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

3 **CAUSE NO. FAM 105 OF 2014**

4 **BETWEEN:**

5 **D. H.**

6 **PETITIONER**

7 **AND:**

8 **B. W**

9 **RESPONDENT**

10 **IN CHAMBERS**

11 **Appearances:** **Petitioner represented by Ms Natasha Bodden instructed by**
12 **Sonia Bush & Associates**

13 **Respondent represented by Ms Sheridan Brooks, QC**
14 **instructed by Brooks & Brooks**

15

16 **Before:** **Hon. Justice N Hall (Actg.)**

17

18 **Judgement Delivered:** **2 November 2018**

19

20

JUDGMENT

21

22 **Background**

23 1. The parties were married on December 23, 1999 and a Petition for Dissolution
24 of Marriage was filed on June 4, 2014. This Petition was proved on July 3,



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1 2014. While there were three children of the marriage there remains only one
2 minor, J born on September 1, 2004.

3
4 2. The Petitioner/Wife had obtained an Ex-parte Occupation Order against the
5 Respondent/Husband on December 31, 2015 excluding him from the former
6 matrimonial home. This Order was discharged on April 12, 2016 on the basis
7 that the Respondent/Husband deposed that he had no intention of returning to
8 occupy the former matrimonial home with the Petitioner/Wife until final
9 resolution of ancillaries. He was however permitted access to the property for
10 the purpose of operating his farm which is located there until further Order of
11 the Court. He always denied the allegations of abuse/violence made by the
12 Petitioner/Wife.

13
14 3. The matters raised by the Petitioner/Wife on ancillaries were as follows:

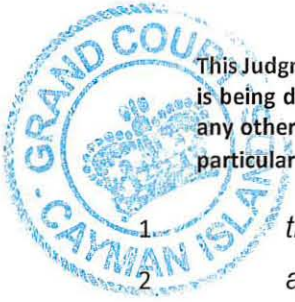
- 15 1. The Child of the marriage;
- 16 2. The Former Matrimonial Home;
- 17 3. Vehicles;
- 18 4. Farm: Animals & Plants;
- 19 5. Bank accounts;
- 20 6. Pensions;
- 21 7. Spousal Support.



22
23 **The Law**

24 4. The applicable legislation is found in sections 19, 20 and 21 of the Matrimonial
25 Causes Law (2005 Revision). These provide as follows:

26 *"19. In dealing with all ancillary matters arising under this Law, the Court shall*
27 *have regard first of all to the best interests of any children of a marriage and*



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1 *thereafter to the responsibilities, needs, financial and other resources, actual*
2 *and potential earning power and the deserts of the parties.*

3 20. *The Court may make orders pending the outcome of any suit in respect of*
4 *which a petition has been presented providing for –*

5 (i) *the care and control of the children of a marriage;*

6 (ii) *the use of the matrimonial home;*

7 (iii) *periodic payments to be made by one party to another pending suit;*

8 (iv) *an injunction for the protection of settled and other property in which either*
9 *spouse claims an interest;*

10 (v) *the protection of one spouse from interference by the other; and*

11 (vi) *security for costs.*

12

13 21. *At the time of pronouncing a decree under this Law, the Court shall, as*
14 *appropriate, make orders for –*

15 (i) *the custody, care and control of the children of the marriage;*

16 (ii) *the disposition of matrimonial property, including the matrimonial home;*

17 (iii) *varying any settlement of the property of the spouses made in consideration*
18 *of the marriage, whether such settlement was made before or upon the treaty*
19 *of the said marriage;*

20 (iv) *varying any other settlement of matrimonial property;*

21 (v) *making financial provision from the property of either spouse for the children*
22 *of the marriage and for the other spouse;*

23 (vi) *providing for periodic payments to be made by either spouse for the benefit*
24 *of the children of the marriage and for the other spouse; and*



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(g) costs.”

The Child of the Marriage

5. The child of the marriage currently resides in the former matrimonial home with the Petitioner/Wife who seeks a Sole Residence Order for the child with liberal contact to the Respondent/Husband. For his part, the Respondent/Husband seeks a shared Residence Order. He expressed the desire to participate fully in the further upbringing of the minor child of the marriage.
6. The Respondent/Husband argued that the Petitioner/Wife obtained the ex-parte occupation order as a tactical manoeuvre and not as a result of a genuine need for same. The timing of this order, he submitted, was meant to ensure that he suffered maximum embarrassment and that he would be unable to spend the holiday season with his children.
7. The Respondent/Husband pointed to statements made by the Petitioner/Wife about the state of her health as being relevant to the issue of custody of the minor child of the marriage. In contrast to her position when the Petition was filed, the Petitioner/Wife is no longer employed as an Assistant Teacher by the Cayman Islands Government. She produced documentation to establish the nature of her illness and indicated that she had been “medically boarded”. The Respondent/Husband raised challenges to the currency of the medical documentation provided.
8. The Respondent/Husband pointed out that the Petitioner/Wife gave no indication about whether or not she received any financial benefits or compensation upon her departure from employment with the Government of the Cayman Islands. He also challenged the details provided concerning her assertion that she was able to do light duties which included conducting a baking business.



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9. While it was not specified in her position statement, in her affidavit of means, the Petitioner/Wife had sought financial assistance including an interim maintenance amount of \$250 per week for the child of the marriage.

10. The Respondent/Husband challenged the expenses put forward by the Petitioner/Wife. He argued that her affidavit of means showed that she had a monthly excess of expenditure of \$3312.73 which would amount to a running debt of \$39,752.76 per year. It was submitted that there was no documentation in support of this allegation.

11. The Petitioner/Wife was also criticized for taking out a car loan of \$31,000 in January 2016 leaving her with a monthly debt of mortgage and insurance of \$702.66. This debt apparently accrued at the time when based on her claims, she already had a shortfall of over \$3000 per month. It was argued that it was very unlikely that she could qualify for such a car loan with that much excess monthly expenses.

12. Additionally figures were given for the minor child's attendance at private school, clothing, school trips, lunch money, art classes and music lessons which amounted to a total expenditure for the child of \$1590 per month. It was argued that this was without consideration of her food from groceries or necessary personal items. It was submitted that some of these expenses for the child would have to be abated. At the time of the hearing it was stated that the child was presently enrolled in public school but that the Petitioner/Wife wanted her to return to private school. She also wanted the Respondent/Husband to pay for the child's music fees because the child had a special gift for music.

13. It was submitted by the Respondent/Husband that he earned \$51,761.00 per annum from which \$297.70 was deducted monthly for family health insurance. His net monthly salary was therefore \$4015.72 and not \$7,000 as the



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Petitioner/Wife argued. It was submitted that while he previously had additional income from farming and selling produce, he could only do this on a limited basis due to the Petitioner/Wife's occupation order. He was unable to provide documentation regarding his income from these sources due to his exclusion from the former matrimonial home in which he kept any and all receipts and documentation in relation to these transactions. The Petitioner/Wife having exhibited some of these, established that she had access to them.

14. The Respondent/Husband stated that he paid the entirety of the mortgage payments for the former matrimonial home. In contrast to the request of the Petitioner/Wife, he submitted that \$800 per month in maintenance would be a reasonable sum for him to pay for the minor child while continuing to be responsible for his children's medical, dental and optical health insurance coverage.

15. The Court's only hesitation when awarding custody would involve any perceived unfitness on the part of any parent. While the Petitioner/Wife made allegations about abusive behaviour on the part of the Respondent/Husband, he always denied this. The matter was never properly ventilated because a Consent agreement about the occupation of the former matrimonial home was arrived at by the parties.

16. The Petitioner/Wife submitted that on the basis of maintaining the status quo, she should have a Sole Residence Order for the minor child of the marriage with liberal contact to the Respondent/Husband. This submission, seems to strengthen the position that there is no danger to the minor child from the Respondent/Husband. At the same time, the Respondent/Husband makes a strong point that if the health of the mother is as severely impaired as she has stated, it would not be best for the child to be under her sole care.



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17. With respect to finances, normally both parents share the educational and medical expenses for the children of the family. In this case, the responsibility will lie solely with the Respondent/Husband. In those circumstances, the award of maintenance for the child will be slightly less than that which was requested by the Petitioner/Wife.

18. Consequently, a Joint Residence Order is made for the minor child of the family. Additionally, The Respondent/Husband is ordered to pay the sum of \$800 per month in maintenance for the child.

The Former Matrimonial Home

19. The main area of dispute involved the former matrimonial home which is located at 35 Raven Avenue, Savannah, Grand Cayman.

20. The property is registered at Registration Section Spotts Block 25C Parcel 147 in the names of SW (3/4 share); SW, BW (the Respondent/Husband) and EM (1/4 share) as Tenants-in-Common.

21. According to the Petitioner/Wife, her mother-in-law, SW had told her on the day after the wedding that she would be gifting the entire five acres of property to her son and herself. It was conceded that a transfer was made six months after this but the Petitioner/Wife stated that she was unaware that her name was not listed as one of the transferees. She claimed that the Respondent/Husband told her that he and she were both the legal owners of the property and that it would be left to them once his mother passed away.

22. The Petitioner/Wife stated that it was after this that she and the Respondent/Husband started to build their matrimonial home on the property. She detailed the physical work that she put into the project and mentioned that she baked and sold items to make ends meet. She also claimed that she was aware that a mortgage was obtained to finish the home but that she left it up



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to the Respondent/Husband to arrange the mortgage. She claimed that it was some years later that she learned that her sister-in-law's name had been added to the Register as a joint proprietor. She claimed that she was unaware that her name was not on the Register.

23. The Petitioner/Wife also claimed that she was unaware of the extent of the mortgage loan obtained against the property. She claimed that the Respondent/Husband took care of all the monetary transactions for the property including for appliances that she selected for the home.

24. There is no dispute that the property in question had always belonged to the Respondent/Husband's family. It had been owned by his grand aunt LT and she subsequently transferred a share to his mother SW and the two owned the property as joint proprietors. The death of LT was subsequently noted on the Register. The Respondent/Husband's name was thereafter added as a joint owner and then subsequently also his sister EM.

25. Evidence was disclosed that on or about October 18, 2000 after the Respondent/Husband's name had been added to the Register, a mortgage was secured in the sum of \$41,841.15 to commence building a home on the property. On November 20, 2002 when his sister's name was added to the title this amount was increased to \$219,000. Subsequently in December 2006 the mortgage was increased to \$265,000.

26. It was Respondent/Husband's position that the mortgage had never been in his sole name and the Petitioner/Wife had never been responsible for paying the mortgage.

27. The Petitioner/Wife claimed that the Respondent/Husband colluded with his mother and sister to thwart her interest in the matrimonial home.

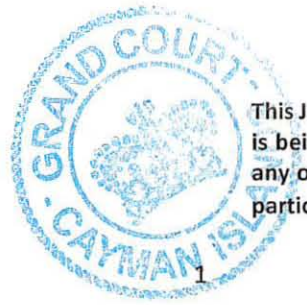
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1 28. Both parties referenced a valuation report dated July 2014 obtained by the
2 Respondent/Husband. The opinion given therein was that the market value of
3 the property was \$1,091,000. This figure reflected the Sales Comparison
4 Approach. The land is valued at \$727,000. The same report also showed a
5 valuation of \$1,176,000 which was based on a Depreciated Replacement Cost
6 Approach. That approach showed the same value for the land and an
7 estimated Replacement Cost of the Building which was stated to be \$413,890.
8

9 29. The Respondent/Husband concluded that his legal interest in the property is
10 one third of a one quarter share in the property. He submitted that he had made
11 no contribution to the acquisition of the land on which the matrimonial home
12 stands and as such he separated the value of the said land from the value of
13 the house. He valued the building at \$364,000 (\$1,091,000-\$727,000). He
14 based his calculation of his share in the former matrimonial home using that
15 method of calculation. For her part, the Petitioner/Wife put forward a much
16 higher valuation although both parties made reference to the same valuation
17 report. The Petitioner/Wife referenced the Replacement Cost of the Buildings
18 of \$413,890 and claimed half of this sum.
19

20 30. The Petitioner/Wife claimed that she had an incurable illness which affected
21 her lungs causing her to be medically boarded. Further she stated that she
22 could not qualify for a mortgage at her age and that following the matrimonial
23 proceedings she would have no place to live. Consequently, she sought to
24 reside in the matrimonial home until she passed with her interest then going to
25 her children or alternatively she sought a lump sum payment from the
26 Respondent/Husband of her interest in the matrimonial home to allow her to
27 purchase a home for herself and the minor child of the marriage.
28

29 31. For his part, the Respondent/Husband conceded that the Petitioner/Wife was
30 entitled to one half of his share in the property. He submitted that at the date
31 of separation, the outstanding amount on the mortgage was \$167,000.
32 Therefore on that date the full equity in the home would be \$197,000 for the



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three owners. He calculated his share in the equity as \$30,321.20. He submitted that the Petitioner/Wife's share as at the date of separation would be \$15,160.60. Using those figures, he submitted that he was prepared to pay her the total amount of his share in the equity of the home subject to his obtaining financing.

32. The Respondent/Husband sought a Declaration that upon payment to the Petitioner/Wife as suggested, she would vacate the former matrimonial home.

33. It is interesting that in their approaches, both husband and wife referenced the value of the building to assess their share of the property. The land itself appears to be excluded from consideration.

34. While the documentation is not entirely clear, it would appear that by the Transfer dated 13th July 2000, the Respondent/Husband and his mother became joint proprietors of the entire property. Thereafter by Transfer dated 1st November 2002, the ownership of the property became that which it is today, with the Respondent/Husband's share dramatically decreased. No issue was taken about this detail, possibly because of the attachment of the mortgages soon after each Transfer.

35. Also while there were submissions alleging collusion between the three legal owners, no evidence was adduced on this point. Thus legal ownership stands as endorsed on the Register.

36. I am persuaded by the authority of ***Josslyn Sainz-Ebanks v James Ebanks & Dorothy Cruz FAM 2 of 2012***. This was a decision of the Honourable Chief Justice, Anthony Smellie QC wherein he recognized the principle that where property was conveyed into the joint names of parties there was a prima facie case that both the legal and the beneficial interest in the property were joint and equal. The onus of proof lay upon the party seeking to establish that equity should not follow the law, and that the parties held a common intention that



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their beneficial interests be different from their legal interests. In order to discern the parties' intention, the Court should look to the parties' whole course of conduct in relation to the property.

37. The contribution of the Petitioner/Wife to the building of the former matrimonial home is acknowledged and accepted by the Respondent/Husband. The former however seeks a division of the value of the property which would affect the legal shares of her mother-in-law and sister-in-law.

38. This was a long marriage and there is no basis to depart from the established principle that the starting point for the division of matrimonial assets should be on the basis of equality. Equality should only be departed from for good reason.

39. Using the July 2014 Report accepted by both sides I consider that a proper valuation of the entire property is based on the market value which is \$1,091,000. The Respondent/Husband's share of this property is one third of one quarter of the equity value.

40. The Transfers do not make a distinction in ownership of the land and building and for the avoidance of doubt, I find that the Respondent/Husband's share is one third of one quarter of the entire property.

41. The Petitioner/Wife's assertion that the behaviour of the legal owners and abusive behaviour by the Respondent/Husband entitled her to a departure from the equality principle, is rejected. Further, there was no evidence adduced from which the Court could conclude that the interests of her mother-in-law and sister-in-law should be disturbed.

42. Clearly, the Petitioner/Wife is entitled to one half of the Respondent/Husband's share in the property and she is awarded this.

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1 43. It was submitted previously that at the date of separation, the outstanding
2 amount owed on the mortgage was \$167,000. This reduced the total equity in
3 the property to \$924,000. The quarter share owned by SW, the
4 Respondent/Husband and EM would then be valued at \$231,000. The value
5 of each party's share would then be \$77,000.

6
7 44. The value of the Petitioner/Wife's half share is \$38,500.00.
8



9 **Pensions**

10 45. The Respondent/Husband submitted a statement showing his pension balance
11 as at 31 December 2016. This sum was \$119,252.15. For her part the
12 Petitioner/Wife produced statements showing her pension balance as at 31
13 December 2015 of \$64,462.93. The Petitioner/Wife applied for half of the
14 Respondent/Husband's pension funds.

15
16 46. As set out in *P.H.R.S. v S.D.S. [2004-05 CILR Note 11]*, a pension is a family
17 asset. The inference which is usually drawn is that the party contributing to a
18 pension scheme did so with the intent and for the purpose of benefiting his or
19 her family members.

20
21 47. The contributions of both parties must be placed in the pot. As submitted by
22 Counsel for the Respondent/Husband the combined pension value for both
23 parties would be \$183,715.08. Divided equally, each would be entitled to
24 \$91,857.54.

25
26 48. The Respondent/Husband is required to transfer \$27,357.54 of his pension to
27 the Petitioner/Wife's pension plan to equalize their pension entitlements.
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29 **Bank Accounts**

30 49. The Respondent/Husband submitted his bank account statements. Most were

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1 in the joint names of himself, his mother and his sister and were clearly meant
2 to service the mortgage loans. He submitted two sets of statements which were
3 in his sole name but which showed very minimal balances.

4

5 50. The Petitioner/Wife made the allegation that the Respondent/Husband did side
6 jobs for which he collected cheques made out to him, then cashed them so as
7 to hide his financial position. She sought to rely on two exhibited cheques made
8 out to the Respondent/Husband as proof of this allegation. For her part, she
9 provided no banking details.

10

11 51. In the absence of any proof that either party had any significant banking assets,
12 it is ordered that each party must retain the benefit of his/her bank accounts.

13

14 Vehicles

15 52. The Respondent/Husband produced a certificate of vehicle ownership for a
16 2001 Toyota Tacoma which was registered in his name. The Petitioner/Wife
17 submitted in contrast, that he used matrimonial funds to purchase heavy
18 equipment which he then registered in his father's name. It was alleged that
19 this included a backhoe, excavators and a dump truck. It was submitted that
20 this equipment was then used for contractual work at various construction
21 locations although the Respondent/Husband was employed full-time to Water
22 Authority. He denied these allegations.

23


24 53. The Petitioner/Wife made reference in her documentation to a car loan and car
25 insurance payments but she did not provide any details about the vehicle to
26 which this was related. Given the state of the evidence under this head the
27 only reasonable order which can be made is that each party retain the benefit
28 of his/her own vehicle.

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Farm: Animals and Plants

54. The Petitioner/Wife submitted that the Respondent/Husband had cows and goats which were matrimonial assets and produced documentation showing payments to the Department of Agriculture and sales receipts in support of this contention. She argued that she was entitled to half of the value of these animals or a lump sum of \$10,000. In his disclosure he denied that this was the current situation and he has stated that he no longer did any farming.

55. The Court is satisfied that previously the Respondent/Husband was involved in farming with the maintenance of plants and animals and that he received an income therefrom. This however appears to have been brought to an end when he was barred from the property. There is no evidence of the present existence of any animals and he denies owning any. The highest that this evidence can be taken, is the recognition that the Respondent/Husband has a skill from which he can earn an income that he may choose to use in the future if there is a change in his circumstances.

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Income & Spousal Support

56. The Petitioner/Wife submitted that the Respondent/Husband earned more than \$7000 per month from working with the Water Authority as a heavy equipment operator. Reference was made to bonus packages which it was believed had been received but not disclosed. Further, according to the Petitioner/Wife, the Respondent/Husband did not disclose the side jobs which he did using heavy equipment or his income from the farm.

57. The Respondent/Husband submitted that his net monthly salary from the Water Authority was \$4015.72. The salary slips which he exhibited however showed a range that varied depending on the amount of overtime that he was required to perform each month. Additionally, the Petitioner/Wife produced proof of a bonus that he received on one occasion. Earlier in proceedings, the



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Respondent/Husband had admitted working on an ad hoc basis by assisting his father with his heavy equipment earning \$100 or \$200 monthly.

58. For her part, the Petitioner/Wife was no longer employed. She stated that she did some baking so as to receive an income but did not provide any details of such said income.

59. She went on to ask the Court to draw an inference of hardship caused to her due to physical abuse. She submitted that she had been deceived by the Respondent/Husband in respect of their matrimonial home and additionally suffered from stress and an incurable illness. She asked the Court to award her \$700 in monthly spousal support.

60. The evidence has established that the Respondent/Husband receives a regular monthly salary from the Water Authority although the monthly quantum varies. Additionally, he is a skilled farmer and when in possession of the "tools" required for farming, he can derive income from that occupation. These proceedings have not allowed the Court to estimate what such earnings would be. It was also accepted from the evidence that the Respondent/Husband can obtain additional income on occasion, by working with his father. Again, the value of these side jobs cannot be estimated.

61. The Petitioner/Wife's allegations of physical abuse have not been proved and consequently the inference of hardship that she invites the Court to conclude cannot be made.

62. Both parties have requested that the Court make orders allowing them to have a "clean break". This can best be achieved, by the awarding of a lump sum payment to the Petitioner/Wife rather than an order for monthly spousal support. This was a long marriage but there are not a great deal of liquid assets to utilize. I award the Petitioner/Wife the sum of \$30,000 to be paid by the



This Judgment was delivered in private, but the Judge hereby gives leave for it to be published. The Judgment is being distributed on the strict understanding that in any report no person other than the attorneys (and any other person identified by name in the Judgment itself) may be identified by name or location and in particular the anonymity of the child and the adult members of their family must be strictly preserved.

Respondent/Husband. No separate order for spousal support is made.

Conclusion

63. Based on the foregoing, the following orders are made in settlement of ancillaries.

1. A Joint Resident Order is made for the minor child J born on September 1, 2004. She will have contact with each parent on a flexible basis as she requires.
2. The Respondent/Husband must pay maintenance of \$800 per month for the minor child until she reaches the age of 18 years or completes full-time education up to the age of 21 years whichever is later. The first payment is to commence on 15th November 2018 and is payable on or before the 15th day of each month thereafter. Payments to be made to the Court Funds Office.
3. The Respondent/Husband shall pay the minor child's educational and medical expenses reasonably incurred until she reaches the age of 18 years or completes full-time education up to the age of 21 years, whichever is later.
4. The Petitioner/Wife is awarded one half of the Respondent/Husband's share in the former matrimonial home located at 35 Raven Avenue, Savannah, Grand Cayman and registered at Registration Section Spotts Block 25C Parcel 147.
5. The value of the Petitioner/Wife's share in the former matrimonial home is \$38,500. Upon payment of this amount to her she must vacate the former matrimonial home.

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1 6. The Respondent/Husband is required to transfer \$27,357.54 of his pension
2 to the Petitioner/Wife's pension plan.

3
4 7. Each party is to retain the benefit of his/her vehicles and bank accounts.

5
6 8. The Respondent/Husband is to pay the Petitioner/Wife the sum of
7 \$30,000.00.

8
9 9. No Order as to Costs.

10
11 10. Liberty to Apply.



12
13
14 Nova Hall

15 Nova Hall
16 Judge of the Grand Court (Acting).
17 2nd November 2018.