

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

CAUSE NO: FAM 183 OF 2017

BETWEEN:

AND



JS

Petitioner

WS

Respondent.

Appearances: Mr. Lawrence Aiolfi for the Petitioner
The Respondent in person

Before: Hon. Mr. Justice Richard Williams

Heard: 11 May 2018

Ex tempore Ruling: 11 May 2018

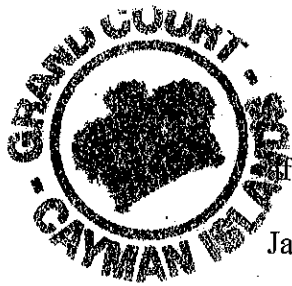
**Transcript of
Ruling circulated:** 11 May 2018

HEADNOTE

Family Law – Maintenance Pending suit for spouse – Interim child maintenance, including child education element

EX TEMPORE RULING

1. I have before me the Petitioner wife's Summons dated 16 January 2018. The Summons seeks an interim periodical payments order for the wife and for the children (N aged 6 and M aged 3) and is supported by her affidavit sworn on 16 January 2018 and her



Affidavit sworn on 2 May 2018. The Respondent husband has filed affidavits sworn on 18 January 2018, 27 April 2018 and 10 May 2018.

2. For convenience, and without intending any disrespect, I will refer to the parties as the husband and the wife.

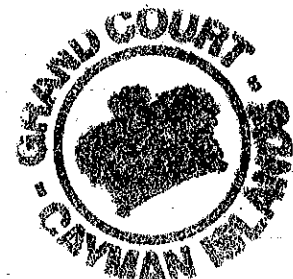
3. As befits such applications for interim orders, neither party has sought to give any oral evidence today or to cross-examine the other. After the parties made their submissions I retired to consider the detail before me to enable me to deliver an Ex Tempore Ruling. After reviewing the matter and considering the figures I invited the parties back into Court and I informed them about the findings I was making in relation to the funds available and explained the types of orders I was considering making. I did so to afford them the opportunity to comment upon the figures I was relying upon and the types of orders that I could make. It appears that they understood how I reached the figures that I had, although they may not have been for the amounts that they were seeking. They also appeared to recognise that disposable income, especially if N were to attend summer school, would not be sufficient to enable M to attend nursery school.

4. The Summons comes within proceedings for divorce initiated by the wife's Petition for Dissolution of Marriage dated 16 August 2017. The Petition was proved on 11 September 2017. Directions were given on 28 February 2018 in relation to the Children Law issues, which include an application by the wife for leave to remove the children permanently from the jurisdiction. The husband wishes the children to remain with him in the Cayman

Islands, presumably under a residence order. A referral has been made for a Court Welfare Officer's Report, which is due to be filed by 25 May 2018. A final hearing to determine the children issues is awaiting allocation of date by the Listing Officer. The Ancillary Relief hearing will be heard no sooner than six weeks after the conclusion of the Children orders hearing. With the above in mind, any orders made today may well be designed cover the needs of this family for a period of 4-6 months.

5. The husband is a 49 year old Canadian national. The wife is a 42 years old British national. The parties were married on 5 October 2008 and therefore it has been a medium length marriage. At this time, and likely until the conclusion of the proceedings, they and the children all reside in the matrimonial home.

6. The husband is currently in full-time employment. The wife does not work and the only income she receives is support from her parents or friends. Both parties are subject to roll-over in October 2018. The wife says that although she has enrolled with three employment agencies, she has not been able to find employment and this may be due to the roll-over situation. It is not clear whether the wife has made any investigations as to regularising her immigration status post-October 2018, this of course will be something she will need to address in the children proceedings and at the final ancillary relief hearing. The husband informs that he has met with an Immigration Consultant and has started to gather the information required for a permanent residency application which his employer has agreed to fund.



The Law

7. In any order I may make today I aim to bridge the gap up until the final hearing. Any order I make today is intended to be a temporary measure. Both parties should understand that today's order is not a final order and the Court in such circumstances, on the more limited evidence supplied and available at this early stage, only endeavours to put in place a fair holding order.

8. The parties should not see any order I make today as indicative of the final level of periodical payments or in fact whether any final order for spousal periodical payments is appropriate having regard to the clean break principle. The parties or their attorneys should not use any order made today as a yardstick.

9. As set out in s.19 of the Matrimonial Causes Law the Court shall have regard first of all to the best interests any children of the marriage, and then move on to consider the responsibilities, needs, financial and other resources, actual and potential earning power and deserts of the husband and wife. At this interim hearing after ascertaining the children's needs I will have concentrate on the parties' financial circumstances.

10. What I have to do is to take into account the income, outgoings and needs of each party as they appear at this time and make an order that will guide the wife over until the final determination whilst at the same time striving to minimise any hardship to the husband.



11. This is not a hearing for the Court to make findings about either party's credibility. In *Campbell v Campbell* (1998) 1 FLR 828, CA the approach commended was not to look in detail at the payer's budget but to see whether the maintenance was a fair proportion of his overall net income. The husband has indicated that his net income is \$6,085. Although the wife is willing to accept this figure for the purposes of this interim hearing, she has indicated that she believes he may earn more than that, and reserves her position in relation to the income as these proceedings progress. The Court will not uncritically accept what either party says is their financial position, if there is reason to believe that something has been hidden. In the matter before me today, there is no reason to believe that either party has not given sufficient disclosure for the interim issues before me to be determined.
12. The approach of the Court when considering maintenance pending suit for a spouse is succinctly stated, referring to the case of *T v T (financial provision)* [1990] FCR 169, [1989] Fam Law 438, at paragraph 4A [711] issue 90 Butterworth Family Law as follows;

“The primary aim of the court will be to make such an order, if possible, which will give a spouse certainly sufficient money to discharge the day-to-day outgoings and to feed, clothe and keep a roof over the head of that spouse until the final adjustments and orders are made in relation to the matrimonial assets and the finances after decree nisi. Where there are sufficient assets revealed by the parties the usual exercise for the court is to balance needs against resources and thus come to a temporary figure until the whole question of the division of the matrimonial property can be decided.”



13. **Nicholas Mostyn QC** then sitting as a Deputy High Court judge in *TL v ML* [2005]

EWHC 2860 (Fam) gave the following often referred to guidelines:

1. *The sole criterion to be applied is 'reasonableness' in accordance with section 22, which is synonymous with fairness.*
2. *A very important factor in determining fairness is the marital standard of living, although that is not to say that the exercise on a maintenance pending suit application is merely to replicate that standard.*
3. *In every maintenance pending suit application, there should be a specific budget for that application which excludes capital or long-term expenditure which should be considered at a final ancillary relief hearing. The budget should be examined critically in every case so as to exclude frenzied exaggeration.*
4. *Where the affidavit or Form E (in this jurisdiction affidavit as we do not ordinarily use Form E's) disclosed by the paying party is deficient, the court should not hesitate to make any robust assumptions about the ability to pay. The court is not confined to the mere say-so of the payer as to the extent of any income or resources. In such circumstances, the court should err in favour of the payee."*



14. When I consider this matter today, I am guided by and I apply the above legal principles.

The Parties' Positions

15. The wife seeks interim spousal maintenance totalling \$1,095. In reality this is a rolled up figure/order to include elements of maintenance to meet both her and the children's needs. It does not appear that the parties have any issue with the Court making a global maintenance figure. Ordinarily I prefer to make separate orders, but due to the way the case been presented and the interim nature of the orders, I am willing to make such an order. The wife does seek an interim child maintenance order, which is in effect an

education order, to meet M's nursery fees of \$1,195 per month and she seeks back payments.

16. It is evident that N is in full-time education and the parties have no issue with the husband meeting those expenses. In her affidavit sworn in January 2018 the mother indicated that in December 2017 the parties agreed that M should be removed from nursery care which was costing \$600 per month and she stated that:



"For as long as I'm not working I will care for (M) at home instead of sending her to nursery. However, if possible, I do believe she would benefit from some mornings at nursery/daycare to mix with other children. Whatever the expense of that may be it will certainly be less than the \$600 monthly that (the father) was paying for her nursery before."

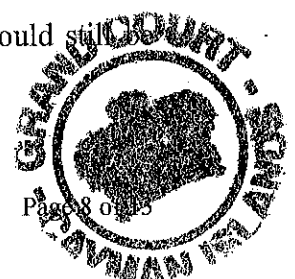
The mother also contended in the affidavit that the fact that as the \$600 per month nursery fees were no longer to be paid that the husband would be able to afford more than the \$600 per month maintenance then being paid.

17. However it appears that the mother unilaterally decided to place M back into full-time nursery in March 2018, she felt that M had been beginning to *"suffer through lack of socialisation with other children and needed exposure to a school environment"* and that M had *"flourished"* since being back at nursery. The wife indicates that she been able to make almost all of the monthly school fees payments of \$1,195 due to contributions from her parents and occasionally from friends. In his affidavit the husband questioned why the wife decided to send M to nursery when the family's income is so tight and that she was at home and able to care for M and he also highlighted that the wife has Montessori

school training. At the hearing the husband conceded that, as she was attending, it was in M's best interests to have some time at then nursery rather than a total cessation. Both parties seemed to agree that, if finances permitted, M should attend for at least two or three days per week. The Court was informed that it would cost around \$900 for three days per week, no figure was available for two days per week.

18. The husband prior to and during the hearing made no offer about what he felt to be an appropriate amount for interim spousal/child maintenance. He indicated that he had concerns paying sums over to the mother, and felt that she spent too much on alcohol and cigarettes. He was unable to quantify that alleged usage. As the parties are under the same roof, there is no issue with the husband paying the normal household expenses such as mortgage, strata fees and utility bills. However, in circumstances where the wife has no other relevant source of income, it is important that she has funds to function as a normal parent and spouse, by buying things for the household and for the children. These funds come from a maintenance order and it is not appropriate for the husband to physically meet all of the expenses himself, nor is it appropriate for the wife to have to plea with the husband for money each time she requires it. With this in mind, the Court will endeavour to allocate funds to her from the husband which will give her the dignity that a spouse requires and to play an active role in the household.

19. The wife's position is as set out in her affidavit. She has no income for the foreseeable future and this position may not change prior to the final ancillary relief order and the granting of the certificate for dissolution of the marriage. However, she should still



endeavouring to find work and if she does she is obligated to promptly notify the husband and provide him with details of her income.

20. During the hearing the husband went through his household monthly outgoings and they are as follows:

Mortgage	\$1,806
CUC	280
Water	75
Strata	450

These outgoings total \$2,611. At the current time there is no household expense for the internet. I am satisfied that the \$120 for Internet/cable is an appropriate basic household expense and I add it to the above to make a total of \$2,731. I am satisfied that these payments should be met by the husband, who should pay the above as and when they fall due, and this would reduce his available income to \$3,354. The husband has asked the Court to consider the historical arrears of strata fees (\$2,700), but it is evident that immediate recovery is not being sought by the Strata and therefore, for the purposes of interim orders, I do not take them into account.

21. In relation to further outgoings for him and the family the husband indicates the following:

Meals out	\$400
Children clothing	150



N's school tuition & summer camps	400
Medical	200
His hair/personal care	15
His recreation	150
Life insurance	150
Bank loan	360
Legal aid contribution	250



These additional outgoings total \$2,075. If these were accepted as suitable amounts, they would leave a balance of \$1,279 before groceries. It is agreed that \$1,000 would be an appropriate figure for the family's groceries and ancillary household items. This would then leave a balance of \$279, again, if the husband's figures were found to be appropriate. I should add that the parties agreed that the figure of \$350 for N's education/summer camps should remain as an outgoing obligation for the husband, although they may decide that over the summer that sum could be used to give M some time at nursery rather than N attending a summer camp. That would be a matter for them, and I afforded the opportunity to the parties to reach that conclusion when I called them in after my initial consideration of the evidence before me as mentioned earlier.

22. However on closer review, having regard to the fact that these are interim orders, there are reductions that can reasonably be made to the husband's outgoings. They are to be reduced to the following amounts:

Meals out	\$200 (to include meals out on work days)
Children clothing	50

N's school tuition & summer camps	350	(average figure taking into account that camp may be only \$300 per month)
Medical	100	
His hair/personal care	15	
His recreation	100	(including with the children)
Life insurance	150	
Bank loan	360	
Legal Aid contribution	250	



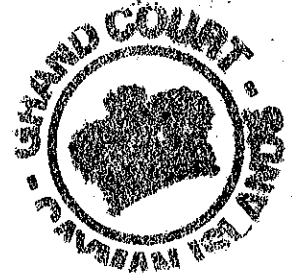
These outgoings amounted to \$1,575. Having regard to them only \$315 and \$250 (Legal Aid contribution) could strictly be defined as being for his personal expenses, as the rest are to a degree family expenses. The above outgoings reduce his total outgoings to \$1,779 before any deduction is made for groceries.

23. In relation to the groceries I am satisfied that \$1,000 is appropriate. This is for the whole family. As the wife is at home, and it is conceded that she is the one who keeps the home and mainly cooks the meals, she should be responsible for purchasing the majority of those items. With this in mind, the husband should provide her with \$900 which should be used for food and household items, including for the husband. I reach that figure as the husband is entitled to have \$100 allocated to himself from the grocery figure to enable him to buy groceries that he may wish to buy for himself.

24. This would leave \$779 which could be used to meet the wife's discreet needs and any payments towards the children. This would not be sufficient to even cover three days at the nursery for M.

25. These types of figures do not require me to carry out an in-depth investigation into whether the figures given by the wife for her outgoings are excessive. It does appear that her reasonable outgoings which would be left after the above findings in relation to groceries and Internet/cable TV would be:

Petrol	\$100
Children clothing	50
Clothing/hair	100
Medical	300
Recreation	100 (with the children)



26. These figures total \$650 and, especially having regard to health requirements, should be paid to the wife as spousal/child maintenance. The \$129 disposable income should be rationed by the husband to meet any other emergency expense not covered. In the figures above.

~~27. I am acutely conscious that I must endeavour to be fair to both parties when making what~~
I hope will be a short interim order designed to last until the final ancillary relief hearing or approval of a submitted consent order. I accept that the order I make today will not meet all of the needs of both parties. It is designed to primarily ensure that the children's primary needs are met.

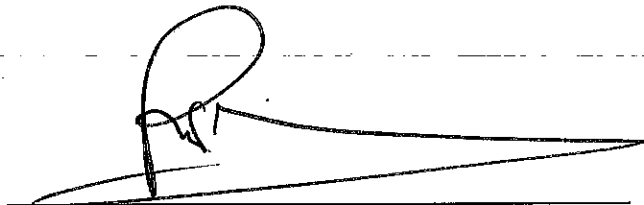
27. When I make my order I must do so having regard to the factors set out in s.19, including as best I can on the limited evidence, each parties financial position.

28. As I sought to make clear before, neither party should hold any figure I order today as a yardstick for future hearings.

Conclusion and Order

29. On the limited evidence before me at this hearing, I find that the appropriate interim figure for spousal/child maintenance is \$1,550 per month. It is made on the basis that \$900 of that figure is to be used for grocery and household items for the whole family, including the husband. A payment of \$775 to be paid by or on the 15th day of each month and the second payment by on the last day of each month. Payments to commence 15 May 2018.

30. I am entitled to make an interim spousal orders even though at the final hearing there may be an issue as to whether this is a case in which ongoing spousal maintenance as appropriate.



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

