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

**CAUSE NO: FAM 194 OF 2012**

**BETWEEN: AL**



**Petitioner**

**AND NL**

**Respondent**

**Appearances: Ms. Yvonne Mullen of Broadhurst LLC for the Petitioner  
Mr. David McGrath of McGrath Tonner for the Respondent**

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

**Heard: 18 & 27 December 2019**

**Written submission filed: 13 January 2020**

**Draft Judgment circulated: 14 February 2020**

**Judgment provided: 21 February 2020**

**Anonymised Judgment: 25 September 2020**

**HEADNOTE**

*Application to vary consent ancillary relief order - periodical payments for children - Court's duty when approving consent order - Judge has a wide discretion to make appropriate order for benefit of children - need not be exclusively for their benefit - may order child maintenance to be paid by the father comprising mother's child-related expenses and her other expenses of providing suitable home for them when they are home from boarding school.*

**JUDGMENT**

**The Application and Background**

1. I have before me the Summons filed by NL, the Respondent father ("the father"), dated 25 July 2019, which was supported by the affidavits sworn by him on 4 October 2019 and 9 December 2019. In his Summons NL seeks an order that the amount of child maintenance payable by him to AL, the Respondent mother ("the mother"), in respect of



their child of the marriage, X aged 15<sup>1</sup>, pursuant to the terms of the comprehensive consent Amended Ancillary Relief Order dated 9 October 2013 (“the Order”), be varied downwards to CI\$850 per month. The father does not seek to vary any of the other still relevant child maintenance provisions in the Order, namely paragraphs 2 and 4, and he confirms that he will continue to be responsible for meeting those needs.<sup>2</sup> Pursuant to the terms of the Order the parties were granted a Shared Residence Order, with X and his 17 year old brother, Y<sup>3</sup>, thereafter spending approximately equal time in their respective homes.

2. I will hereafter refer to AL as the mother and to NL as the father.
3. The mother opposes the father’s application, contending that there should be no variation in the level of child maintenance ordered to be paid to her for X. At paragraph 10 of the mother’s Closing Written Submissions she states that the reduction would be:  
  
*“devastating to her financial position, would undermine her ability to provide a home for her children and to maintain a strong relationship by visiting them regularly at school.”*
4. The Certificate of Dissolution of Marriage was granted on 9 October 2013. I hope that the parties do not feel it inappropriate for me, for convenience sake, to refer to them herein as the father and the mother.

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<sup>1</sup> X was age 8 at the time of the Order.

<sup>2</sup> At paragraph 3 of the Order it was agreed that the father would be responsible for the reasonable costs of the children’s nanny, until such time as the nanny remains necessary. As the children are overseas in full-time education, a nanny is not necessary. The parties agree that Paragraph 3 in relation to the children’s nanny is no longer applicable.

<sup>3</sup> The Order in relation to Y has come to an end due to his age - s.11(4) Children Law (2012 Revision) but the living arrangements with each parent persists.



5. At paragraph 5 in the Order the parties agreed that on the first day of each month, commencing 1 April 2013, the father would pay into the mother’s designated bank account child maintenance in the sum of \$2,500 per month for X and the same amount for Y. The said payments would continue *“until the children are no longer in secondary education.”*

To her credit, although the father during cross-examination conceded that the mother had been entitled to \$9,000 in maintenance back pay for the period between March and September 2013, she did not pursue it, as she voluntarily indicated to the father at the time that he could use that money to decorate the children’s bedrooms in his home. She told the Court that she took that decision *“emotionally as the boys are my priority and I want to make sure that they have two comfortable homes.”*

6. The parties also agreed at paragraph 5 in the Order that:

*“In the event that a child attends a school outside of the Cayman Islands, the parties agree that this shall be a significant change of circumstances such that they will revisit the issue of child maintenance payable under this provision.”*

7. The mother contends that, at the time of the Order, both parties were *“in full agreement”* that the children *“were never to attend a boarding school”* and that *“if the plan were for the children to attend school outside the Cayman Islands”* she would not have agreed to the wording included in paragraph 5 of the Order.

However, whether or not it was agreed that the children would attend boarding school, it is clear from the evidence that prior to the Order both parties were discussing the possibility of the children attending school with sporting academies overseas, possibly



with the mother moving overseas with them during, at least, the term time. The email exchanges between the parties in June 2013 make this abundantly clear. Therefore, when arriving at the wording in paragraph 5 of the Order, I am satisfied that the parties had in mind the possibility of the change of circumstances that would come about if the children moved overseas to be educated. However, the Order having provided for a review upon the said event occurring and the parties now not agreeing what should happen upon them revisiting the issue of child maintenance, it is something which this Court must review and then decide what the variation, if any, should be at this time whilst putting X's needs first.

8. For the avoidance of doubt, in this case, the children's move to the USA for education which is solely funded by the father is a significant change of circumstances and, in the context of the natural changes that will have occurred seven years on, it grounds the Court's jurisdiction to review the child maintenance order, even if such an event had not been specifically addressed in the Order. On top of this, the father's obligation under the Order to meet X's (and Y's) education needs means that the relevant educational and travel expenses for him to meet have greatly increased, especially in relation to the level of school fees. It is clear that Goldring P in *K v K* [2017 (2) CILR 682] at paragraph 40, although I accept when he was discussing overseas studies at a university for a child over 17, considered that a child studying overseas could amount to a change of circumstances.
9. Also of relevance when considering whether there has been a change of circumstances is the level of each party's income now when compared with what it was when the Order was agreed, as well as the fact that both parties' expenses in relation to meeting the children's needs when they are in the Cayman Islands have lessened because of the greatly reduced amount the boys now stay in each of their households.

10. I also note that seven years have passed since the making of the Order and this is not a variation application made shortly after a relevant order. Apart from the financial changes brought about by the children attending school overseas, on top of the increase of the cost of living in the Cayman Islands over the years, their needs may well have changed due to them being seven years older.

11. When considering whether there has been a change of circumstances and then whether there should be a variation, it is important to take into account the additional requirements in the Order in relation to the wider considerable financial provision made by the father for the children, especially how these, not just including educational expenses, have now greatly increased. In effect, on top of the child maintenance payments to the mother, the father agreed and continues to meet all of the other expenses for the children.



12. At paragraph 2 of the Order it was agreed that the father would be responsible not only for the children's reasonable educational expenses (up to and including completion of tertiary education), but also their medical, optical and dental expenses.

13. The order provided that the parties agreed that child maintenance would cease upon the completion of the relevant child's tertiary education. The father indicated that his intention, when agreeing to this cut-off date, was that when the children commenced their studies at university, rather than paying child maintenance to the mother, he would give financial support payments directly to the children.

14. At paragraph 4 of the Order it was agreed that, on the proviso that he was consulted, the father would be responsible for the children's reasonable and agreed extracurricular costs

and the reasonable and agreed travel, and associated travel costs and expenses. During the hearing the father indicated that paragraph 4 of the Order includes the cost of the children travelling to and from school, which may occur about 10 times per academic year. He added that:



*“To the extent that (the mother) wants to take the boys on holiday and feels that she is not able to meet the costs of those holidays, I am happy to contribute to that.”*

The requirement of paragraph 4 in the Order ceases when the respective child reaches 18 years of age.

15. The father stated in his oral evidence that, if the mother wished to visit the boys at their school, he would be happy to contribute to her travel costs. I gained the impression from his evidence that he felt that, based on his history of travel to see the boys at school, it would be reasonable and appropriate for each parent to travel two or three times per academic semester to the school in the USA.<sup>4</sup> In the Scott Schedule attached to the Closing Written Submissions filed on the behalf of the father it is stated that there should be four trips. Having regard to the frequency of the father’s trips to the school in the past academic year, I find that there should be funding for two visits pre-Christmas vacation, two pre-Spring break or Easter and two post Spring Break or Easter.
  
16. The mother stated that each trip costs in the region of CI\$900 which, if spread over the year, would amount to CI\$450 per month. The father stated in his evidence that when he takes a school trip it costs him only CI\$450 each time including flight, car rental and hotels. This is on the low side and is based upon being able to book the lowest fare well

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<sup>4</sup> The mother in her evidence in chief stated that she would like to travel to the school to see them five or six times during the academic year. This is consistent with there being two trips in each ‘term’ (i.e. possibly before Christmas and pre and post Spring Break or Easter.)

in advance on JetBlue or Southwest airlines<sup>5</sup>, which may not be available, and staying in a hotel offering a rate of only up to US\$100 per night. In the Scott Schedule filed on his behalf the figure is given at CI\$600 per visit. I find that a reasonable cost estimate for:

- (i) suitable hotels is US\$130 per night (total US\$390 for three nights);
- (ii) car rental is US\$100; and
- (iii) return flights is US\$300.



On the basis that a reasonable trip may be for three overnights, I find that a reasonable amount per trip is US\$790 (CI\$648)<sup>6</sup>, which would work out at US\$395 (CI\$324)<sup>7</sup> per month over a year for six trips. It is in X's best interests that his parents can visit him and therefore I view it as being one of his needs.

17. This is not specifically provided for in the Order, so the mother would have to go to the father each time and try to justify such a contribution which he may refuse. Alternatively, the Court could strive to give the mother more independence by calculating, when considering the level of child maintenance payments, a reasonable figure for her reasonable travel as a part of her child related outgoings in relation to the children. I prefer the latter course, as it gives more certainty and prevents one parent being perceived as being more dominant than the other. It is also more consistent with the following sage words of Baroness Hale at paragraph 126 in *Miller v McFarlane* [2006] UKHL 24, upon which the father places reliance at paragraph 7 of his Written Closing Submission, when she stated:

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<sup>5</sup> Father states the air fare should be in the region of US\$230 return with taxes.

<sup>6</sup> XE currency conversion.

<sup>7</sup> XE currency conversion.

*“The whole point of a divorce is to enable people whose lives were previously bound up with one another to disentangle those bonds and lead independent lives.”*



Therefore, when I go on later to calculate the level of child maintenance for X the base/starting figure will be CI\$324 and the mother will then be responsible for meeting the cost of her trips to visit the children at their school. I do not treat the cost of these visits to already be included in the CI\$850 monthly maintenance figure ordered by agreement in relation to Y and therefore, at this time, I apportion the full CI\$324 to meeting X's needs.

18. Pursuant to the Order the mother received CI\$399,000 in cash (exclusive of the pension sharing order<sup>8</sup>). The mother also received time limited spousal maintenance of CI\$3,500 per month for three years. The father retained the former matrimonial home and the funds in his capital account. The division of the matrimonial capital was roughly equal.
19. By a Consent Order dated 7 December 2017, reached after Y had commenced his studies in late August 2017 at a boarding prep school in the USA, the monthly child maintenance payment in relation to him was reduced from \$2,500 to \$850.<sup>9</sup> It was agreed that the variation of the maintenance be backdated for October and November 2017. The father did not seek to back-date to the beginning of the school term, namely September 2017.
20. The parties submitted the draft consent order containing the variation provision for the Court to approve administratively, without providing the Court with any updated

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<sup>8</sup> The father transferred half the value of his pension (half being CI\$93,565) to an appropriate pension account nominated by the mother.

<sup>9</sup> The parties agreed that the commencement date would be 1 October 2017 and that as a consequence the father would be entitled to debit an overpayment totaling \$1,650 from future child maintenance payments. The father did not claim a debit for September, which was Y's first month away at school.

evidence about the family's finances. The father's case is that the consent order was voluntarily and freely agreed by the mother, who had legal representation at the time. The father contends that the original periodical payment amount was reduced by about a third on the basis that Y would be living in the Cayman Islands for only about a third of the year. If that is the case, then the one third figure did not take into account the fact that there are certain year round running expenses in relation to the household which still need to be met even if the children are not in situ, as a proportion of them are for the benefit of the children to ensure they have suitable home when back from school. As already highlighted, both parties also agree that it is in the children's best interests if both parents are able to visit them whilst they are at school, for example to attend school events. A rigid application of the one third formula and pro rata approach may not take into account that additional expense which is not specifically covered by any other provision in the Order, including paragraph 4 therein or the above-mentioned continual child related element of household expenses for the mother.



21. The mother, who had the benefit of legal representation at the time, said that although she did not agree with the reduction in maintenance which she felt would be “*devastating*” to her finances at what was an emotional time for her with the child leaving to the USA, she reluctantly agreed, for harmony's sake, to the variation of maintenance. The mother told the Court that she did not feel “*emotionally able to face a showdown*” with the father with whom she felt communication had deteriorated because of his reaction to her initial position opposing his wish for there to be a downward variation.
  
22. In August 2019 X began his studies at a boarding school in USA. Y moved to the same school from his school in the USA, so that both boys could attend the same school. The

father, consistent with his approach taken when Y commenced his studies overseas, has now issued a Summons to vary the maintenance figure downwards in relation to X.



23. The father accepts that there can be circumstances where a spouse's and children's needs can overlap. However, he contends that is not the case here, as the needs can be reasonably met from the mother's capital and income sources and that, in reality, the mother is making a veiled application for spousal support under the guise of child maintenance.

24. The father submits that the appropriate maintenance figure for X is also CI\$850 per month, seemingly adopting the one third justification used for the earlier reduction in relation to the maintenance payable for Y. The father suggests that figure, although he does not accept that, due the children being away for 66% of the year and with her for only about 17% of the calendar year, the cost to the mother of maintaining either of the children *"approaches anywhere near \$850 per month or CI\$10,200 per year."*

25. When considering the level of maintenance payable relation to X, although a factor to be taken into account, this Court's discretion is not fettered by the fact that \$850 was agreed in relation to X by the parties. That figure was reached in a Consent Variation Order, administratively approved by the Court without an investigation of the parties' then finances and made at a time when the mother knew that she would still have CI\$2,500 coming into the household in respect to X.

26. The mother, highlighting the fact that she has had to 'eat into' the capital provided to her in the Order, opposes the downward variation which she again submits would be *"devastating to her financial position."*



27. The mother argues that there should be no variation in the maintenance figure, as the existing orders are in any event “*extremely favourable*” to the father when having regard to his income. The mother contends that she does not have sufficient resources to meet the “*combined needs of the children: both for those expenses directly attributable to the children and those expenses which arise as a result of having to provide a home for them.*”
28. Although the mother appears to be intimating at paragraph 29 of her affidavit sworn on 4 December 2019 that the CI\$2,500 maintenance originally granted to her in relation to Y should be “*reinstated*”, she accepted in her oral evidence that no application has been made in that regard and that the Court at this hearing is only considering an application to vary the maintenance payable for X.

### **The Law**

29. Section 23 of the Matrimonial Causes Law (2005 Revision) (“the Law”) provides that either spouse:

*“may make an application of variation of any order made under section 21, and the Court, after hearing the parties, may make such variation.”*

A periodical payment provision in a consent order may be varied in the same way as a provision in an order made after a contested hearing.

30. The periodical payment provision for the benefit of X, which the father now seeks to vary, was made in the Order pursuant to paragraph 21(f) of the Law. This Court had a duty to consider the general principles set out in s.19 of the Law prior to approving the Order. Accordingly, when approving the Order and applying the principles set out in s.19



of the Law, I had regard to the content in the affidavit with exhibits sworn by the mother on 23 November 2012 and the Statement of Information for a Consent Order signed by the mother on 19 September 2013 and by the father on the 13 September 2013. In the signed declaration at the end of that Statement, the parties confirmed that they had made and received sufficient information to enable them to make an informed decision about the content of the Order and that they had not been pressurised in any way to endorse the terms of the Order.

31. At a variation hearing the Court is entitled to look *de novo* at all the matters under the general provision set out at s.19 of the Law.<sup>10</sup> However, the nature of the review actually conducted is a matter for the Court having regard to proportionality and may not require a full *de novo* approach. What is clear is that the Court, when considering an application to make or vary a child maintenance order in relation to X, must have regard first of all to his interests. Although the Court may then also consider the parents' circumstances, including any change in their circumstances since the Order, and specifically their responsibilities, needs, financial and other resources, actual and potential earning power and deserts of the parties, it must do so in the context of X's needs being put first.
32. The Grand Court in the Cayman Islands, in deciding whether to exercise its powers under s.21 and, if so, in what manner, when considering what is fair in all the circumstances of the case, traditionally may have regard not only to the matters set out in s.19, but also to the relevant factors raised in s.25(1) of the Matrimonial Causes Act 1973, and now s.3 of the Matrimonial and Family Proceedings Act 1984 in England and Wales.<sup>11</sup> These

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<sup>10</sup> See Cazalet J at page 581 in *Garner v Garner* [1992] 1 FLR 573 and his reliance upon the guidance from the Court of Appeal in *Lewis v Lewis* [1977] 1 WLR 409.

<sup>11</sup> *Doak v Doak and Riley* [2002] CILR 224, [17], [21], [22], *Wight v Wight* CICA 6 of 2006 [62] ("*Wight*"), *Wood v Wood* [2009] CILR 255 [12], and *McTaggart v McTaggart* 2011 (2) CILR 366 [39].



factors may also be considered in a variation application made pursuant to s.23 of the Law. Similarly, when considering X's needs, the Court may have regard to:

- (i) his financial needs;
- (ii) his income, earning capacity and resources;
- (iii) any physical or mental disability; and
- (iv) the manner in which he is being, and the parties expect him to be, educated.

33. During the hearing I provided the parties with an extract from Butterworths Family Law Service, Issue 90 ("Butterworths"). At paragraph [860]-[870] the authors, helpfully for the matter before me and for future cases brought in the Family Division and Summary Court, outline the approach for the Courts and for the attorneys to take in child maintenance applications; stating:

*"The court has to treat each case on its own merits and to do what it can to achieve a just result. Practitioners often do not go into these applications armed with sufficient information. Bringing up children these days is the most expensive business and, if at all possible, the applicant should bring to court calculations of what they have actually spent on the child during a preceding period, rather than simply taking the approach that the court can be asked to imagine or speculate upon the cost of maintaining the children. Obviously, it will be very difficult, often impossible, to show what proportion of heating, lighting and general household expenses is referable to the children<sup>12</sup>, but some items such as clothing, footwear, school expenses, holidays, pocket money, travelling expenses and so on can be specifically calculated and, where possible, this should be done."*

34. In my judgment delivered on 7 February 2017 in *AK v TK* 39 of 2015 I opined that it was "important" that at the time of the divorce "the level of quality of lifestyle (for the children) in (a) party's home is not disproportionate to that which can be offered in the

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<sup>12</sup> "But the overall costs of these items should be available to the court so that they will not be overlooked."



*other*”. I recognised, when fixing a figure for periodical payments for the children, Mr. McGrath’s submission in **AK v TK**, which was accepted by me and the Court of Appeal in that case, that there would be some overlap in the children’s needs between the expenditure that was clearly solely for the children and household expenditure that benefited both the mother and the children, but which enabled them to have adequate homes with both parents.

35. When **AK v TK** went before the Court of Appeal, a comprehensive and guiding decision was delivered.<sup>13</sup> Goldring P, at paragraph 37, made clear that the Court has a wide discretion in such cases and that any order does not have to be solely for the a child’s benefit, stating:

*“The starting point of any analysis must be s.21(f) of the Matrimonial Causes Law (para. 7 above). By it, the court was obliged to make an “appropriate” order “for the benefit of the children.” Those latter words seem to me to provide the judge with a wide discretion. They do not mean that the order has to be solely for the children’s benefit. It is sufficient if it can reasonably be said of the order that it fulfils needs of the children which would otherwise not be met.”*

36. The President then added at paragraph 37 in **K v K** that the following guidance concerning the approach to quantification given by Thorpe LJ in **Re P (Child)** (8) [2002] EWCA CIV 837 at paragraph 47 was consistent with the wording of s.21(f) of the Law, namely:

*“[The issues of the home having been settled] the judge can proceed to determine what budget the mother reasonably requires to fund her expenditure in maintaining the home and its contents and in meeting her other expenditure external to the home, such as school fees, holidays, routine travel expenses, entertainments, presents etc. In approaching this last decision, the judge is likely*

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<sup>13</sup> **K v K** [2017] (2) CILR 682.



*to be assailed by rival budgets that specialist family lawyers are adept at producing. Invariably the applicant's budget hovers somewhere between the generous and the extravagant. Invariably the respondent's budget expresses parsimony. These arts have been developed in Matrimonial Causes Act claims, particularly where the budget is advanced to found the calculation of the price of the clean break. But it is worth emphasising the trite point that, by contrast, an order for periodical payments is always variable and will generally have to be revisited to reflect both relevant changes of circumstances and also the factor of inflation. Therefore in my judgment the court should discourage undue bickering over budgets. What is required is a broad common sense assessment. What the court first ordains may have a comparatively brief life before a review is claimed by one or other party."*

37. The father accepted at paragraph 35 in his Skeleton Argument that there will be some items rightly contained in the mother's budget which are not exclusively for X's benefit. However, whilst also accepting that the mother is entitled to provide X with a quality of life comparative to that which X enjoys with him, he objects to paying expenses which he regards as purely meeting the mother's needs. He forcefully argues that he should not be required to continue to pay to the mother substantial income support "*so that the quality of (her) life is not "gravely" diminished, as she alleges...and so that she herself can live commensurate with how she perceives that (he) lives.*"

38. At paragraph [871] in the extract from Butterworths<sup>14</sup> the authors highlight that the Court should take into account that maintenance was for the child and not for the other parent and that each parent has a financial responsibility to meet the child's needs. The authors state that:

*"..., solicitors representing the respondents to applications should for their part, bear in mind, especially that:*

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<sup>14</sup> See paragraph 33 above.



*(a) periodical payments for children are meant to be for the children. Accordingly, there should be no 'profit element' for the benefit of the custodial party;*

*(b) it is clear from the statute that the cost of supporting and bringing up the child is not necessarily required to fall entirely on one parent. If both parents have resources the question before the court should be 'what contribution towards the total cost should be borne by the respondent?'*

39. In light of the above and of the change of the circumstances, the exercise for the Court is to review and ascertain the needs of X and to apply the above-outlined principles, including the primacy of X's interests when doing so. The Court has a wide discretion when considering what type of review should be conducted, whether there has been a change of circumstances and what type of variation, if any, should be made.<sup>15</sup> Each variation application turns on its own facts and, due to the different nature of the issues in the present matter, the cited cases referring to the need for the Court to find that the current level are manifestly unjust or that the financial arrangements show a failure to make proper provision for a child, do not restrict this Court's discretion. As already mentioned herein, although the Court may have it in mind as a consideration, the Court is not fettered by the variation order agreed by the parties in relation to Y and should determine what level of periodical payments is required to meet X's needs from the father in the circumstances of the case. Similarly, although not fettered by it, the Court may pay regard to the level of child maintenance agreed by the parties in 2013 in the Order reached when they both had legal representation, as well as to their income at that time compared to what it is now.

40. Although the Court, when assessing the amount to be paid by the father, must not burden him with contributing to or overwriting the costs of the mother's domestic lifestyle which the father contends are "overstated" and which would in effect amount to a spousal

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<sup>15</sup> *Lewis v Lewis* [1997] 3 All ER 992 at 994, Ormrod LJ.



maintenance order in disguise seven years after the certificate of dissolution, it must acknowledge that some of the needs for X will overlap with the mother's needs. The Court will in such instances have to apportion a reasonable amount for the child's benefit whilst leaving the mother to pick up the greater balance. The purpose of child maintenance is not to provide for the mother a personal lifestyle similar or proportional to that which she believes the father to have.

41. It is important, and worth repeating, that the Court must have in mind that, although the father has a much greater income and income capacity than the mother, he has been paying and will continue to pay the substantial expenses that are required to meet the majority of the wider needs of the children. It is also right to have in mind that the mother also has a duty to arrange her finances in such a way so that she also financially contributes to the meeting of the children's needs.

### **The Father's Income and Outgoings**

42. The father is an attorney. At the time of the Order in 2013 the father disclosed that his income was CI\$530,000 per annum<sup>16</sup>. The father's income in 2018 was CI\$540,840/annum and in 2019 it further increased to CI\$613,106 per annum. The father does not accept, and the evidence does not support, the mother's contention in correspondence that his income is at least US\$1.3 million per annum. This is not one of those cases where the Court need carry out a detailed analysis of the father's income and personal outgoings as, even though he states that he would like to start putting sums towards the boys' university/college fund which would be assisted by the variation sought, he does not argue that he does not have the means to pay the maintenance for X at the current level or to pay for their college education when the time comes. Although

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<sup>16</sup> Paragraph 2 Statement of Information for a Consent Order filed on 20 September 2013.



there would be merit in planning for the cost of the children's university/college education by placing funds in a college savings account, in the circumstances of this case, it is not a necessity that should usurp any requirement for child maintenance for X.<sup>17</sup>

43. When I consider the father's income and his personal lifestyle, the approach when conducting the exercise is not to simply say he can afford child maintenance at the current level and that, on that basis alone, simply determine that the periodical payments for X should stay at the same level. The nature of the exercise is also not to provide the mother with a personal lifestyle akin to the father's seven years post separation. There is, however, an element when making my deliberation in seeking to have the children to be able to enjoy similar basic benefits when in each parent's home.

44. The father's child related annual expenses for which he is solely responsible, not including his expenditure when the children are staying with him, have been rounded up or down and are helpfully summarised in the below table found at paragraph 37 of the father's Skelton Argument. The mother does not contend in her Written Closing Submissions that the figures are inaccurate, nor were they challenged during the cross-examination of the father.

ITEM	APPROXIMATE COST p.a. (US\$)
Y	
School fees – 2019/20 1st USA school	60,000
School fees – 2019/20 2 <sup>nd</sup> USA school	60,000
Travel to/from USA School and hotels	4,000
School uniform	2,000
School books & supplies	3,000
Dorm furnishings	1,000

<sup>17</sup> The father indicated in cross-examination that the children's paternal grandparents had set up a trust fund for the children's college expenses into which the grandparents had invested US\$189,000.



Shoes & Clothing	3,000
Sports equipment	1,500
Toiletries	400
Mobile phone service – U.S.	1,300
Spending money	7,500
<b>SUB-TOTAL:</b>	<b>US\$143,700</b>
<b>X</b>	
School fees – 2019/20 USA School	60,000
Travel to/from USA School and hotels	4,000
School uniform	2,000
School books & supplies	3,000
Dorm furnishings	1,000
Shoes & Clothing	3,000
Sports equipment	1,500
Toiletries	400
Mobile phone service – U.S.	1,300
Spending money [2]	7,500
<b>SUB-TOTAL:</b>	<b>US\$83,700 (CI\$68,634)</b>
<b>TOTAL:</b>	<b><u>US\$227,400</u> <u>(CI\$186,468.21)</u><sup>18</sup></b>

45. The double school fees shown in the table in relation to Y will not be payable moving forward, they were only required as he moved school without giving sufficient notice to his previous school in the USA. This reduces the total figure to US\$167,400 or CI\$137,628<sup>19</sup>, which is a considerable sum and, when subtracted from his income leaves a figure of CI\$426,638.
46. The only other remark I have is about the entries for shoes and clothing, sports equipment and toiletries as the father says that he bears sole responsibility for those items, partially

<sup>18</sup> Conversion using XE Currency Converter.

<sup>19</sup> Conversion using XE Currency Converter.



by buying the items and partially by money that he puts on debit cards which he provides to the children, although he says he also gives them US\$7,500 pocket money per annum (US\$625 per month). However, it is clear that the mother also buys these items and that is how it should be. As I stated in *AK v TK* the mother and the children are entitled to share the enjoyment and partake in the parent/child experience that comes with her physically part meeting such expenses when the children are with her or away at school. As was also seen in *AK v TK*, the father contends that his meeting all of these major expenses would leave the mother with responsibility to only meet the limited expenditure on the children when they are staying with her. As I remarked in *AK v TK* such an approach “*may to a degree side line the wife’s role with the children*”.

47. I note that the mother stated in her affidavit evidence<sup>20</sup> that, given her financial position at the time of the Order, the parties agreed in the Order that the father would meet all the listed expenses relating to the children. I also note that, even though the mother’s salary has since greatly increased<sup>21</sup>, enhancing her financial position when compared with the same in September 2013, the father does not seek to vary his responsibility to meet those considerable wider costs.

### **The Mother’s Income, Income Capacity and Outgoings**

48. At the time of the Order in 2013 the mother did not set out a figure for her income on the Statement of Information for a Consent Order, but recorded “*income from employment (T.B.D)*”.

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<sup>20</sup> Paragraph 13 affidavit sworn in December 2019 (full date not recorded in affidavit).

<sup>21</sup> See paragraph 50 below.



49. The mother confirmed in her oral evidence that her right to work certificate was issued in August 2013 and that she was then able to start work with a company setting up and managing its new office. At the time her income was CI\$3,000 per month plus a small commission. She was, of course, also receiving spousal maintenance of CI\$3,500 per month (until March 2016) and the child maintenance payments for the children. Her total personal and spousal income, pre-commission, was therefore CI\$6,500. Her total income including child maintenance was CI\$11,500 per month or CI\$138,000 per annum. This was a financial income position she was aware of when consenting, with the benefit of legal representation, to the terms of the Order.

50. In September 2015 the mother commenced her employment with a bank which resulted in her salary increasing to CI\$60,000. The salary was increased in June 2017 to CI\$98,000. Her base salary was further increased in June 2019 to its current level of CI\$118,000 per annum. In 2019 she received a bonus of CI\$12,000 per annum, making a total of CI\$130,000. The mother informed the Court that the salary increase is considered every two years, so the next salary increase will not be until around June 2021. Although bonuses may vary each year (upwards or downwards), I assess the mother's income capacity to be the region of CI\$130,000 per annum. Her total annual income including \$850 per month child support for Y, excluding any periodical payments for X, is CI\$140,200 (average of CI\$11,683 per month).

51. If the order made in relation to X is not varied the mother will have a total income of around CI\$170,200.00, which is CI\$32,200 more than she was receiving at the time of the Order and at a time when the children were still living in her household for approximately half of the year rather than just roughly a third of that time. If the order is varied, and the mother was to now receive \$850 as suggested by the father, her annual



income would be CI\$150,400.00, which is still CI\$12,500 more than she was receiving at the time of the Order and at a time when the children were still living in her household for approximately half of the year rather than just roughly for a third of that time.

52. The mother has provided separate schedules setting out her outgoings. The mother submits that there is an inevitable overlap within the domestic budget for expenditure to meet the needs of herself and those of the children. Although the mother accepts that the father will continue to solely meet the significant child related expenses set out in the Order and most of those in his Schedule<sup>22</sup> found in his Skeleton Argument, she submits that she will need the periodical payments for X to, at least, remain at their current level in order to give X (and Y) a similar quality-of-life when he (they) is (are) living with her as he (they) enjoy when they are with the father. By the three schedules, the mother claims that the total income she ideally requires to meet all of her and the children's needs is CI\$16,334 per month (CI\$195,996 per annum).

53. The first schedule, set out below, lists the mother's household expenses totalling CI\$13,754.74.

<b>Household Expenses</b>	<b>Per month (CI\$)</b>
Mortgage	4,800.00
Strata	760.00
Water	350.00
Electricity	400.00
Food/household/dog food/boys & the mother's toiletries	1,200.00
Dog grooming	25.00
Helper	600.00
Cash withdrawals (groceries, lunches, X and Y snack and spending money when on island and take back	300.00

<sup>22</sup> See paragraph 44 above.



with them to school	
Car maintenance, service and licencing	104.00
Car insurance	83.33
Petrol	120.00
Life insurance	418.15
Pharmacy (X, Y, AL)	50.00
Home maintenance	500.00
Home insurance	200.00
Home furniture/furnishings	500.00
Credit card payments	1,000.00
Legal fees	1,500.00
UK TV Box subscription	31.67
Annual PO Box rental fee	23.58
Holiday	500.00
<b>TOTAL:</b>	<b>\$13,754.73</b>

54. The housing outgoings have a bearing on the level of child maintenance due to the inevitable overlap on some of the listed items being required to meet both the mother and the children's needs. Although the children are now away at school and only spend half of their school vacations with the mother, there will be an element of child maintenance for certain year round expenses that still have to be met in their absence to ensure that a home can be maintained for the children when they are staying. However, there are a number of expenses claimed, for example utility bills, that do not fall under that criteria and some of those that do are overstated.

55. Those that should not be regarded as children expenses and which are not an overlapping expense are dog food, dog grooming, legal fees, annual PO Box rental fee, credit card payments and the mother's toiletries. The medical expenses should not be regarded as a child related expense for the purpose of these calculations as all medical expenses for X are to be met by the father. If the mother has to take X to receive medical attention or to buy him medication, if it is something that cannot be covered on the children's medical



insurance (for instance a prescription), then she must submit the receipt for the treatment/medication to the father for him to repay her promptly.

56. I also find that, due to the children's age and the limited time that they are at home, a helper is not required for them. If the mother chooses to retain the helper to look after the family dog and to maintain the house in which the children reside for such a limited amount of time, then that is a cost for her to meet and is not child related.
57. The cash withdrawal head is too vague and overlaps with other heads of expense such as groceries and I am not satisfied it should be regarded as a child expense. Although the life insurance may be a requirement for the mother's borrowing, again I do not find that this should be classified as an overlapping child expense.
58. This therefore leaves the following from the Household Expenses Schedule that may be regarded, to greater and lesser degrees, to contain an overlapping element in relation to X. Some of the below expenses will be year round overlapping expenses and some will only overlap when the boys are at the mother's home. As seen in the table at paragraph 79 below, the proportion of the expense that should be regarded as an overlapping expense to be attached to each head of expense may vary depending on what it is.

<b>Household Expenses</b>	<b>Per month (CI\$)</b>
Mortgage (A)	4,800.00
Strata (A)	760.00
Water	350.00
Electricity	400.00
Food/household/boys toiletries	1,200.00
Car maintenance, service and licencing (A)	104.00
Car insurance (A)	83.33



Petrol	120.00
Pharmacy (X, Y, AL <sup>23</sup> )	50.00
Home maintenance	500.00
Home insurance	200.00
Home furniture/furnishings	500.00
UK TV Box subscription	31.67
Holiday ( <i>father agrees should be treated as boys expense</i> )	500.00
<b>TOTAL</b>	<b>\$9,569.00</b>

59. In relation to quantifying the overlapping element of the above claimed expenses, the Court is in the difficult position mentioned in the extract in Butterworths set out at paragraph 32 herein. The calculation is made more complex as the children now only reside with the mother for half of their school holidays (at most for only 7-8 weeks a year), so the bulk of the household expenditure, even if it has an overlapping element, is in reality for the benefit of the mother who the father no longer has a duty to financially support. A lot of the expenses, even those containing an overlapping element, would ordinarily still have to be met by the mother even if there were no relevant children. On the other hand, the calculation is made simpler by the fact that the father is meeting nearly all of the children's expenses at other times.

60. The acknowledged difficulty highlighted in the extract from Butterworths does not mean that a party should not strive to assist the Court by suggesting what proportion of the overall cost of each item or what amount may be determined as a cost for a child, rather than simply providing the global figure for each item to the Court. The problem that the father and the Court face in this case due to greater particularisation by the mother of the proportion and quantum of the household cost that could be regarded as being for the benefit of X (and Y) is evident from what is stated at paragraphs 17-19 and 25 in the



father's Affidavit in Support of his Disclosure Summons which he swore on 4 October 2019. The mother states at paragraph 12 of her Affidavit sworn on 8 November 2018 that it is not possible for her to pro rata the household costs and that performing such an exercise would be "*artificial and speculative*". Alas, it is precisely that exercise that this Court is now being expected to conduct, but without any meaningful suggestions or helpful input from the mother.

61. I accept that the three schedules provided by the mother are headed in the manner ordered by McMillan J on 15 November 2019 but, having regard to the limited time that the children are with her, she has not assisted the Court by identifying in the household schedule what proportion should be regarded as a child expense. The father, on the other hand, has tried to assist the Court by setting out what he contends are realistic expenses that may relate to X coupled with suggested figures in a Scott Schedule attached to his Written Closing Submissions
62. The primary household expense is the mortgage at CI\$4,800 per month. This coupled with the strata fees of CI\$760 and home insurance of CI\$200 make a monthly total of \$5,760. This is a significant proportion of the mother's income and a commitment that should only have been entered into by her with consideration of its affordability having regard to her global financial position, including the best use of any available capital.
63. The mother undertook this new financial commitment, borrowing CI\$570,000, about a year after she sold her previous adequate family home and almost a year after the maintenance payments for Y had been reduced. At the time the mother must have been aware that, if X also went to school overseas, the father would likely be making an



application to vary downwards the payments for X. It was, of course, long after the spousal maintenance payments had come to an end in March 2016.

64. Due to her age, the mother had to take out a mortgage with a short fifteen year term thereby increasing the monthly repayments. Despite that, in light of the capital received by her in the ancillary relief proceedings and the profit made by from the the sale of her EB property, the father believes that (i) it is likely that her current savings are greater than those disclosed by her and (ii) the level of her borrowing should have been less resulting in a monthly borrowing repayment at significantly less than the present \$4,800. That said, when cross-examined, the father conceded that he wanted the children to be in a similar level of accommodation to his when they were with the mother and that he was not saying that CI\$4,800 per month is “*extortionate*” for a mortgage in the Cayman Islands.
65. It is not a father’s responsibility to fund a mother’s capital interest in her home, save to the limited extent that there is an overlap for provision of a home or base for any relevant child. It is definitely not a father’s responsibility to fund a mother’s personal lifestyle, especially if she has financially overstretched herself by the decisions made and by how she has chosen to utilise her capital resources. Therefore, having had the benefit of fully reviewing the available evidence which the Learned Judge did not have the opportunity to do, I took a slightly different approach to the one taken by McMillan J when he considered the father’s Disclosure Summons on 15 November 2019.
66. Although not departing from McMillan J’s approach to the other disclosure then being sought, at the close of the hearing, I directed the mother to provide all bank statements



from 1 August 2018 to the end of September 2018<sup>24</sup>. I ordered the said disclosure to enable the Court to try to determine what funds were available to her shortly before the purchase of her home having regard to the capital she had received from the divorce settlement and to the profit funds/equity she had received from the proceeds of sale of the EB property (which she had purchased using some of the matrimonial capital obtained due to the terms of Order). This could then place the Court in a better position when trying to determine whether the mother had made a reasonable decision in relation to the new home purchase and the terms of the new purchase which had resulted in the level of borrowing and the monthly payment commitment.

67. If the mother had not used her capital from the divorce settlement or the net equity from the sale of the EB property sensibly or decided to keep capital that was available in her account at the time of the house purchase in her accounts and not to invest it in the property, thereby increasing the level of borrowing required, and if the Court felt that the mortgage and related expenses<sup>25</sup> should be regarded as an overlapping expense partially for X's benefit, that could affect its approach when calculating the level of child maintenance about what would be a just contribution for the father to make towards that benefit.
68. To try to get an understanding of how funds have been used and what was available at the time of the latest home purchase, it is necessary to look at the chronology of events following the parties' separation and the Order. Regrettably the mother chose not to file dated bank statements to verify her case that due to her outgoings she had to use her capital from the divorce settlement to meet reasonable day to day expenses. The onus was

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<sup>24</sup> The parties did not seek to examine or cross examine on the content of the same and were content to deal with the content in their Closing Written Submissions.

<sup>25</sup> See paragraphs 58 above.



on the mother to prove that contention, especially if the verifying financial material was obtainable, and not for the father to disprove it in the absence of such material from the mother.

69. As already noted, pursuant to the Order the mother received a lump sum of CI\$399,722. That amount was paid by 12 quarterly payments of around CI\$33,310 spread over a period from 1 April 2013 to 1 January 2016. The mother indicates that the capital was mostly used, as she had to continually “*dig into the capital account payments*” to supplement her initial lack of salary and then low salary and maintenance amounts to supplement her living costs. She has also had to meet substantial legal costs.
70. After the parties separated the father remained in the former matrimonial home and the mother, in January 2013<sup>26</sup>, moved into a rental unit in a desirable development for professional families (“the development”) where I can take judicial notice that the rents can range between CI\$4,000 to \$5,500 for only a two bedroom unit, and usually CI\$5,000 upwards for a three bedroom. The mother indicated that she funded the furniture from the proceeds of sale of a vehicle. However, during cross-examination, the father said that he paid for the furnishings and it was not then put to him that this contention was wrong. The father also paid the fees for the mother’s first attorney which were in the region of CI\$11,000.
71. To her credit, although having been out of the job market for ten years as she had commendably taken on the role of homemaker, the mother sought work but was not able to commence employment until September 2013 due to immigration issues. The mother understandably had to use some of the capital received in the divorce settlement during

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<sup>26</sup> About three months before she received the first instalment of the capital repayment.



that period before she started her employment. The issue is whether she unreasonably used too much of it by maintaining a lifestyle that was, post-divorce, financially prudent. There are no statements or detailed explanation before me to illustrate how that capital was actually used.

72. The mother contends that when she commenced work in September 2013<sup>27</sup>, due to her salary level<sup>28</sup>, she still had to use some of her capital to meet her costs. Again, there are no statements or detailed explanation before me to illustrate how that capital was actually used. This again is understandable to a degree, although she was still in receipt of spousal maintenance at the time.

73. The mother said that she purchased the EB property on 11 December 2014 for CI\$530,000 with chattels. There is nothing that suggests that this was not a suitable property to meet the children's reasonable needs. This was before the mother started her job with the Bank in 2015, giving her a better annual salary of CI\$60,000 per annum.

74. The mother sold the EB property in 2017, just after Y left to school in the USA and after her salary with the Bank had been increased in June 2017 to CI\$98,000 per annum. She said during cross-examination that:

*““One of the reasons” why she had to sell was because she “knew” that she was “going to give in and that there would be a reduction in maintenance”.”*

It is unclear what the level of the mortgage was at that time, but it does not appear that it was greater than the current property borrowing. The mother said in her evidence in chief that the net profit she made from the sale was about US\$150,000 and in her cross-

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<sup>27</sup> See paragraph 49 above

<sup>28</sup> As already mentioned, CI\$3,000 per month plus a small commission.



examination she said it was US\$287,000 gross or CI\$235,000. After the sale she rented a property in a comfortable modern development for families and professionals charging above average rents (“the complex”). The mother has not disclosed what the rent was to enable the Court, having regard to the reason given for the sale, to compare it with what she was spending every month on the EB property. I note that on the mother’s Butterfield Bank Statement, account number xxxx24, which was disclosed as a result of my direction, there is an entry for a deposit reimbursement from the complex for CI\$4,800.

75. After about a year living at the complex, the mother purchased her current property for CI\$620,000. At around that time she only had about CI\$185,997 in her primary Butterfield Bank account xxxx24. She put down a 5% deposit. In her affidavit evidence the mother said that she took out a charge on the home in order to have additional funds as a down payment to Fidelity Bank, pay stamp duty of around CI\$54,000<sup>29</sup>, Land Registry and legal costs and CI\$50,000<sup>30</sup> to carry out required works on the house before she moved in. She stated that the proceeds/profit remaining from the sale of the EB property was put into the purchase. She added that she had to pay the vendor for the chattels and a highlighted debit entry on 24 August on the xxxx24 Statement shows a figure of CI\$22,100.22 for that.

76. Since 2013 the mother has moved home four times, each time incurring inevitable moving and settling in costs which would have eaten into her capital. Just before purchasing her current property the mother only had about CI\$185,997 left in her primary Butterfield account xxxx24. After completing the purchase of and readying her home, by

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<sup>29</sup> Entry on 27 August 2018 in Butterfield Bank Statement for account xxxx24, shows CI\$56,638 debit which the mother states was for closing costs including the stamp duty.

<sup>30</sup> This figure appears to be consistent with the debit entries highlight by the mother in her bank statements for account xxxx04 for the period 1 August 2018 to 29 November 2018.



1 November 2018 she only had just over \$58,000 left in that primary Butterfield account.

I note that the statement for the account xxxx24 for 27 December 2019 shows a balance of CI\$11,450. When I review the bank statements it does appear that a significant proportion of the capital that remained in that account at the time of the purchase was used to upgrade or make ready the new house.

77. When reviewing the statements and carrying out a tracing exercise, I do not see any evidence from the entries therein leading to a conclusion that the mother has undisclosed accounts containing other substantial funds. I do not find, as the father suggests, that the mother, has other savings. I do not find that the mother at the time of the purchase had significant capital which could have been used to greatly reduce the level of borrowing, although it would be right to say that she could have chosen to delay some of the other considerable expenditure to a later date and done so gradually. I would not have been able to reach the above conclusions, in a better informed manner, without sight of the August 2018 Bank Statements which I ordered to be disclosed. It is a pity that the mother chose not to disclose the same voluntarily. Again, it being her decision to move home three times after the initial rental in the development, it is clear that if some of this capital had not been used to fund the same, it could have been applied to increase the size of down payment and thereby slightly reduce the monthly borrowing payments.

78. Especially during 2013 and during her time in her employment which commenced in August 2013<sup>31</sup> it is understandable that the mother would have had to use some of her capital. Even after she started with the Bank, up until June 2017, her salary was only \$60,000 and again it is understandable that she had to 'eat into' her capital including to a lesser degree the proceeds from the sale of the EB property, especially after the spousal

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<sup>31</sup> See paragraph 49 above



maintenance came to an end. Despite this, it does appear, in the absence of evidence from her verifying the reasonableness of her day to day expenditure post the Order, that the mother has been unrealistically living above her income means, in fact, her current outgoing schedules, if accurate, clearly illustrates that.

79. The mother will have to address and tailor her expenditure accordingly moving forward, especially now that her outgoings on the children are significantly reduced due to them being away at school. Despite that, and her expenditure on setting up the new home, I am not satisfied that her financial management is such that the Court should depart from the normal approach when trying to adduce what proportion of the mortgage/strata element of the household expense should be regarded as overlapping a benefit of the child when considering the level of child maintenance to be paid for X. However, when determining what would be an appropriate proportion for this overlapping responsibility which still persists for certain expenses even in the absence of the children, I cannot disregard the fact that the mother's choices about her day to day expenditure and accommodation has resulted in over use of her capital and has increased the level of borrowing that she has committed to. I also cannot disregard the fact that the major part of these capital commitments primarily benefit her and that the overlap proportion for the children in this family's circumstances is low.

80. With the above in mind, I will now turn back to the mother's Household Expenses Schedule and the items which I have found, in paragraph 57 above, to be overlapping expenses and go on to consider what a reasonable figure for each item is and what amount of that figure should be regarded as the overlapping child expense. When carrying out the calculations as best I can, a difficult and imprecise exercise as



highlighted in the above-mentioned extract from Butterworth<sup>32</sup>, a number of the figures have been rounded up and I have also rounded up on some items (especially the ones that have monthly bills) and had regard that the time that X may spend with the mother would be no more than two months per annum, although I accept that it may well be less than that.

<b>Household Expenses</b>	<b>Per month (CI\$)</b>
Mortgage (A)	4,800.00
Strata (A)	760.00
Home insurance (A)	<u>200.00</u>
<i>Sub-total:</i>	<i>5,760.00</i>
<b>Overlap amount for X</b>	<b>500.00</b>
Home maintenance (A) ( <i>mother's figure reduced</i> )	350.00
Home furniture/furnishings (A) ( <i>mother's figure reduced</i> )	<u>250.00</u>
<i>Sub-total:</i>	<i>800.00</i>
<b>Overlap amount for X</b>	<b>75.00</b>
Car maintenance, service and licencing (A)	104.00
Car Insurance (A)	<u>83.33</u>
<i>Sub-total:</i>	<i>187.33</i>
<b>Overlap amount for X</b>	<b>25.00</b>
Electricity - ( <i>Mother's figure reduced and rounded up having regard to average figure from submitted bills/bank statements</i> )	350.00
<b>Overlap amount for X</b> ( <i>for 2 months 1/3<sup>rd</sup> \$700 = \$233 - divided by 12 months = \$18 rounded up</i> )	<b>18.00</b>
Food/household/boys' toiletries	1,200.00
<i>(Although the father stated in his oral evidence that he felt this figure to be too high, the Scott Schedule attached to the father's Closing Written submissions does not seek to challenge the amount but approaches the calculation for the children on a \$20/child per day basis for 50 days giving a total of \$83.33 - I am satisfied that this is a fair means of reaching a figure under this head )</i>	
<b>Assessed overlap amount for X</b>	<b>83.33</b>

<sup>32</sup> See paragraph 33 above.



Petrol	120.00
<b>Overlap amount for X</b> (for 2 months 1/3 <sup>rd</sup> of \$240 = \$72 – divided by 12 = 7 (rounded up))	<b>6.00</b>
<b>Pharmacy X</b> - (Mother's total figure of \$50 reduced <sup>63</sup> )  (This could actually have appeared in the schedule for just the children's expenditure- although the father says these are purchased at the school and paid for by him I am satisfied that the mother is entitled to and also purchases such items in her role as a mother )	<b>10.00</b>
Water - (Mother's figure reduced and rounded up having regard to average figure from submitted bills/bank statements)	200.00
<b>Overlap amount for X</b> (for 2 months 1/3 <sup>rd</sup> of \$400 = \$120 – divided by 12 = \$10/month (rounded up))	<b>10.00</b>
UK TV Box subscription	31.67
<b>Overlap amount for X</b> (for 2 months 1/3 <sup>rd</sup> of \$64 = \$21 – divided by 12 = \$2/month (rounded up))	<b>2.00</b>
<b>TOTAL of overlap for X (rounded up)</b>	<b>\$730.00</b>

81. The holiday figure of CI\$5,000 in the original household table has been removed. The mother stated that she spends roughly this amount to take the children to the Sister Islands for their annual holiday. In the Scott Schedule filed on behalf of the father this is characterized as being a boys' expense and it was suggested that it not be regarded as being a household expense. The father in his evidence recognised the importance of this annual holiday to the children and did not seem to question the amount or that he would not meet that expense. When compared with the amount that he spends on vacations, I am content to order that he covers this expense. I am content to give the parties an option when they draft the final order, either (i) (for jurisdictional reasons, only if both parties consent) the father pays it by a payment to the mother of CI\$5,000 by a set date each year

<sup>33</sup> The mother's figure of CI\$50 is reduced by this Court to take into account that there is no child overlap in relation to the expense for the mother's pharmacy, her pharmacy needs are assessed as being \$30 of the \$50 claimed in her Household Expenses Schedule. The \$10 figure arrived at is 50% of the \$20 figure assessed as being the total amount overlapping figure for X and Y.



for the holiday or; (ii) it will be added to the monthly periodical payments at a rate of an extra CI\$417 per month. It will cover both boys and the mother's holiday expenses and the father's contribution, hitherto made voluntarily, to them.

82. The mother's second schedule, set out below, lists her personal expenses totalling \$1,363.16. I have regard to this when considering the mother's disposable income and her ability to pay her fair share to meet the children's needs, but the father is not responsible for meeting these personal expenses.

<b>The Mother's Expenses</b>	<b>Per month (CI\$)</b>
Lunches – work week	250.00
Phone/mobile data	300.00
The mother's social spending/hair/treatments/dry cleaning	500.00
Bank charges	40.00
The mother's clothing	200.00
Gym membership	40.00
New prescription glasses	33.16
<b>TOTAL:</b>	<b>\$1,363.16</b>

83. The mother's third schedule, set out below, lists the children's expenses totalling CI\$1,216.13.

<b>Boys' Expenses</b>	<b>Per month (CI\$)</b>
iTunes subs/movies	61.16
Netflix	15.99
Xbox (Y)	9.99
Amazon	12.99
Boys' clothing	200.00
Travel and accommodation to visit the boys	416.00
Boys' gifts (Christmas, birthdays and general)	500.00
<b>TOTAL:</b>	<b>\$1,216.13</b>



84. I accept the father's evidence that the iTunes, Netflix, Xbox (Y), Amazon expenditure is being double accounted, as they are paid directly on the children's debit cards which are funded by the father. The nature of these online accounts, subject to copyright about some of the content, enable the children to use them when they are at school and when they are at home.
85. I do not agree with the father that just because the children have the capacity to buy clothing using their debit card which is funded by him that the mother should not be expected to and or be entitled to purchase clothes for them. As already mentioned herein, this is part of parenting and each parent should be able to participate. I am satisfied that a budget of CI\$100 per month for X (50% of the \$200 claimed by the mother for both children) is a reasonable amount.
86. In the Scott Schedule the father challenges the mother's claim that CI\$6,000 (CI\$3,000 per boy) is a reasonable amount for purchasing the boys gifts and some general items, he feels that the appropriate sum is CI\$5,000. I agree, and assess the monthly figure for X at CI\$208.
87. Although the mother did not include it in this schedule, I deem it appropriate to delete the vague, and to a degree overlapping, claim in the mother's Household Expenses Schedule and regard it as falling under the Boys' Expense Schedule. I will treat it as being pocket money and ancillaries for the boys during the fifty days that they are with the mother at a rate of \$20 a day for each child, totaling \$2,000. This means that the amount for X will be \$83 per month.



88. This gives an assessed total for X the under the Boys Expenses Schedule of CI\$391 per month. This figure does not include the assessed figure for the mother's visits to see X at his school which was assessed at CI\$324 per month.<sup>34</sup>
89. The global figure for X's monthly needs assessed to be arising in the mother's budget are CI\$391 per month plus the assessed total overlapping amount of CI\$730.00<sup>35</sup> from the Household Expenses Schedule. The total for X is therefore \$1,121. This figure does not include the assessed figure for the mother's visits to see X at his school which was assessed at CI\$324 per month<sup>36</sup> nor the holiday provision assessed at \$417 per month.<sup>37</sup>
90. The mother contends that she has no disposable income.
91. When one looks at the mother's outgoings under the heading: Household Expenses, there are areas where she could make savings.

Household Expenses	Per month (CI\$)
Mortgage	4,800.00
Strata	760.00
Water ( <i>reduced from 350</i> )	200.00
Electricity ( <i>reduced from 400</i> )	350.00
Food/household/dog food/boys' & Mother's toiletries ( <i>reduced from \$1,200 on basis that \$900 is reasonable for 10 months and \$1,200 for two months is reasonable to budget for the boys stays – the mother also budgets for \$250 for lunch each month in her personal expense table</i> ).	950.00
Dog grooming	25.00
Helper ( <i>luxury expense</i> )	600.00

<sup>34</sup> See paragraph 16 above.

<sup>35</sup> See paragraph 80 above.

<sup>36</sup> See paragraph 17 above.

<sup>37</sup> See paragraph 81 above.



Cash withdrawals <i>(is vague – moved to Boys’ Expenses Schedule and treated as boys’ school vacation pocket money)</i>	-
Car maintenance, service and licencing	104.00
Car insurance	83.33
Petrol	120.00
Life insurance	418.15
Pharmacy (X, Y, the mother)	50.00
Home maintenance <i>(reduced from \$500)</i>	350.00
Home insurance	200.00
Home furniture/furnishings <i>(reduced from \$500)</i>	250.00
Credit Card payments <i>(claimed at \$1,000, but is double accounting as is used as way to pay other expenses set out)</i>	-
Legal fees	1,500.00
UK TV Box subscription	31.67
Annual PO Box rental fee	23.58
Holiday (father accepts this figure)	500.00
<b>TOTAL:</b>	<b>\$11,315.58</b>

92. The mother could chose to make a saving on her helper who she now pays \$600 a month. It is not clear when her legal fees payments will come to an end. The mother, if she chose to do so, could also cut down on her social spending/hair/dry cleaning put at \$500 per month in her Personal Spending Table and her phone/mobile data at \$300 per month.
93. The mother’s assessed average monthly income, including bonuses and Y’s, maintenance, but excluding any maintenance for X is CI\$11,683 per month. The mother’s assessed outgoings (not including visits to the boys’ school or the \$5,000 annual

holiday claim) are:



Household expenses (assessed by Court at)	11,315.58
Personal expenses (assessed by mother at)	1,363.00
Boys' expenses (assessed by Court at)	782.00

**Total: CI\$13,460.58**

This leave a monthly shortfall of \$1,777.58

### Conclusions

94. Great reliance has been placed by the mother on the content of the *AK v TK* ruling which was upheld by the Court of Appeal. I entirely endorse the mother's submission concerning the approach and guidance given in that case concerning overlapping expenditure in a household budget. However, it would be wrong to place any reliance on the amount of child maintenance ordered in *AK v TK*, even putting aside the Court of Appeals view that the level was "*a little generous*", as each case turns on its own facts. In that case the order was made on the basis that the two children should be living in the mother's home for six months per annum and not only for 5-8 weeks. In addition in that matter the children attend private school in the Cayman Islands where the school fees and associated education costs met by the father were substantially less than the costs for the father to send X and Y to boarding school in the USA. Although the father's income in the current matter is greater than that that enjoyed by the father in *AK v TK*, the mother's assessed salary is also greater in the present matter.



95. The Court must not disregard the significant non-education expenses that the father has paid and will continue to meet pursuant to the terms of the Order<sup>38</sup>. He is already paying CI\$137,628 for the children, meeting almost every major expense. The mother's financial responsibility is limited to the time when the children spend 50% of their school vacation time at her home with some extra expenditure when she visits them at their school or if she wishes to send them clothing or toiletries. It is quite right that, despite the fact that the father is paying for all of the other child expenses, due to the parental income disparity he should continue to make a contribution to the overlapping household expenses having to be met with the mother, primarily when the children are with her but also when they are away to maintain a home for them to visit.

96. Both parents are expected to contribute to the upkeep of their children, even if there is a disparity in their income. The mother has an income of CI\$10,834 (CI\$11,683 per month including the periodical payments for Y) and with such an income would be expected to contribute. If the mother were to receive CI\$850 per month for Y this would reduce the shortfall to CI\$927<sup>39</sup>. There are some areas where the mother could make some savings in her outgoings.<sup>40</sup> In reality the mother's resulting small (when considering the size of her salary) contribution to meeting the children's financial needs, primarily in the short period of 7-8 weeks when they are with her, would be dwarfed by the father's contribution which would amount to CI\$139,328 per annum. As already highlighted the mother received significant capital in 2013 and made a good profit from the sale of the EB property. Although recognising that she did have a low income initially and would need to utilise reasonable sums from that that capital, her financial choices have led her to

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<sup>38</sup> For the current academic year (2019/2020) the father has also had to pay an additional \$60,000 to Y's former school in the USA.

<sup>39</sup> See paragraph 93 above.

<sup>40</sup> See paragraph 92 above.



depleting that capital and recently committing herself to high longer term capital expenses. As already highlighted the children are with her for such limited periods of time, and she cannot expect the father to be responsible for meeting her capital expenses which are primarily for her long term benefit, although an element of the overlapping with X's financial needs has been taken into account, and certain expenses apportioned to the father even for the period when X is away at school.

### **Order**

97. Accordingly, I vary the Order to reduce the base child maintenance order for X to CI\$850 per month.
98. In addition, on the basis that then mother will now bear the financial responsibility for all of her trips to visit the children at their school I add an additional CI\$324 per month<sup>41</sup> to the base child maintenance, bringing the total up to CI\$1,174 per month.
99. I also give the parties the option of agreeing that the father will provide the mother with CI\$5,000 per annum towards holiday expenses, but in the absence of any such agreement, then a sum of CI\$417 will be added each month to the base child maintenance for X making a monthly figure of CI\$1,591. The bulk of the holiday cost is for accommodation in the Sister Islands which Y would also benefit from, I do not deem it necessary to apportion this separately for Y and X and it is intended that this global sum will cover the father's ordered contribution to meeting the children's holiday expenses, which I regard as being a need for them. The order of course does not prevent the father from providing additional sums to the mother if he deems it to be in X's best interest.

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<sup>41</sup> See paragraph 17 above.



100. If the parties take the \$5,000 per annum payment option, then I order that the periodical payments provision in the Order will be varied downwards to C\$1,174 per month. If they do not go with that option, then I order that the provision in the Order will be varied downwards to CI\$1,591 per month.

101. I have carefully reviewed the father's application for the backdating of the variation. I have a wide discretion as to whether that should be done. I am not satisfied that would be appropriate in this case as it would require the mother to struggle to find additional sums from her dwindling capital to meet that sum. That may well prevent the mother from being able to meet X's (and Y's) needs in the short term and even longer term and, as X's needs are my first consideration, I do not backdate the order. The variation in the level of child maintenance will take effect from the first payment date following the circulation of the signed copy of this Judgment. In this case, I am also conscious that the mother took a sensitive approach to backdated maintenance payments that were arguably due to her in 2013<sup>42</sup>, and one might hope that the father, when he considers this Court's approach to backdating, has that in mind.

### **Costs**

102. Although in paragraphs 70 and 71 in the mother's Written Closing Submissions she seeks an order for the father to pay her costs, neither party has made substantial submissions concerning costs.

103. My preliminary view, having regard to the terms of my order, is that neither party should be regarded as being the successful party in this matter. In addition, due to my ruling in relation to disclosure from the mother at the hearing and the nature of the disclosure

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<sup>42</sup> See paragraph 6 above.



actually ordered by McMillan J, my preliminary view is that neither party should be regarded as being the successful party in relation to the father's Disclosure Summons that came on before McMillan J on 15 November 2019 when he reserved the costs of the Summons.

104. Although my preliminary view is I that there should be no order as to costs, I still afford the parties the opportunity to formally apply. If a party seeks a different order as to costs then he/she is to file and serve a Summons no later than 14 days after the date of circulation of the signed copy of this Judgment.

#### **Footnote**

105. I note that for an application of this nature, even with the various legal arguments raised, each party's costs are disturbingly high and disproportionate with the actual issues involved in a variation in child maintenance case where the primary issue is whether payments should be reduced from CI\$2,500 per month to CI\$850 per month. The mother's Form A and Form B dated 27 December 2020 place her estimated costs at CI\$20,280 and the father's Form B dated 14 January 2020 put his costs at CI\$33, 239.50.
106. It is again worth repeating the following contained in my judgment handed down on 12 September 2017 in the variation of child maintenance case, of **SD v AL** Fam 145 of 2006:

*"31.I accept that this is not a big money case, but as a great deal of money and time has been squandered on these proceedings, I again share the sentiments of Munby J. **KSO v MJO & Ors** [2008] EWHC (Fam) 3031 when he stated:*

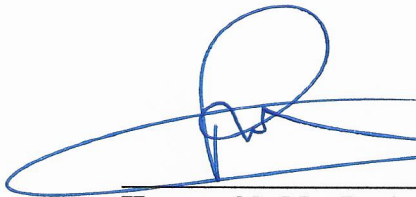
*"The picture is deeply dispiriting. And it is not as if it is only the adults who suffer from the consequences of such folly. The luckless children do as well. The present case is a sobering, and for me deeply saddening, example. If, instead of spending – squandering – over £430,000 in costs,*

*the wife and the husband had been able to resolve their differences at a more modest and, dare I say it, more seemly level of costs, there might very well have been enough left in the matrimonial 'pot' to house the wife and children and to enable the children to remain at their school, whilst still leaving something more than a mere consolation prize over for the husband. ....the mother and the father, for that is what they are – are faced now with the wretched and thankless task of trying to explain to their daughters how it has all come to this.”*

32. I also draw attention to the following remarks of Jackson J. in *TF v FF* [2013] EWHC (Fam):

*“In my view, the court has a responsibility to discourage currently profligate wasted costs, particularly in a case with a track record like this. It is a matter for each party to decide what they want to spend, but they cannot expect it to be recoverable if it exceeds that threshold.”*

107. I hope the parties keep the above in mind if they seek to litigate this matter further in the future.



**Honourable Mr. Justice Richard Williams**  
**Judge of the Grand Court**

