed that business in January 2024, as she felt unable to run it and be a single parent at the same time. She said that she then had a temporary job as a part-time bookkeeper with a health and wellness business. Between April 2024 to August 2024, the mother worked as a *“paralegal”* for a Bank. When that employment came to an end, the mother accepted an offer to work with a law firm as part of its administrative support team. The mother informed the Court that the stress she was feeling in her life and her daughter's health hindered her ability to undertake the role and to meet that employer's standards. On 30 September 2024, the mother was informed that she had failed to successfully pass probation and her employment was terminated.
23. The mother was then unemployed, and it was during that time that she issued the Variation Summons which is currently before the Court. However, there was a further change of her employment circumstances. On 6 January 2025 she commenced her current employment as a legal secretary with a law firm. To her credit she was able to find this demanding and better remunerated employment whilst balancing and continuing to have the responsibility for the care of the children. The exhibited remuneration letter from her employer shows that:
- (i) her annual salary is US\$80,000 (US\$6,666.66 before deductions);
  - (ii) life assurance cover is paid for by the employer (the sum of US\$563.20 per year);
  - (iii) private healthcare cover for the mother is paid for by the employer (US\$13,827.12/year or US\$1,068.92);
  - (iv) private healthcare can be provided for any dependents with the employer subsidising that cost at a rate of 25% of their premiums; and
  - (v) the employer contributes US\$4000 per annum into the employee's pension.

When one looks at the wife's prorated monthly payslip for January 2025 (starting from 6 January not 1 January) one can see that her net income after the deduction of her 5% pension contribution

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<sup>6</sup> See paragraph 6 above.

was CI\$5,846.16. It is it likely that the pension contribution will increase by about \$61 for the extra six days and therefore the likely net income would be US\$5,785.16. There is a disparity of the income between her and the father, with the mother benefitting for a higher level.

24. The mother highlights that another change of circumstance is that, despite the provision set out at the second bullet point in the child maintenance section at the foot of page 3 of the Order, the father ceased the youngest child's medical insurance coverage provided by his employer from around July 2024. This state of affairs in relation to the health insurance existed at the time that the mother filed a summons before us, a time when she was also unemployed. Due to the father failing to ensure the coverage, the mother intends to take out coverage for both children with her employer. An email sent to the mother on 12 November 2024 from the recruiting agency who recruited her for her present job states that the employer informed them that the health insurance payment for two children would be US\$725.58. On the basis that it was agreed and ordered that the father should pay for the eldest child's coverage, the mother is arguably now having to fund an additional US\$362.79 (50% of the total figure for the health coverage for two children). If the mother is paying for both children's coverage her net income would fall to around US\$5,059.58 (about CI\$4,186). I am satisfied that this would be her net income figure.
25. When one looks at the mother's present stable net income figure and compares it with the income she had at the time that the maintenance figure was fixed, one might say that her 'take home' income position is now better. On her evidence as set out in paragraph 6 above, after the dog day care business expenses were deducted, for some months there was a negative 'take home' balance of -CI\$483 left and in the limited 'best' months (the Christmas holiday period, the Easter holiday period and the Summer holidays) there was a take home income of CI\$5,517. The latter figure is considerably more than her current net income, but that figure does not include any sums for the payment for health insurance for herself and for the youngest child, which she would have had to make when running the business, so in reality there may not be much difference even on the best months. If one looks at the then take-home pay averaged out over a year, her average monthly net take-home income figure may even be better now.
26. When considering a change of circumstances, the Court can take into account the fact that at the end of 2023 and 2024 there were cost of living increases, including for utilities, rent and for groceries. This means that the costs of providing for the needs of the children would have increased,

but it also means that the outgoings of both the payer and payee of maintenance division will have increased.

27. The mother's application was initially put on the basis that she sought an increase to \$400 per child per month child maintenance with no other changes to the Order. This means that the father would have to recommence, as required per the Order, making the insurance premiums for the eldest child. During the hearing the mother indicated that she now felt obliged to arrange for both children's health insurance, adding that if the maintenance was raised to \$400 per child per month, she would agree to that provision in the order being amended to her paying the premiums.
28. The father has not filed any application to vary the Order. In his Affidavit he indicates that he agrees to paying by attachment of earnings order the child maintenance of \$250 per child per month and to the payment of school expenses that are supported by receipt. The father specifically opposes an increase of child maintenance to \$800 per month. In the Affidavit he seems to be of the view that there should be a variation to the Order to the extent that the wife takes on the responsibility for both children's health insurance and that should be through her employer's healthcare coverage. The father makes no mention about the other provisions in the Order requiring the parents to equally discharge the costs of uncovered medical related expenses and mutually agreed extra-curricular activities for the children.
29. The father accepts that he has ceased the ordered health coverage for the eldest child on his employment healthcare. He informs the Court that this was because of a significant change of circumstances. At the time when the Order was made, the father was not cohabiting with his wife. After they were married, he kept the child on his employment insurance. However, he says that his wife has recently been diagnosed with cancer ("Multiple Myeloma") and that this means that she is unable to work. As her husband, he says that he is legally obligated to place her on his work insurance, and this has meant a significant increase in the insurance deductions taken directly from his salary. Prior to adding his wife he was paying for his eldest child, and the monthly amount being deducted for that was \$248 and CI\$242.50 for himself. From August 2024 onwards the deduction for his health coverage increased by an additional CI\$139.50 to CI\$382. However, when he removed the child and added his wife to the policy in July 2024, the dependent health deduction figure (which now was just for the wife) increased to CI\$764 and there was an additional deduction of CI\$622 for health premium variance. In August and September 2024, the other increased figures

were \$764 for dependent health coverage remained at CI\$764 but the health premium variance figure reduced to CI\$155.50. That meant that for July 2024 the deduction from his salary for health coverage increased by CI\$1,277 from CI\$490.50 to CI\$1,768. His net pay, which included the deduction for \$500 by AEO for the Court ordered child maintenance, was reduced from the June figure which was \$1,510.11 to only \$503.07. For the August and September 2024, the deduction from his salary for health coverage increased by CI\$429 from the June figure by CI\$1,277 from CI\$490.50 to CI\$919.50. His net pay, which again included the deduction for CI\$500 by the AEO, was reduced to CI\$830.80 in August and CI\$757.24 for September. For the reasons set out at paragraph 18 above relating to the appropriate health variance figure, I find that the August and September 2024 figure should be the applicable deduction for the purpose of the calculations of the father's outgoings.

30. The mother does not challenge the father's evidence concerning the ill-health of his wife. The mother has not provided any evidence that the father has access to any other employment income. She questions how he is able to survive on the disclosed net salary figures when he says that his rent alone is CI\$1,700 per month. The father's position is that family members assist him and his wife, and that the landlord has been flexible in relation to the rent payments. What is evident is that, although the father's employment circumstances have not changed (he says that he had been in the same job for the last eight years), there has been a detrimental change of circumstances in relation to the outgoings for him when one includes his family unit with his wife. She is not working due to serious ill-health, so that source of income is not coming into the household. To compound that, a significant deduction is having to be made from his salary to meet her health coverage to ensure that her health condition can be treated.

### **The Law**

31. Section 23 of the Matrimonial Causes Act (2005 Revision) ("MCA") states:

*"Either spouse...may make application for variation of any order under section 21, and the court, after hearing the parties, may make such variation."*

This section provides the Court with a broad discretion as to whether or not to make any variation once it has heard from the parties. The only limit on that discretion appears to be that the Court may only make a variation sought by way of application, and not some other variation.

32. Section 19 MCA provides the guidance as to the principles to be followed when exercising the discretion conferred by s.23 MCA where it states:

*“In dealing with all ancillary matters arising under this Law, the Court shall have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.”*

33. Section 19 and s.21 of the MCA give the Court a wide discretion when it comes to financial provision. The Courts in the Cayman Islands, in deciding whether or how to exercise their powers under s.21 or their powers to vary any order made under s.21 when considering what is fair in all the circumstances of the case, traditionally had regard not only to the matters set out in s.19, but also have been guided by the relevant factors raised in s.25(2) of the English Act.<sup>7</sup> Some of those factors to be considered include:

- (i) The income earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (ii) The financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future;
- (iii) The standard of living enjoyed by the family before the breakdown of the marriage;
- (iv) The age of each party; and
- (v) Any physical or mental disability of either of party.

34. In the Court of Appeal decision in *Morris v Morris* [2016] EWCA Civ 812 (“*Morris*”), Moylan J. spoke about the proportionate exercise that the Court should conduct when determining a variation application. As this is not the first time, and may likely not be the last, that there have been issues concerning child maintenance since the Order was approved, I see merit in now fully sharing this recent and most helpful guidance herein:

*“87. On a variation application is the court required to consider the matter de novo? In my view, the simple answer is that it is not. The court must conduct an exercise which is proportionate to the requirements of the case. They might warrant a complete review but they can also justify, what Mr Duckworth refers to as, a light touch review. In this respect,*

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<sup>7</sup> *Doak v Doak and Riley* [2002] CILR 224, [17], [21], [22], *Wood v Wood* [2009] CILR 255, [12] and *McTaggart v McTaggart* (2011) 2 CILR 366[39].

*Mr Duckworth was right to acknowledge that the court can confine its consideration to factors relevant to the variation application.*

*88. I do not consider that the authorities on which Mr Duckworth relies support his submission that the court must undertake the exercise de novo. He can point to the passage in Ward LJ's judgment in Flavell v Flavell when he says (at p.357):*

*“The court is not required to proceed from the starting-point of the original order but looks at the matter de novo.”*

*But, this has to be seen in context, namely that it was in response to a submission that the court does not have jurisdiction to vary an order unless the applicant can show exceptional circumstances or, at least, a material change. Further, Ward LJ's observation is not the same as saying that the court is required to consider the matter de novo. That Ward LJ is not saying this is clear because he agrees “entirely” with what Cazalet J had said in Garner v Garner [1992] 1 FLR 573:*

*“Almost invariably, an application to vary an earlier periodical payments order will be brought on the basis that there has been some change in the circumstances since the original order was made; otherwise, except in exceptional circumstances, the application will, in effect, be an appeal. If an order is not appealed against, or is made by consent, then the presumption must be that the order was correct when made. If it was correct when made, then there will usually be no justification for varying it unless there has been a change in the circumstances.”*

*89. In addition, in Lewis v Lewis [1977] 1 WLR 409, that great family judge, Ormrod LJ, also does not say that the court must start de novo:*

*“I am bound to say that it has always seemed to me ... that the powers of variation, which were given by statute to this court in a series of enactments going right back to 1857, have been, if anything, progressively enlarged, and that the intention of Parliament is that, in handling these family matters where money is concerned, the court should have as unfettered a discretion as possible to deal with the situation as it is when the matter comes before it (p. 412F).”*

*90. Further, although not referred to during the course of the hearing, the overriding objective requires the court to deal with cases proportionately. Thus, although section 31(7) requires the court to have “regard to all the circumstances of the case”, this is not the same as requiring the court to undertake the section 25 exercise de novo. It is instructive to see what the Supreme Court said recently in respect of case management in a financial remedy claim. In Wyatt v Vince (Nos 1 and 2) [2015] 1 WLR 1228 Lord Wilson JSC (with whom the rest of the court agreed) said (para 29):*

*“... by rule 1.4(1) of the family rules, the court must further the overriding objective by actively managing cases, which, by rule 1.4(2)(b)(i)(c), includes promptly*

*identifying the issues, isolating those which need full investigation and tailoring procedure accordingly. This exercise will dictate the nature, and in particular, the length of the substantive hearing.”*

91. In *Sharland v Sharland* [2015] 3 WLR 10170, Lady Hale (with whom the other six Supreme Court Justices agreed) said, at para 43:

*“This court recently emphasised in *Wyatt v Vince* (Nos 1 and 2) [2015] 1 WLR 1228 the need for active case management of financial remedy proceedings, “which ... includes promptly identifying the issues, isolating those which need full investigation and tailoring future procedure accordingly”: para 29. In other words, there is enormous flexibility to enable the procedure to fit the case. This applies just as much to cases of this sort as it does to any other.”*

92. The court has “enormous flexibility” to determine the “nature” of the substantive hearing. This includes, as Mr Duckworth accepts, focusing on the relevant factors and in my view also, where appropriate, conducting a light touch review. Specifically, to require the court to undertake the exercise *de novo* would be contrary to the overriding objective and the obligation for a case to be dealt with proportionately.”

35. Having regard to ***Morris***, the following principles are appropriate as a guide to the Court in the exercise of its discretion:

- (i) The practice has developed where the Court looks for a material change in circumstances since the last order when considering varying periodical payments order.<sup>8</sup> However the wording of s.23 and s.19 MCA give the Court wide powers to vary its ancillary relief orders and contemplates that there may be other circumstances other than a change of means which would justify a variation in the original order;
- (ii) Whilst the Court has a broad discretion when determining variation applications, such discretion should be exercised in a proportionate manner: proportionate to the money involved, the cost and complexity;
- (iii) In conducting its s.23 MCA exercise the Court should have sufficient information available to it for the relevant issues to be addressed in a way which is fair and proportionate against the backdrop of the Overriding Objective. The provision of information for the exercise is a mutual and reciprocal obligation; and

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<sup>8</sup> Henderson J. Judgment dated 16 February 2010 in *Maria-Constanza Lindsay Fear v Richard David Fear* Cause No. D129 of 2005 at paragraph 3, Levers J. Judgment dated 23 June 2005 in *John Michael Dinan v Elizabeth Marie Dinan* Cause No. D131 of 1990 at page 4.

- (iv) A full, exhaustive and expensive representation of a final ancillary relief hearing should be avoided. That would be contrary to public policy, detrimental to the parties' interests and a drain on the limited resources of the Court.

### **Mother's Employment, Income and Outgoings**

36. The mother's income position is fully set out in detail at **paragraphs 23-25** above. Her net income before any deductions for dependents' healthcare is roughly US\$5,785. If the mother is paying for both children's coverage her net income is around US\$5,059.58 (about CI\$4,186).

37. The Mother did not provide details about her outgoings in her affidavit evidence, but in her oral evidence stated that her monthly outgoings<sup>9</sup> are:

Rent (2 bedroom)	\$2,550.00
Cell phone/internet/TV	106.00
CUC electricity	250.00
Water/sewerage	65.00
Groceries	1,000.00
Car rental	500.00
Petrol	150.00
Vehicle insurance	125.00
Medication	<u>150.00</u>
<b>Total Outgoings:</b>	<b><u>\$4,896.00</u></b>

38. The mother did not give a separate breakdown of the specific expenditure of the children. She said that they do not have any extracurricular activities to pay for, adding that one of the children has been gifted karate classes by a donor. She mentioned that some of the medication was for the children and highlighted that the eldest in particular needs ongoing treatment as she has been diagnosed with disruptive mood dysregulation disorder, conduct disorder, generalised anxiety disorder and attention deficit hyperactivity disorder. The mother provided a breakdown for the school supplies and uniforms for the present school year and they ran to around CI\$1,070 (so each party would have responsibility for about \$535 - about \$45 per month). There are no figures for the children's clothing, presents, hygiene products or haircuts. The Court should, of course, have in mind that a proportion of the outgoings listed in paragraph 37 above can also be related to the needs of the children, what are often termed as being 'roof over the head' expenses. These may include a

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<sup>9</sup> Excluding clothing, family trips/holidays, hairdressers, presents and other non-basic expenditure.

proportion of the rent, utilities, grocery bills and reasonable vehicle costs. However, child maintenance is not to be used as spousal maintenance in disguise, so it is not for the paying parent to contribute to the spouse’s personal outgoings.

39. When one analyses the mother’s figures it is fair to say that a payment of CI\$500 in itself would not meet the children’s needs. If the father had the ability to pay CI\$800 that sum alone would not meet the children’s needs, especially when one has regard to the fact that their medical coverage alone is US\$725.58. If the mother were to match the CI\$800 as her contribution, then \$800 per child would not fully meet the two children’s needs. On a needs basis alone, the mother’s claim for CI\$800 as a contribution would not be unreasonable, especially if she is taking on the responsibility for the healthcare coverage. Although the children’s needs are my first priority, that is not the end of the determination, as the Court must also then look to see what the father’s income/income capacity and outgoings are to see if he is able to meet a reasonable contribution to the children’s needs.

**The father’s Income and Outgoings**

40. The father’s income position is fully set out in detail at paragraph 29 above. His present net pay, after the deduction of \$500 for child maintenance, is between CI\$830.80 in August 2024 and CI\$757.24 for September 2024.

41. The father provided details about his outgoings in his oral evidence and in his Affidavit sworn on 18 October 2024. His evidence is that his outgoings are as follows:

Rent (1 bedroom)	\$1,700.00
Cell phone/internet/TV	106.00
CUC electricity (oral evidence)	250.00
Water/sewerage	50.00
Groceries	500.00
Cable/internet/phone	305.00
Petrol (affidavit)	75.00
Vehicle insurance (\$400/annum)	33.00
Home Gas (\$175/ 6 months)	29.00
Car Maintenance (\$1,300/annum)	<u>108.00</u>
<b>Total Outgoings:</b>	<b><u>\$3,156.00</u></b>

42. The Father also, like the mother, has projected outgoings averaged out at \$45 per month for school supplies. His outgoings also exclude clothing, family trips/holidays, hairdressers, presents, and other non-basic expenditure.
43. The father's income and outgoings figures are not controversial. It is clear that at this time, when his wife is unable to work due to her ill-health and when the father must pay such high insurance to have her covered on his work healthcare, a detailed accounting is not required to establish that he simply does not have the funds to enable an increase in child maintenance to be ordered. If he did not receive assistance from family members or friends, it is likely that that his financial predicament would be worse. This is not a case where it can be said that he is not using his income capacity. He has been in employment for the last eight years, and that appears to be with the same employer.

#### Conclusions

44. Accordingly, with some regret due to the greater financial burden this imposes on the mother, I make no order on the mother's application for a variation upwards of the monthly child maintenance. The figure remains at CI\$500/month (CI\$250/child) and the AEO remains in place. As already directed herein,<sup>10</sup> the father is to pay the arrears for school supplies payments assessed at CI\$34.56 by the end of January 2025. If the father has failed to make that payment, then it must be paid within seven days of the parties being provided with a sealed copy of this Judgment.
45. The father did not file an application to vary the provision in the Order in relation to him being responsible for the health coverage for the eldest child. Therefore, that provision remains in place. Despite that, I accept that it is likely that the mother will feel obligated to take on the burden for arranging that coverage. Unless that provision in the Order is changed, especially if the father and his family's circumstances hopefully change for the better, the mother may apply for an accounting of the amounts that she has had to pay for the eldest child's health coverage.



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**Honourable Mr. Justice Richard Williams**  
**JUDGE OF THE GRAND COURT**

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<sup>10</sup> See paragraph 3 above.