

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



**CAUSE NO. FAM 172 OF 2019**

**BETWEEN:            SUSAN RANKINE McLAUGHLIN            PETITIONER/APPLICANT**

**AND                    LENNOX BENJAMIN McLAUGHLIN                                RESPONDENT**

**Appearances:                                Ms. Allard of Brooks & Brooks for the Applicant**  
**Respondent in person**

**Before:    Hon. Justice Richard Williams**

**Heard:     15 June 2021**

**Date of Ex Tempore Ruling:                15 June 2021**

**Transcript of ruling circulated:            17 June 2021**

**HEADNOTE**

*Family Law - Protection from Domestic Violence Act 2021 - Protection Orders - Occupation order - Matters to be considered before making an order under the Law*

**TRANSCRIPT OF EX TEMPORE RULING**

1. I deliver this Ex Tempore Ruling to enable the parties to have an immediate decision and to leave this hearing with the reasons why I have reached that decision. I will ensure that the parties are provided with the transcript of the ruling.

## **The parties, applications and previous hearings**

2. The Applicant (“the wife”), in her Summons dated 20 May 2021, seeks a number of orders against the Respondent (“the husband”), pursuant to s.4 of the Protection from Domestic Violence Act 2021 (“the Act”). The first is a protection order (which is sometimes referred to as a non-molestation injunction) pursuant to s.5 of the Act, which includes a non-communication order. Also pursuant to s.5, orders are sought excluding the husband:

- (i) from coming within 100 feet of the wife’s person;
- (ii) from coming within 100 feet of the wife’s workplace at the Airport; and
- (iii) from coming within 100 feet of the former matrimonial home (“FMH”) where the wife and her mother reside.

Pursuant to s.10 of the Act, an occupation order is sought permitting the wife to live in the FMH to the exclusion of the husband. I hope that the parties do not mind if I refer to them hereafter as the wife and the husband.

3. The husband opposes the making of any protection order and of any order to oust him from the FMH. However, he accepts that he left the FMH over two years ago and now only returns to bathe there because where he is living does not have hot water. He also returns there to assert and retain his right to enter the FMH which he wishes to continue to monitor.

4. The parties were married in August 1979. The 64 year-old husband is a Caymanian national and he is living with the parties’ adult daughter. However, he retains his right to

access to the FMH which he is very keen to retain. The husband has a kidney problem and he attends dialysis three times each week. The 61 year-old wife is also a Cayman national. She works for Customs at the Airport. There are no relevant children living in the FMH.

5. On 15 July 2019, the wife filed a Petition for divorce alleging that the husband had behaved in such a way that she could not reasonably be expected to continue to live with him. On 30 July 2019, the husband filed his Acknowledgment of Service in which he indicated that he would not be defending the Petition. The Petition was proved on 6 September 2019.
6. On 16 July 2019, the wife filed a Summons seeking protection and occupation orders. On 16 July 2019, McMillan J granted a Non-Molestation Order, a Non-Communication Order and an order preventing the husband from going within 100 feet of the wife's place of employment.
7. On 9 August 2019, at the return date hearing, McMillan J refused to make an occupation order but he extended the Ex Parte Orders. No specific expiry date for the injunction orders was set out in the order, but he did direct that it be listed for a review hearing in three months. It seems that the parties thought that the Orders had expired after three months.



8. It appears that neither party sought to renew the injunction as they choose to try to focus on resolving their financial ancillary relief issues. On 6 September 2020, the parties were able to agree on the division of CNB shares. They also agreed to obtain joint valuations of their two properties<sup>1</sup>. At the hearing on 28 November 2019, the parties requested an adjournment, indicating that a consent ancillary relief order would likely be filed for the Court to review. At the hearing on 13 February 2020, the Court was informed that there remained only one issue and that was about whether the wife had capital in a Credit Union account. The mention hearing became an informal Financial Dispute Resolution hearing (“FDR”) as I wished explore in more detail a way to assist the parties to finally resolve the matter. That attempt was unsuccessful and as a consequence, I informed the parties that, if the matter had to go to trial, due to my involvement in the FDR hearing, I would have to recuse myself from that hearing.
9. At the outset of today’s hearing I reminded the parties about what I had said at the mention/FDR and they were both content for me to deal with this matter, as it is discrete and separate from the ancillary relief.
10. The parties agreed to attend mediation to see if that final issue could be resolved. Alas, mediation in July 2020 did not result in an agreement between the parties and the ancillary relief matter has drifted somewhat since then.



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<sup>1</sup> The FMH and a piece of land.

11. It is evident that the inability to resolve the ancillary relief has heightened tensions between the parties. The husband, in particular, is aggrieved because he is not really living in the FMH and simply wishes to have the matter resolved so that he can have his portion of the matrimonial division to enable him to set up his own home. That said, the frustration arising from the inability to move this case forward does not excuse his conduct towards the wife.
  
12. I have considered the content of the wife's affidavit sworn on 12 May 2021 and exhibited documents (including police reports and pictures taken by the wife). The husband has not sought to file any affidavit evidence. I have heard oral evidence from both the parties today who have both been cross-examined.

### **The Law**

13. Pursuant to s.5(1) of the Act, the Court may make a protection order prohibiting a person from committing any further act of domestic violence if satisfied that he or she has committed or threatened to commit an act of domestic violence against a spouse (prescribed person) and is likely to repeat such acts or having regard to all the circumstances, the order is necessary for the protection of the spouse. Pursuant to s.6(7) of the Act, the protection order may be made for such period as the Court considers necessary but may not exceed three years. If the Court adds any directions to the order they may expire before the end of the protection order, but they must not extend beyond three years.



14. A person commits an act of violence against a spouse if it is proved that his conduct caused or is intended to cause amongst other things emotional or psychological abuse (s. 3(1)(a) of the Act), or physical abuse (s.3(1)(c) of the Act). I note that financial or sexual abuse may also establish domestic violence, but these are not relevant considerations in the matter before me.
15. Pursuant to s.3(2)(a) of the Act, emotional or physical abuse means behavior which is intended to harass or undermine the emotional or mental well-being of a prescribed person. Pursuant to s.3(2)(a) of the Act, this behavior may include intimidation by using abusive or threatening language in a manner calculated to cause annoyance to, instill fear in or result in ill-treatment of the prescribed person. Pursuant to s.3(2)(f) of the Act, this behavior may include damaging any property owned by, or available for the use or use or enjoyment of the prescribed person, or any property in the care or custody or situated in the residence of the prescribed person.
16. Pursuant to s.3(2) of the Act, physical abuse means any act or omission which causes or threatens physical injury.
17. Pursuant to s.3(3) of the Act, an act of abuse, including s.3(1)(a) of the Act, emotional or psychological abuse and s.3(1)(c) of the Act, physical abuse, which is committed on a single occasion shall be regarded as act of domestic violence even though some or all of those facts, when viewed in isolation, may appear minor.



18. If the Court is satisfied that an act of domestic violence has been committed then, pursuant to s.4(1) of the Act, the Court may grant a protection order and/or an occupation order.
19. Therefore, if the Court establishes that there has been domestic violence whether by one or both of the parties, it must go on to consider what orders should be made. When doing so, the Court should have regard to a number of matters. This is not a case involving any children.
20. Section 10(1) of the Act permits the Court to make an occupation order to a spouse for such period and on such terms and subject to such conditions as the Court thinks fit, the right to occupy the household residence to the exclusion of the respondent.
21. Pursuant to s.10(3) of the Act, the Court may make occupation order only if it is satisfied that such an order: (a) is necessary to protect the prescribed person from an act of domestic violence; or (b) would be in the best interest of a child.

### **Facts and findings**

22. Pursuant to s.29 of the Act, if there is any question of fact, then that should be decided on a balance of probabilities.
23. It is clear to me that the husband feels there to be an injustice due to the delay in the parties' financial affairs being resolved. He feels that his communications in that regard



to the wife and her attorneys have not been responded to and that these proceedings have been brought as a strategy to secure the FMH for the wife. However, it is clear from the evidence that often when he attends at the FMH his physical and verbal manner is threatening, including him using derogatory terms such as “*whoring bitch*”. On at least three occasions around Easter 2021, he entered the FMH with a chain wrapped around his right fist. His wife finds that threatening and it puts her in fear. His explanation for doing that is for protection against some man he may find in the FMH, which is a weak one without foundation. When asked he confirmed that in the two years he has been living away from the FMH, he has never met a man in the FMH or been threatened by man at the FMH.

24. The husband has also left notes saying that unless the wife pays him \$162,500 that she will always have trouble with the house. This is a threat that he intends to enter the FMH and continue to cause issues and problems for her there unless the financial issues are resolved in a satisfactory manner for him.

25. The most significant recent incident occurred on Easter Monday. The wife was at home in her bedroom at around 10:00 PM. Due to issues with then husband when he attends at the FMH she locked her bedroom<sup>2</sup> door. The husband entered the house via the garage and tried the handle on the bedroom door and he said he tried to speak to the wife through the door. The wife refused him entry, so the husband accepts that he went to the kitchen to get a bread knife to use to pry open the door by circumventing the lock mechanism. He

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<sup>2</sup> Which is not the master bedroom.



accepts that he opened the wife's bedroom door without her consent and started to enter the room. He said that he used his left hand to open door and that the chain was wrapped around his right hand. The wife, understandably in fear, sprayed him with a chemical in a can and possibly struck him on his face and head with the can. A scuffle then ensued during which the husband struck the wife causing her to have injuries to her face. She said that she injured at least two of her knuckles in the chains he had around wrist. The husband bit the wife's thumb causing a cut on both sides of the thumb.

26. The wife's injuries depicted in the exhibited photographs which she took immediately after the incident are consistent with her evidence about the assault upon her. The Police Report about their attendance at the FMH on that night is on the whole consistent with the injuries that the wife said she received and are consistent with the photographs that she took. I accept that the report noted that the wife said that the husband hit her multiple times over her body, but I find that is not consistent with her oral evidence about the assault and the injuries.
27. What is clear is that the husband had no right to enter the wife's bedroom and a consequence of him entering the room in an aggressive manner is that he put the wife in fear and there was a confrontation. This confrontation was his fault. In the confrontation, he caused the injuries that the wife suffered and they constitute an assault and bodily harm.



## Conclusion

28. It is clear that the husband has inflicted both physical and emotional/psychological abuse against the wife and therefore acts of domestic violence have been committed by him. Having reviewed the evidence, I am satisfied that the threshold has been met for the Court to make a Protection Order against the Respondent husband under this Law. The Court must consider what the terms of that Protection Order should be and give careful consideration as to whether the Court should then go on to make an occupation order
29. When considering what orders to make, the Court must have regard to the relevant factor set out in s.7 of the Act:

**(a) The nature, history or pattern of the violence that has occurred and whether a previous protection order or interim order has been issued**

I recognise that there have been previous protection orders made against the husband in 2019 by McMillan J after hearing from both parties. However, I concentrate on the recent incidents in April 2021. There is a pattern of threatening and abusive behaviour from the husband as a consequence of his anger about the failure to resolve the parties' financial issues, in particular concerning the FMH and the piece of land. This anger manifests itself in verbal abuse, harassment and, on occasion, the infliction of bodily harm. The conduct of the husband is not acceptable. His conduct amounts to physical abuse as well as emotional and psychological abuse intended to harass the emotional and well-being of the other party. His conduct constitutes domestic violence pursuant to s.3(1)(a) and (c) of the Act.

**(b) The need to protect the wife from further domestic violence**



On the evidence before me there is such a need. The husband needs to understand that his conduct towards the wife is unacceptable and abusive. The only way that he may understand this (and to stop the abusive conduct), is by the Court making some of the protection order sought with a penal notice attached.

**(c) The accommodation needs of the applicant and any other person**

I have regard to the fact that the wife has nowhere outside of the matrimonial home to reside. For the past two years, the husband has resided at the parties' daughter's house, which is a three-bedroom property where the husband has his own bedroom. His grandson has his own bedroom and his granddaughter and his daughter share one bedroom. The husband has clothing stored in the matrimonial home and some tools and other items in the garage. I am satisfied that, for hopefully the short period of time required that it should now take to conclude the divorce proceedings, he continues to have suitable alternative accommodation where he has already been residing for the last two years.

**(d) The hardship that may be caused as a result of making the order**

I have regard to the same factors that I considered in paragraph c). Although it will be inconvenient, the hardship on the husband will not be considerable if an occupation order is made as long as suitable arrangements are made for him to have access to or to store certain belongings at the FMH. When I make the orders I am conscious of the fact that the husband has a kidney health issue that requires him to take dialysis three times a week. There is no evidence that this condition has deteriorated due to him living for the past two years in his daughter's home.



**(e) The income, assets and financial obligations of the Respondent, the Applicant and any other person affected by the order**

The husband works now and again being self-employed in the construction injury. He informed the Court that he does not have to contribute to the household expenses at his daughter's home. The wife works for Customs and has a monthly salary of around CI\$4,000. It appears that she has a more regular income than the husband. There is no mortgage on the home, but she is the person tasked with maintaining the home at this time.

**(f) The need to preserve and protect the institution of marriage and other relationships affording protection and assistance to the family as a unit**

The parties are at the very late stages of the divorce proceedings. The Petition has been proved and it appears that the ancillary relief issues are narrow. I am today going to give case managements directions to trial.

**Orders**

30. Accordingly, I therefore make the following protection orders in the following terms to last for six months (until midnight on 14 December 2021) or until further order of the Court:

- (i) The husband is forbidden whether by himself or by instructing or encouraging any other person from assaulting or threatening to assault the wife;
- (ii) The husband is forbidden whether by himself or by instructing or encouraging any other person from engaging or threatening to engage in conduct which would constitute domestic violence towards the wife; and



(iii) The husband is forbidden from communicating directly or indirectly with the wife, save than through the wife's attorney.

31. I decline to make an order excluding the husband from coming within a 100 feet radius of the wife as the daughter's home at which he is residing is only about 50 feet away. I do not make an order excluding the husband from coming within 100 feet of the wife's place of employment, the Airport, as there is no evidence that he has sought to or threatened to behave inappropriately towards the wife at that location.

32. I make an Occupation Order permitting the wife to reside at the FMH to the exclusion of the husband. The husband is excluded from entering or attempting to enter the curtilage of the FMH. The Occupation Order is also made for six months (running from 14 December 2021) or until further order of the Court.

33. A penal notice is attached to the Protection Orders and to the Occupation Order. If it is later proved beyond all reasonable doubt that the husband has breached one or more of the orders made today, the Court may impose a term of imprisonment for each breach.

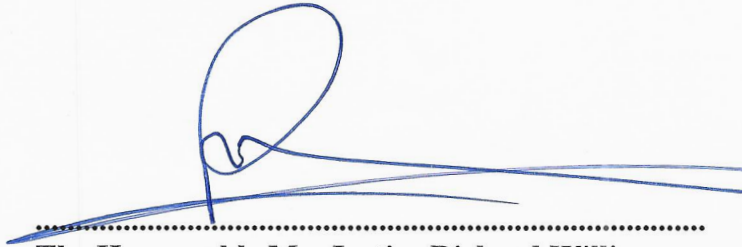


## Ancillary Relief

34. The ancillary relief proceedings have drifted since the unsuccessful mediation in July 2020. As the financial issues are the catalyst for the tension between the parties, I deem it appropriate to take this opportunity with the parties before me to now case manage the same to a final ancillary relief hearing. Both parties are content for me to do so, although they recognise that I am recused from the final hearing due to my conducting the FDR last year.
35. I give the following case management directions:
- (i) The parties are to agree the valuations of the FMH and piece of land. If they are unable to agree the valuations, then they must jointly instruct a valuator (with each party being responsible for 50% of the cost of the valuator). If the parties have not agreed the valuations or agreed on the identity of the valuator to instruct by or on 13 July 2021, then they are to each submit the details of two valuers along with their projected fees to the Court by or on 13 July 2021 and the Court will, following an administrative review, direct which valuator the parties are to jointly instruct;
  - (ii) The parties are to file and serve any updating ancillary relief affidavits no later than 14 days prior to the final hearing. No further affidavits may be filed thereafter without leave of the Court;
  - (iii) The parties have leave to consult with the Listing Officer to fix a one day final ancillary relief hearing. That hearing may be heard before any judge save for Williams J who is recused due to him conducting an earlier FDR; and



- (iv) The parties are to comply with the Practice Direction concerning the hearing bundle for the ancillary relief hearing.



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

