

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

3 **CAUSE NO: FAM 66 OF 2014**

4  
5 **BETWEEN:**

6 **AW**  
7 **PETITIONER**

8 **AND**

9 **AH**  
10 **RESPONDENT**

11 **AND**

12 **R**  
13 **CO-RESPONDENT**

14

15

16 **Appearances:** **Ms. Yvonne Mullen of Hampson and Company for the Petitioner**  
17  
18 **Mr. Dilliway-Parry of Priestleys for the Respondent and Co-**  
19 **Respondent**

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22 **Before:** **The Hon. Justice Cheryl Richards Q.C.**

23  
24 **Heard:** **21<sup>st</sup> May 2021, 2<sup>nd</sup> July 2021**

25  
26 **Submissions:** **16<sup>th</sup> July 2021**

27  
28 **Draft Judgment:** **5<sup>th</sup> April 2022**

29

30 **HEADNOTE**

31 ***Family Law – Costs in respect of Stay Application and Application re Housing***  
32 ***for Child of the Marriage***



1 **JUDGMENT**

2 1. This is a ruling in respect of two outstanding applications for costs following  
3 determination of the substantive issues.

4  
5 2. The history of this matter is set out in previous judgments of this Court. I shall refer to  
6 the Petitioner and the Respondent as the wife and the husband respectively although  
7 their marriage has ended.

8  
9 3. The first application for costs arises in respect of two Summonses for directions issued  
10 by the wife on the 15<sup>th</sup> January 2021 (“the January Summons”) and on the 28<sup>th</sup> April  
11 2021, (“the April Summons”). Both were concerned with the housing aspect of the  
12 Final Ancillary Order made by this Court on the 3<sup>rd</sup> March 2020 (“the FAO”). In  
13 particular the provisions with respect to the purchase of a home for the child of the  
14 marriage, J (“the J Home”).

15  
16 4. Paragraph 6 (a) of the FAO, provided that:

17 *“The housing needs of J. will be met in accordance with the following terms of this*  
18 *Order:*

19 *a. The Respondent shall pay a 10% deposit on a house to be purchased at a*  
20 *value of between CI\$800,000 and CI\$900,000, including fixtures,*  
21 *furnishings and fittings (“J Home”). Such deposit shall be paid within 10*  
22 *days of an offer on a suitable property, to be agreed between the parties*  
23 *or confirmed by further order of this Court, being accepted by the vendor.*  
24 *A response to a request for agreement to a proposed suitable property is*  
25 *to be provided within a reasonable time;”*

26  
27 5. Additional terms provided for the payment of stamp duty, closing costs and the  
28 proportion of expenses to be borne by each party with respect to the purchase.  
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1 6. The January Summons was listed for hearing on the 21<sup>st</sup> January 2021. Both parties  
2 provided Affidavits dated the 20<sup>th</sup> January 2021 and 19<sup>th</sup> January 2021 respectively.  
3 On the day prior to the date for the hearing, an application was made by the wife for  
4 the hearing to be adjourned due to the sudden and serious personal difficulty of the  
5 wife's then Counsel.

6  
7 7. The April Summons sought an order for directions pursuant to paragraph 6 of the FAO  
8 as to the purchase of the J Home and in particular in respect to Registration Section  
9 Spotts Block 25B Parcel 593.

10  
11 8. The second application for costs relates to an application for a Stay of the Court's  
12 judgment of 5<sup>th</sup> March 2021. Following a hearing on the recalculation of the sums to  
13 be paid to the wife as ordered by the Court of Appeal and the issuance of the judgment,  
14 the husband filed a Summons for a Stay pending appeal dated 20<sup>th</sup> April 2021. After  
15 hearing arguments, the Court granted a Stay. In submissions on costs, Counsel for the  
16 wife submitted that the fair outcome was closely connected with the success or  
17 otherwise of the forthcoming appeal. Counsel suggested that costs should be in the  
18 cause of the appeal or reserved until after delivery of that judgment.<sup>1</sup> The appeal has  
19 now been heard and decisions were handed down on the 25<sup>th</sup> January 2022 and 17<sup>th</sup>  
20 March 2022.

21 **THE STATUTORY PROVISIONS AND RULES**

22 9. Section 21(g) of the *Matrimonial Causes Act* provides that the Court shall as  
23 appropriate at the time of pronouncing a decree under the Act, make orders for costs.

24  
25 10. Section 24 of the *Judicature Act (2021 Revision)* provides a power to order costs in  
26 the discretion of the Court. It is *inter alia* in the following terms:

27 “24. (1) Subject to the provisions of this or any other Law and to rules of  
28 court, the costs of and incidental to all civil proceedings in –

29 (a) the Court of Appeal; and

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<sup>1</sup> Submissions dated 16<sup>th</sup> July 2021



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(b) *the Grand Court,*  
*shall be in the discretion of the relevant court.*

- (2) *Without prejudice to any general power to make rules of court, such rules may make provisions for regulating matters relating to the costs of those proceedings including, in particular, the entitlement to costs, the taxation of costs, the powers of taxing officers and the powers of judges to review decisions of taxing officers.*
- (3) *The court shall have full power to determine by whom and to what extent the costs are to be paid.*
- (4) *In any criminal or civil proceedings, the court may disallow or (as the case may be) order the attorney-at-law or foreign lawyer concerned to meet the whole of any wasted costs or such part of them as may be determined in accordance with the rules of court.”*

11. The Grand Court Rules (“GCR”) O.62 r.4 provides, *inter alia*:

- “(1) This rule shall have effect unless otherwise provided by any Law.*
- (2) *The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.*
- ...
- (5) *If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.*



1                   (6)    *The amount of the costs which a successful party shall be entitled to*  
2    *recover from any other party is –*

3  
4    (i)   *the fixed costs prescribed in rule 7;*

5    (ii)   *the amount assessed by the Judge in accordance with rule 8;*

6    (iii)   *the amount allowed after taxation on the standard basis; or*

7    (iv)   *the amount allowed after taxation on the indemnity basis.*

8  
9                   (7)    *The orders which the court may make under this rule include an order that*  
10    *a party must pay –*

11  
12    (i)   *a proportion of another party’s costs;*

13    (ii)   *a stated amount in respect of another party’s costs;*

14    (iii)   *costs from or until a certain date only;*

15    (iv)   *costs incurred before proceedings have begun;*

16    (v)   *costs relating to particular steps taken in the proceedings;*

17    (vi)   *costs relating only to a distinct part of the proceedings; and*

18    (vii)   *interest on costs (at the prescribed rate for Cayman Islands*  
19    *dollars) from or until a certain date, including a date before*  
20    *judgment.”*

21  
22           12.    GCR O. 62 r.4(9) provides a definition of costs thrown away as follows:

23    *“Where proceedings or any part of them have been ineffective or have been*  
24    *subsequently set aside, the party in whose favour this order is made shall be*  
25    *entitled to the party’s costs of those proceedings or that part of the proceedings*  
26    *in respect of which it is made.”*



1    **APPLICABLE PRINCIPLES**

2           13.    In its full judgment on costs in the case of *McTaggart v. McTaggart*<sup>2</sup>, the Cayman  
3           Islands Court of Appeal confirmed the applicability of the provisions of GCR, O.62,  
4           r.4 to family proceedings. The Court stated:-

5                        “23 ... In my view, the wife is correct to contend that, unless and until there is a  
6                        change to the relevant rule in this jurisdiction, in awarding costs in  
7                        ancillary relief proceedings, the courts here should give effect to the  
8                        provisions of GCR, O.62, r.4—that, generally, a successful party to any  
9                        proceeding should recover from the opposing party the reasonable costs  
10                      incurred by him in conducting that proceeding in an economical,  
11                      expeditious and proper manner—and, in applying the principle that “costs  
12                      follow the event,” should follow the guidance in *Gojkovic* (3).”

13          14.    The Court held that:-

14  
15                      “The starting point in “big money” cases, when making a costs order  
16                      under the Matrimonial Causes Law (2005 Revision), s.21, was that costs  
17                      should follow the event, and not lie where they fell. The court retained a  
18                      discretion to depart from this position, and in exercising that discretion it  
19                      was required by s.19 to consider the parties’ resources, including their  
20                      liability for costs. If an otherwise fair allocation of resources would be  
21                      rendered unfair by a party’s need to meet costs, then the court had  
22                      discretion to alter the allocation of matrimonial property under s.21(b),  
23                      order a payment to be made to the party under s.21(e), or make a costs  
24                      order under s.21(g). In deciding which approach to adopt, the court  
25                      should have in mind the desirability of avoiding additional litigation to  
26                      determine costs, and give serious consideration to adjusting orders under  
27                      s.21(b) or (e).”

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<sup>2</sup> [2015] (1) CILR 123



1           15.     The Court stated that it is important that it is borne in mind that GCR O.62 r.4  
2                     recognizes that the court has a discretion with respect to costs and that:-

3                                 “24...—           *the mandatory requirement that “the court shall order the*  
4   *costs to follow the event” arises only “if the court in the exercise*  
5   *of its discretion sees fit to make any order as to the costs of any*  
6   *proceedings”—and (b) that the mandatory requirement is, itself,*  
7   *qualified by the words “except where it appears to the court that*  
8   *in the circumstances of the case some other order should be made*  
9   *as to the whole or any part of the costs.”*

10                                 “25.     *In deciding whether or not to make any order as to the costs of*  
11   *ancillary relief proceedings, the court should have in mind that*  
12   *the powers conferred by s.21 of the Matrimonial Causes Law*  
13   *(2005 Revision)—and, in particular, the power to make an order*  
14   *for the disposition of matrimonial property, conferred by para. (b)*  
15   *of that section, the power to make financial provision for one*  
16   *spouse out of the property of another conferred by para. (e) and*  
17   *the power to make an order for costs, conferred by para. (g)—*  
18   *must be exercised with regard to the direction, in s.19 of that Law,*  
19   *that in dealing with all ancillary matters, the court shall have*  
20   *regard to (inter alia) “the needs, financial and other resources”*  
21   *of the parties.*

22                                 26.     *Having regard to the needs and financial resources of a party*  
23   *requires, it seems to me, that—in exercising its powers under s.21*  
24   *of the Law—the court takes account of the need of each party to*  
25   *discharge his or her liabilities to their respective legal*  
26   *representatives in respect of the costs of the ancillary relief*  
27   *proceedings and the resources available to each party to meet that*  
28   *need.”*

29



1           16.     The starting point that costs follow the event may be displaced depending on the  
2                    circumstances of the particular case. In *Gojkovic v. Gojkovic*<sup>3</sup> the English Court of  
3                    Appeal held that a court exercises a wider discretion in respect of costs in family  
4                    proceedings than in other civil proceedings. With the exception of matters involving  
5                    children or some special circumstance, where funds are available, costs *prima facie*  
6                    follow the event.

7  
8           17.     Counsel for the husband has also drawn the Court’s attention to the case of *Bonotto v.*  
9                    *G. Boccaletti*<sup>4</sup> in which the Cayman Islands Court of Appeal made the following  
10                   observation:

11                           “29     Section 24(2) of the Judicature Law (1995 Revision) in very plain terms  
12                           states that costs shall be in the discretion of the court. That broad general  
13                           discretion is undoubtedly necessary to give the court a power to do justice  
14                           between the parties in the multiplicity of circumstances that can arise  
15                           during the conduct of a case.”

16     **APPLICATION RE PURCHASE OF THE J HOME**

17           18.     The April Summons for directions as to the purchase of the J jome was supported by  
18                    the Affidavit of the wife dated 26<sup>th</sup> April 2021. In summary the wife asserted therein  
19                    that three attempts to purchase a home for J in accordance with the FAO had been  
20                    frustrated by the husband. In particular that he had failed to make the required 10%  
21                    down payment of the purchase price within 10 days of the acceptance of a purchase  
22                    agreement by the vendor.

23  
24           19.     It was stated therein that there had been correspondence sent to the husband’s Counsel  
25                    on the 14<sup>th</sup>, 25<sup>th</sup> and 31<sup>st</sup> August 2020 with respect to three potential homes which were  
26                    within the price range of \$825,000.00 to \$869,000.00 and that no substantive responses  
27                    had been received.

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[1992] Fam. 40  
<sup>4</sup> [2001] CILR 292



1       20.     The three lost opportunities in respect of which the wife made offers to purchase are  
2       stated to be as follows:

3               (i)     Woodland Property

4       21.     On the 19<sup>th</sup> August 2019, a property at Woodland, Lower Valley for \$840,000.00 was  
5       identified by the wife. The husband was advised but failed to view the home. In  
6       October 2020, the Woodland property had re-entered the market at a price of  
7       \$894,000.00. On the 2<sup>nd</sup> November 2020 the husband indicated that he thought that the  
8       amount of repairs which the property required made it too expensive.

9               (ii)    Spotts Home

10      22.     On the 17<sup>th</sup> September 2020 a home in Spotts, Savannah at a price of \$825,000.00 was  
11      identified by the wife. The husband viewed the home at her request, agreed that it was  
12      suitable but failed to have his attorneys provide a draft contract for sale as he proposed  
13      or to make the required deposit.

14              (iii)   Beach Bay Property

15      23.     In December 2020 the wife identified a property in Beach Bay for \$950,000. 00. The  
16      wife advised the husband that she would pay the excess cost over and above the price  
17      range set by the Court. The husband disagreed with the purchase stating that it was  
18      outside the terms of the Court Order.

19  
20      24.     In March 2021, the wife identified a second property in Spotts for \$915,000.00 on  
21      which she made a down payment. On the 2<sup>nd</sup> April 2021, the husband agreed to view  
22      the property. He attended the property with his contractor on the 16<sup>th</sup> April 2021. He  
23      asked for and received construction plans. On the 19<sup>th</sup> April 2021 he indicated that he  
24      was waiting on a response from his contractor.

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1 25. The wife expressed her concerns that the husband had adopted an approach of  
2 obfuscation and delay and was actively trying to prevent the purchase of a home for J.  
3 She complained that he:

- 4
- 5 (a) did not engage in a timely manner, or at all, causing various offers to lapse;  
6
- 7 (b) made objections based on various properties requiring too much  
8 maintenance;  
9
- 10 (c) raised objections to the purchase of a house outside the cost parameters of  
11 the FAO, even though she had confirmed her willingness to pay any  
12 excess.  
13
- 14 (d) insisted that the J Home only have 3 bedrooms and a small pool; and  
15
- 16 (e) rejected standard form purchase contracts without providing a basis for  
17 such rejection or indicating amendments sought.  
18  
19

20 26. The husband's Affidavit in reply is dated 20<sup>th</sup> May 2021. He asserted that the wife's  
21 Affidavit was misleading, incorrect and inaccurate. He stated that the FAO required  
22 the agreement of the parties or a further order of the Court before the deposit payment  
23 fell due.  
24

25 27. He said that the disagreement in each case was for good reasons which included his  
26 view as to whether or not it was a poor purchase, not in the interest of J or beyond the  
27 scope of the Court's order. He details that responses had in fact been made to the wife  
28 in each case and copies of the responses were exhibited to his Affidavit. The husband  
29 also notes that he agreed to the purchase of a property at Spotts. Following his  
30 agreement there were negotiations in respect of remedial works which needed to be  
31 done to the property and how payment for these was to be effected. While these were  
32 ongoing the wife sought to proceed with her preferred property at Woodland Drive  
33 which had by then returned to the market. He produces at page 3 of his Exhibit "AH"-  
34 6, an email dated 5<sup>th</sup> October 2020 to the wife's attorney which reads in part:

35 *"Our client is in agreement that the recently viewed property is a nice and*  
36 *appropriate location for the J Home and accordingly wishes to proceed*  
37 *with the purchase if possible."*



1 28. On 3<sup>rd</sup> November 2020, the husband by way of a letter from his attorney complained  
2 about the unilateral agreements being entered into by the wife and the unrealistic  
3 deadlines. Paragraph 2 of the letter stated:

4 *“Importantly, our client has had conversations with the owner of the*  
5 *Spotts...property which we are instructed remains unsold and would be*  
6 *available to purchase. We would urge your client to proceed with this*  
7 *purchase.”*

8 29. In respect of the second Spotts property, the husband obtained a report from a  
9 contractor on 24<sup>th</sup> April 2021 which indicated a number of issues with the property.  
10 These included the lack of insulation of the exterior walls, the level of impact resistance  
11 of the windows and front door, the need for renovation of the air conditioning system  
12 and the unsuitability of the pool for children.

13  
14 30. The husband also produced correspondence in relation to three properties which he had  
15 recommended. The most recent recommendation was on the 27<sup>th</sup> April 2021.

16  
17 31. He expressed concern that the wife had repeatedly entered into unilateral purchase  
18 agreements without consultation.

19  
20 32. In his position statement filed 21<sup>st</sup> May 2021, the husband argued that both Summonses  
21 should be dismissed with costs against the wife. This on the basis that the wife was  
22 seeking a declaration in respect of a property valued at \$915,000.00 which was outside  
23 the terms of the FAO and that the husband’s opposition to various properties was  
24 reasonable given the issues identified with respect to those properties.

25  
26 33. At the hearing for directions, the husband insisted that the Spotts house was overpriced.  
27 The wife contended that the items noted by the contractor were in the main cosmetic  
28 in nature except for the safety of the pool for children. In summary, the husband’s  
29 position was that the house should be thoroughly checked and the advice of an expert  
30 considered. The wife’s view appeared to be that the husband was putting forward minor  
31 issues which could be easily remedied and that in doing so he was displaying an  
32 unwillingness to consent to the purchase of the home for no good reason.



1       34.     The Court invited the husband to provide further information as to the cost of repairs  
2             /remedial work for the items identified by his contractor. The wife was invited upon  
3             receipt of this information to seek to re-negotiate with the vendor and the parties were  
4             thereafter to meet. The husband was also invited by the Court to put forward options  
5             for other houses for the consideration for the wife. An update was to be provided to the  
6             Court by the 16<sup>th</sup> July 2021.

7     **THE SUBMISSIONS**

8       35.     Counsel on behalf of the husband submits that the January Summons was never relisted  
9             by the wife and was abandoned. It was adjourned on the day of the hearing by which  
10            time the husband had already incurred significant costs. It is submitted that the husband  
11            has in effect succeeded in relation to that Summons and is entitled to “costs thrown  
12            away” in relation to those proceedings.

13  
14       36.     Counsel submits further that although the relief sought by the April Summons was for  
15             directions, the submissions of Counsel for the wife made clear that the wife sought the  
16             intervention of the Court to compel the husband to provide the deposit for the Spotts  
17             home and to proceed with that purchase.

18  
19       37.     Counsel submits that the wife in making the application relied on “flawed Affidavit  
20             evidence” and made a number of inaccurate assertions with respect to the husband.  
21             Counsel referred to a number of inaccuracies. These include that it was not correct to  
22             say that the husband had failed to pay the deposit of the purchase price in circumstances  
23             where such deposit only became payable after agreement between the parties as to the  
24             purchase of a home. Additionally, that the various assertions in the wife’s Affidavit  
25             that the husband had failed to respond to correspondence in relation to potential homes  
26             including the Woodland property and the first Spotts property is not correct. Detailed  
27             responses were provided on the 2<sup>nd</sup> of September 2020 to the wife’s correspondence of  
28             14<sup>th</sup>, 25<sup>th</sup> and 31<sup>st</sup> August 2020. The husband had agreed to the purchase of the first  
29             Spotts home identified but before this could be concluded the Woodland Drive  
30             property returned to the market which was stated by the wife’s attorney to be her  
31             preferred property.

32



1 38. Counsel submitted that far from being reluctant, the husband had engaged proactively,  
2 reasonably and constructively. Any objections made by him were for good reason in  
3 that having taken advice from experts, there were safety issues or the property was  
4 unsuitable.

5  
6 39. It is argued that the husband was successful in relation to the April Summons in that  
7 the Court refused to make an order directing the purchase of the Spotts home. It is said  
8 that he is therefore *prima facie* entitled to his costs of resisting the application.

9  
10 40. Counsel on behalf of the wife submits in response that there are three good reasons  
11 which justify the refusal of the husband's application for costs. Firstly that against the  
12 background of the two cases cited and referenced above, the issue of costs in  
13 matrimonial law is not as straightforward as costs follow the event in particular where  
14 issues involving children are raised.

15  
16 41. Counsel submitted:

17 *“The reasoning behind this approach is obvious and longstanding.*  
18 *Making costs orders in respect to matters where the best interests of*  
19 *children are involved is rare indeed, and only where one party has been*  
20 *guilty of misconduct of some kind. Costs orders can only increase the*  
21 *hostility between parents, which is not in the best interests of children.”*

22 42. It is further submitted that the Summonses were entirely necessary given the lapse of  
23 time that had occurred in trying to secure a home for J. Counsel argues that the  
24 application was clearly brought with J's best interests in mind in order to secure a home  
25 for him and that there can be no *mala fides* identified on the part of the wife. Counsel  
26 suggests that as it relates to the welfare of a child, no order for costs ought to be made.

27  
28 43. Counsel submits further that there was in this case, no event, given that the Court  
29 instead directed that the Summons be relisted for an update. The end result was to focus  
30 the husband's mind on the issue of housing and he thereafter engaged meaningfully in  
31 the process.

32



1 44. With respect to the resources of the parties, Counsel submitted that given the economic  
2 disparity between the parties, costs should either be in the cause or alternatively no  
3 order for costs should be made.

4  
5 45. I accept that there is some merit in the arguments put forward by the husband at least  
6 in so far as it appears from the evidence that the wife repeatedly made down payments  
7 and offers to purchase before the husband had given his agreement to a particular  
8 purchase. The husband did provide extensive replies over time.

9  
10 46. The difference in their approach was evident. The wife was understandably anxious to  
11 secure a permanent home for J. This is against the background of proceedings which  
12 have been ongoing since 2014 and multiple changes of rental accommodation which  
13 cannot have been desirable for J.<sup>5</sup> The husband was understandably concerned to  
14 ensure that any home identified was not only within the price set by the FAO but was  
15 also good value for money and safe for J. The wife interpreted any delay on the  
16 husband's part or question as to suitability of the property as reluctance. From all the  
17 evidence before the Court, I consider that they were each in their own way,  
18 endeavoring to act in the best interests of J.

19  
20 47. At the hearing I declined to give the directions sought but did not dismiss the  
21 application. I was of the view that the issues identified by the husband's contractor in  
22 particular with respect to the safety of the pool for children merited further  
23 consideration and was a possible route for further negotiation of the purchase price. I  
24 considered that this should be explored to see whether the parties could come to an  
25 agreement after possible re-negotiation of the purchase price. The matter was set down  
26 for an update to be provided. As it ultimately transpired the husband identified another  
27 property for the J Home.

28  
29 48. Even if it could be said that there was an "event" and the husband was successful in  
30 resisting the application of the wife, which is not entirely clear, in these circumstances  
31 where the wife was trying by both the January and the April Summons to secure a

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<sup>5</sup> Judgment dated 3<sup>rd</sup> August 2019



1 much needed and long awaited permanent home for J, I do not consider that a costs  
2 order would be appropriate. In her Affidavit the wife stated:

3 “28 J.’s safety, happiness and continued development are central in my focus.  
4 I am and have always been an avid and pro-active advocate for J.’s special  
5 needs, health and basic needs. Being able to provide continued stability  
6 in purchasing a permanent home has been a request as far back as 2014  
7 following the Chief Justice’s comments on purchasing a home versus  
8 renting for J.’s benefit. The purchase of a home and all that centers  
9 around J. is not just about basic and special needs. It is also the future  
10 quality of life of J. and this should not be diminished. The J. Home is the  
11 sole asset upon which his future will be linked to.”

12 49. It is evident from the approach of both the wife and the husband that J’s safety,  
13 happiness and continued development is of paramount concern.

14  
15 50. In *Gojkovic v. Gojkovic*, the Court stated:

16 “However, in the Family Division there still remains the necessity for some  
17 starting point. That starting point, in my judgment, is that costs prima facie follow  
18 the event (see *Cumming-Bruce L.J. in Singer v. Sharegin (1984) FIR 114 at p. 119*)  
19 but may be displaced much more easily than, and in circumstances which would  
20 not apply, in other Divisions of the High Court. One important example is, as the  
21 Judge pointed out, that it is unusual to order costs in children cases.”

22 51. I note also the economic disparity between the parties which is set out in detail in the  
23 earlier judgments of this Court and is referenced further below.

24  
25 52. In my view, given the nature of the application and the circumstances of the parties,  
26 this is an appropriate case in which no order for costs should be made in respect of the  
27 January Summons and the April Summons.

## 28 COSTS IN RESPECT OF THE STAY APPLICATION

29 53. The application for the Stay was supported by the Fourth Affidavit of Sally Crane dated  
30 20<sup>th</sup> April 2021. The husband argued that if he was to be required to pay to the wife  
31 further sums towards the amount to be shared, then if he were to succeed on appeal he



1 would have significantly overpaid the wife having already paid \$149,775.90 and with  
2 all costs now being at large. This given that the sum on re-calculation was \$349,821.00  
3 as per the pre-nuptial agreement. Counsel said that there was a very real risk that  
4 substantive sums could be payable by the wife if the appeal succeeded.  
5

6 54. Counsel for the husband submitted that the balance of convenience was in the  
7 husband's favour and that the prejudice would be *de minimis* in respect of the wife.  
8 Counsel said there would be very little prejudice in waiting for the short time for the  
9 hearing of the appeal. Counsel pointed to the fact that the divorce proceedings had been  
10 ongoing for over 7 years. Counsel also submitted that the husband had just paid out a  
11 substantial sum of money being \$125,000.00 as a down payment on a home for J and  
12 was due to pay a further sum of \$300,000.00 in the next few months towards the home.  
13

14 55. The wife opposed the Stay on the basis that the grounds of appeal and balance of  
15 convenience favored her. In her Affidavit of the 18<sup>th</sup> May 2021 the wife averred that  
16 the husband had ceased making payments since October 2020, was in arrears and had  
17 been acting in bad faith.  
18

19 56. Counsel for the wife submitted that an important factor was that as the amount sought  
20 to be paid was in installments, the amount which was due to be paid including arrears  
21 as at the 3<sup>rd</sup> July 2021 would amount to \$328,016.08 which would be less than the  
22 amount which the husband suggests is appropriate in any event, that total being  
23 approximately \$350,000.00.  
24

25 57. Counsel for the wife argued that the wife was entitled to the fruits of her judgment, that  
26 she was in the weaker economic position and the absence of payments was impacting  
27 her ability to meet the second appeal. Counsel also submitted that as with respect to  
28 the first Stay application, given that payments are to be made by installments the  
29 accounting exercise arising therefrom could be undertaken and the prejudice was much  
30 reduced.  
31

32 58. I considered as urged by the husband, the imminence of the date of the Court of Appeal  
33 hearing being only two months away on the 8<sup>th</sup> September 2021, the amount on  
34 recalculation as per the pre-nuptial agreement and the sum awarded, the recent



1 payment by the husband of a down payment of CI\$125,000.00 on a property for the J  
2 Home and the costs which were said to be at large. The conclusion was that it was  
3 appropriate that a Stay be granted. In particular as stated in a brief oral decision the  
4 margin between the recalculated sum, as per the pre-nuptial agreement when at large  
5 costs were factored in was significantly smaller than at the time of the first Stay  
6 application.<sup>6</sup>

7  
8 59. With respect to costs Counsel on behalf of the husband submitted that following a fully  
9 contested hearing in which the wife resisted the application, the Stay was granted. It is  
10 argued that in these circumstances it is difficult to see how he cannot be deemed to  
11 have succeeded and that he should therefore be awarded his costs.

12  
13 60. Counsel on behalf of the wife in reply submits that the added factor which tilted the  
14 balance was the down payment of \$125,000.00 made on a property by the husband  
15 which was only effected two days before the hearing and of which the wife was only  
16 made aware of moments before the start of the hearing. Prior thereto the situation was  
17 similar to the previous application made for a Stay which was refused. Counsel argues  
18 that in these circumstances the wife was acting entirely reasonably in defending the  
19 application. Counsel also points to the disparity in means between the parties with the  
20 husband having significantly greater resources.

21  
22 61. The Cayman Islands Court of Appeal noted in the cited case of *McTaggart v.*  
23 *McTaggart* that the power to make an order as to costs in all ancillary matters must be  
24 exercised with regard to “*the needs, financial and other resources of the parties.*”<sup>7</sup>

25  
26 62. In the earlier judgment of 3<sup>rd</sup> August 2019, the income disparity between the parties  
27 was detailed by way of an income chart over a five year period.<sup>8</sup>

28  
29  
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31  
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<sup>6</sup> Paragraphs 17 and 19 of the Judgment dated 28<sup>th</sup> February 2020

<sup>7</sup> Paragraph 25 of the Judgment

<sup>8</sup> Paragraph 222 of the Judgment



1           63.     The wife has significantly less resources and as contemplated by the Orders made, any  
2                    payments to be made to her by way of sharing of assets are to be paid in installments  
3                    over an extended period of time. This is not a case where she will have immediately  
4                    available a pool of funds from which payments can be made. Given the disparity in  
5                    resources and all the circumstances as outlined above, in my view, the appropriate  
6                    course in the exercise of my discretion is to make no order as to costs in respect of the  
7                    Stay application.

8     **Dated this 19<sup>th</sup> day of April 2022**

9     

10    **Honourable Justice Cheryll Richards Q.C.**  
11    **Judge of the Grand Court**