

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

CAUSE NO: CAUSE G 382 OF 2002

BETWEEN:

EG

Applicant

AND

CM

Respondent

Appearances: **Applicant and Respondent in person**

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

Heard: **10 March 2017**

Date of Judgment: **10 March 2017**

**Perfected Transcript of
Judgment Circulated:** **15 March 2017**



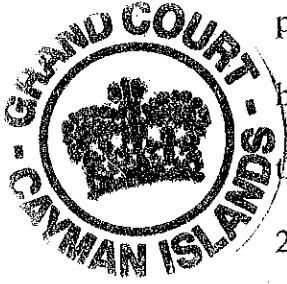
HEADNOTE

Family Law - Affiliation proceedings - Enforcement of Arrears - transfer back to Summary Court from Grand Court - Appropriate Court in which to hear applications brought within affiliation proceedings - Appointment of and role of Collecting Officers/Clerk of Courts/District Commissioners.

EX TEMPORE JUDGMENT

Background

1. I have a Summons before me filed in the Grand Court by the mother, EG, in which she seeks an order for CM, the father, to pay arrears which have accrued



pursuant to an order made in the Summary Court on 12 January 2001 requiring him to pay maintenance set at CI\$50 per week into the Court Funds Office for their child who was born on 5 February 1998. The substantive element of the 2001 Order has not been varied by the Summary Court or by the Grand Court.

2. I will hereafter refer to the parties, for convenience, as “the mother” and “the father.”

3. After various earlier arrears hearings, on 17 July 2002 the Summary Court assessed child maintenance arrears to be \$2,450 and ordered the father to pay \$200 per week towards the arrears.¹ I note that these arrears were well in excess of the minimum \$50 figure set out in s. 47(1) Summary Jurisdiction Law (1995 Revision)².

4. On 9 August 2002 the mother issued her first Summons in the Grand Court seeking enforcement of the Summary Court orders including an order for committal of the father and directions from the Grand Court regarding maintenance arrears. It does not appear from the court file and the papers³ before me that an investigation was actually conducted by the Summary Court⁴ prior to the issuing of the Grand Court Summons to determine whether any of

¹ See paragraph 4 of the mother’s affidavit sworn on 30 January 2017.

² See paragraph 8 below.

³ No mention of any investigation in the mother’s affidavit sworn on 9 August 2002 made in support of her Summons dated 9 August 2016.

⁴ Such investigation being required to enable the requisite ground to be made out before any judgment could be removed to the Grand Court pursuant to s.47(1) Summary Jurisdiction Law (1995 Revision).

the father's goods or chattels could be seized conveniently in the Islands to clear the arrears.

5. On 17 April 2003 Levers J. ordered the father to pay \$100 per week towards the arrears and that he should forthwith hand over \$500 as a further payment towards the arrears.

6. The mother contends that the father paid \$500 to her, but he has made no further payments. She states that the arrears as of 26 January 2017 stood at \$39,650. The mother, since 17 April 2003, has been dilatory in her approach to the alleged arrears as she has made no application to the Court until the present application.



7. I have noticed that some affiliation cases have been stayed in the Summary Court and have then been transferred to the Grand Court for enforcement of and possible consequent variations to existing Summary Court affiliation orders. I accept that most of these cases were transferred to the Grand Court pre-2005.

8. Prior to 2003 (and even up to 2005) the transfers appear to have been made pursuant to s.47(1) Summary Jurisdiction Law (1995 Revision) which permitted the Summary Court upon application made by a party entitled to the benefit of a judgment exceeding \$50, where there were no goods or chattels in the jurisdiction which could be conveniently seized to satisfy the judgment, to



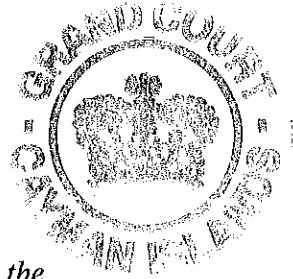
“remove the judgment into the Grand Court.” Section 47(2) provided that no further proceedings could then be had or taken in the Summary Court and the judgment should then be entered in the Grand Court and the proceedings could progress in the Grand Court as if the judgment had originally been obtained in the Grand Court.

9. It appears that this practice was in fact ordinarily adopted (i) when the arrears far exceeded \$50; (ii) when either the level of arrears reached \$20,000 (as Magistrates believed that the quantum of arrears exceeded the Summary Court’s jurisdiction) or, (iii) because the Magistrates believed that the Summary Court had no power to enforce by means of a committal order. I have on a number of occasions expressed my concern as to whether that was and remains the best approach and I have made clear my view that, save for appeals, only the Summary Court should now deal with affiliation matters.

The Law

10. Affiliation proceedings are by the Affiliation Law (1995 Revision) (“the Law”) conferred upon a magistrate or upon a court of summary jurisdiction. Having regard to the definition section (s.2) of the Law “*court*” means a court of summary jurisdiction. The Grand Court is only mentioned in s.2 (definition section) and later in s.8 which deals with appeals to the Grand Court.

11. Section 5 of the Law provides for the Summary Court determining the issue of paternity and if appropriate the level of any affiliation order. I understand that the Summary Court ordinarily orders that the payment be made into the Court Funds Office.



12. Section 5(8) of the Law deals with enforcement and provides:

"Any affiliation order may, after the expiration of one week from the making thereof, be from time to time enforced in the court, if the payments required by it to be made or any of them are in arrear, in the manner prescribed by law for the enforcing of orders of justices requiring the payment of a sum of money:

Provided that where, by an affiliation order, it is provided that payment be made to a collecting officer under this Law, nothing in this section shall preclude the collecting officer from enforcing such order in the manner hereinafter prescribed.⁵"

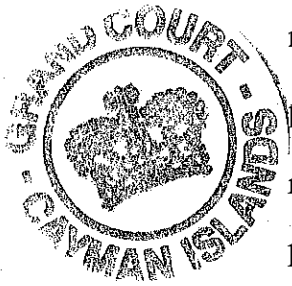
13. Section 6(1) of the Law provides the Court "shall⁶, from time to time, subject to the approval of the Governor" appoint one or more Collecting Officers and if Collecting Officers are not so appointed, "the Clerk of the Court shall⁷ be the collecting officer for Grand Cayman and the District Commissioner shall⁸ be the collecting officer for Cayman Brac and Little Cayman." In affiliation proceedings that have come before me there is no evidence of a Collecting Officer ever having been appointed or of the Clerk of Courts/District Commissioners taking on this role and fulfilling the duties of a Collecting

⁵ My emphasis by underlining.

⁶ My emphasis by underlining.

⁷ My emphasis by underlining.

⁸ My emphasis by underlining.



Officer. I am unable to understand why this is, for it appears that the hands-on role to be performed by a Collecting Officer and the resultant s.7 enforcement procedure were designed to be the ideal mechanism for the Summary Court to manage and enforce payments by a defaulter or likely defaulter. This would have been the more appropriate approach to enforcement of affiliation orders (especially pre-2003) rather than removing the affiliation order to the Grand Court.

14. Section 6(2) of the Law gives the Summary Court the discretion (if it thinks it desirable to do so) to order that the payments be made to a Collecting Officer.
15. Section 6(3) of the Law provides that payment may be made to a Collecting Officer in person, or by letter sent by registered post properly addressed to a Collecting Officer.
16. Section 6(4) of the Law provides that it shall be the duty of a Collecting Officer to receive payments directed to him and to make payments fortnightly to the named recipient in the affiliation order.
17. I am not clear whether payment into the Court Funds Office has been regarded as constituting payment to a Collecting Officer. I strongly doubt it has because, having regard to the wording in s.6(2) of the Law, that would be inappropriate. If it has, the intention in the Law is for a Collecting Officer to take on a

proactive role. If it has, the Law sets out the jurisdiction and procedure to be followed in relation to enforcement of orders. If it has not, then it appears that the Collecting Officer's role is redundant as there appears to have been no Collecting Officers appointed and no orders made requiring payment to an appointed Collecting Officer (or to a Clerk of Court or to a District Commissioner fulfilling that role). The Chief Magistrate may feel that there is some value in reviewing the procedure and clarifying the position, in particular concerning why Collecting Officers have not been appointed from time to time or why orders have not been made naming the Clerk of Courts/District Commissioners and whether the Summary Court has thereby been failing to comply with its obligation to do so under s.6(1) of the Law.

18. Section 7 of the Law sets out the proactive role that a Collecting Officer would undertake if named in the affiliation order. Section 7(1) provides:

“Where, under an affiliation order which provides that payment thereunder shall be made to the collecting officer, payment is fourteen clear days in arrear, the court⁹ may, upon the application of the collecting officer, issue a warrant directing the sum due under such order or since any commitment for disobedience to such order as hereinafter provided, together with the costs attending such warrant, to be recovered by distress and sale of the goods and chattels of the putative father, and if upon the return to such warrant it appears that no sufficient distress can be had, the



⁹ My emphasis by underlining – s.2, the definition section, states that “*court*” means a court of summary jurisdiction.



court¹⁰ may issue a warrant to bring the putative father before it, and in case the putative father neglects or refuses without reasonable cause to pay the sum so due together with such costs, the court¹¹ may commit him to prison for any period not exceeding three months unless such sum and costs, together with the costs of commitment, be sooner paid.”

19. Section 7(1) of the Law envisages that a Collecting Officer, if there were arrears of 14 days, would apply to the Summary Court to issue a warrant directing the sum due under such an order and he would seek to recover by distress and sale of goods and chattels of the putative father. If upon the return of such warrant it appears that no sufficient distress could be had, the Summary Court may issue a warrant to bring the father before it. If the Summary Court was then satisfied that the father neglected or refused to pay without reasonable cause he could be committed to prison for a period not exceeding three months. It was therefore incorrect for the Summary Court to believe that it had no power to commit in all affiliation cases. Prior to 2003, if a Magistrate felt that committal was a required option in a particular case he/she could have made an order under s.6(2) of the Law for payment to a Collecting Officer (or if none had been appointed, then to the Clerk of Court/District Commissioner) and the s.7 procedure (including orders of committal) could then have been used.

¹⁰ My emphasis by underlining – s.2, the definition section, states that “*court*” means a court of summary jurisdiction.

¹¹ My emphasis by underlining – s.2, the definition section, states that “*court*” means a court of summary jurisdiction.

20. If this interventionist approach were taken by Collecting Officers then it would be highly unlikely that arrears would be permitted to reach the level that one frequently sees, including in the matter currently before me. Rather than waiting for a mother to make an application to enforce, a Collecting Officer, whose responsibility would be to the child who is to benefit from the order, would have a court imposed duty to ensure that the Summary Court reviewed arrears and enforced affiliation orders in a timely fashion, well before they reached a substantial level.
21. If the enforcement provisions set out in s.7 of the Law are not available because orders utilising Collecting Officers are not made then, when the Summary Court seeks to enforce an order pursuant to s.5(8) of the Law, regard should now be had to s.34 of the Summary Jurisdiction Law (2006 Revision). This section provides that any judgment or order of the Court made in a civil cause or matter may be enforced by any of the means set out in subsections (a)-(e) (including committal). Interestingly, for the purpose of this section a Magistrate shall have all the powers of a Judge of the Grand Court.
22. Section 7(3) of the Law provides that the six-month limitation in the Summary Court does not apply to proceedings for enforcing the payment of summons due under an affiliation order.



23. The Law makes no provision for enforcement of affiliation orders in the Grand Court. Section 8(1) of the Law intends that any appeal that lies to the Grand Court concerning an affiliation order shall be final and binding for all purposes and not subject to appeal to any other court or tribunal whatsoever. The Section appears to envisage that the Grand Court's involvement in affiliation proceedings is intended to be limited to it being the appellate court.

Addressing the Reasons Why Affiliation Proceedings Have Been Transferred to the Grand Court

24. As already mentioned by me, one reason I have been given is that, due to the dollar level of arrears that have been allowed to accrue in specific cases, the Summary Court feels that such cases exceed their civil jurisdiction (set out in paragraph 2 of the Schedule in the Summary Jurisdiction Law).

25. Section 14 of the Summary Jurisdiction Law (2006 Revision) provides that:

"... in addition to any jurisdiction conferred by any other law for the time being in force (for example the Affiliation Law, the (Summary) Courts shall have jurisdiction in respect of any proceedings, causes or matters specified in the Schedule, and may also exercise any power or jurisdiction in respect of any other civil cause or matter which is expressed under any law to be exercisable by or to be within the jurisdiction of a court of summary jurisdiction or a magistrate."



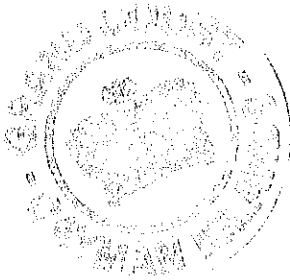
26. Turning now to the Schedule in the Summary Jurisdiction Law. Paragraph 1 of the Schedule provides jurisdiction in any proceedings for the recovery of any sum of money expressed to be recovered summarily. The \$20,000 restriction under paragraph 2 of the Schedule does not apply to affiliation proceedings.

27. Paragraph 3 of the Schedule provides jurisdiction in any proceedings in respect of which civil jurisdiction is by any law conferred upon a magistrate or upon a court of summary jurisdiction

28. These paragraphs reconfirm the jurisdiction of the Summary Court in affiliation proceedings no matter what the level of arrears.

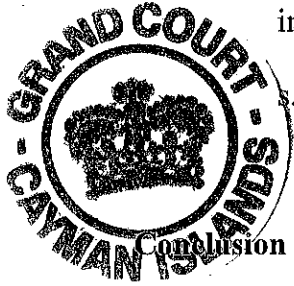
29. I have been informed that, until s.5 Summary Jurisdiction (Amendment) Law 2003 came into effect, the Summary Court felt it had no jurisdiction to enforce affiliation orders by means of order of committal.¹² I have been informed that, as a consequence, if enforcement of affiliation orders were sought then the Summary Court affiliation proceedings were stayed and mothers had to make applications by summons issued in the Grand Court as the Summary Court judgment was removed into the Grand Court.

¹² Section 5 amended the principal Law by repealing s.35 and substituting a new s.35 which set out powers of enforcement including at 35(d) by means of an order for committal.



30. As already highlighted by me, from 1995, s.7 of the Law has provided a clear and comprehensive procedure for enforcement (including making orders of committal) in the Summary Court if that Court makes an order pursuant s.6(2) that payments be made to a Collecting Officer. It is regrettable that Collecting Officers have not been appointed or s.6(2) orders made by the Summary Court for payment to the Clerk of Court or relevant District Commissioners in their role as Collecting Officers, as this has resulted in mothers, rather than Collecting Officers, always having to take on the responsibility for applying to enforce affiliation orders in the Summary Court. It has meant that mothers have had to issue summonses to enforce orders made in affiliation proceedings, which are strictly summary proceedings by nature, in the Grand Court. It has also meant that the Summary Court has failed to avail itself of the comprehensive enforcement powers (including orders of committal) that are set out in s.7 of the Law, especially pre-2003 when the Summary Court felt that it had no jurisdiction to make committal orders.

31. However, if the Summary Court does not feel that it is required under s.6 of the Law to appoint Collecting Officers or if it sees no merit in making orders for payment to Collecting Officers including the Clerk of Court/District Commissioners and thereby making use of the timely enforcement procedure clearly set out in s.7 of the Law, then s.34 Summary Jurisdiction Law (2006 Revision) now gives the Magistrates considerable powers of enforcement,



including by order of committal¹³, when it is exercising its jurisdiction under s.5(8) of the Law.

32. I would invite urgent review of the practice of ‘transferring’ affiliation matters in which arrears have accrued to the Grand Court. The Summary Court now has comprehensive powers to deal with enforcement in such cases, whether it be under the long standing and neglected enforcement provisions contained in s.7 of the Law which are available when a Collecting Officer has been ordered by the Summary Court to receive the payments or since 2003 under the enforcement powers contained in s.34 of the Summary Jurisdiction Law (for the purpose of s.34 the powers being the same as for a Judge of the Grand Court) when exercising the Summary Court’s powers under s.5(8) of the Law.

33. The appropriateness of the Grand Court now continuing to enforce affiliation orders and making consequential variations (save on appeal) to the levels of ongoing affiliation payments is questionable.

34. I accept that a difficulty may be perceived to arise where following the removal of a judgment into the Grand Court (save on appeal) the Grand Court has varied the amount of affiliation payments ordered by the Summary Court. This may be because the Summary Court has concerns about

¹³ See paragraph 21 above.



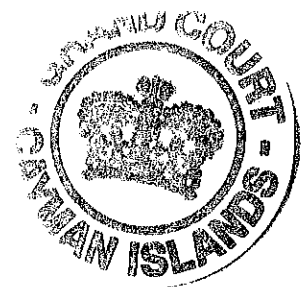
enforcing an order made by the Grand Court as well as about the wording contained in the stay provision, s.47(2) Summary Jurisdiction Law (1995 Revision). I note in the case before me that the substantive payment element of the affiliation order has remained in the same terms as the one made by the Summary Court on 12 January 2001. However, even if the Grand Court has varied the affiliation order, the Grand Court may be able to transfer the affiliation proceedings back to the Summary Court where the affiliation proceedings have been stayed and direct that any such orders moving forward should be treated as Summary Court orders and be enforced in the normal way by the Summary Court.

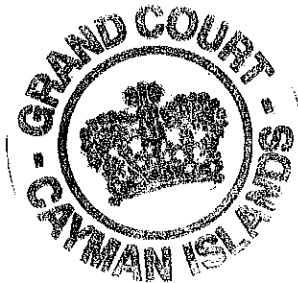
35. I am satisfied that the apparently adopted procedure of transferring affiliation matters to the Grand Court for enforcement and the Grand Court then being asked to make consequential variations to an affiliation order ought not to continue. As evidenced by the comprehensive enforcement mechanism introduced in s.7, the Law always intended that affiliation proceedings be applied for, varied and enforced in the Summary Court. Any variation to an affiliation order should be made in the Summary Court and not in the Grand Court. Applications to enforce a Summary Court order should be made in the Summary Court and I respectfully suggest that the Chief Magistrate may wish to consider whether this could now also be done in compliance with s.6(1) of the Law by appointing Collecting Officers and thereby opening up the opportunity to use the 'hands-on' procedure set out

in s.7 of the Law, rather than limiting enforcement to free standing applications which have to be made by mothers.

36. Applications by summons now brought in cases in which historical orders in affiliation proceedings have been made by the Grand Court as a result of the s.47 Summary Judgment Law (1995 Revision) procedure having been adopted, should be referred to a Grand Court Judge prior to issue for a direction about whether they should be issued in the Summary Court or whether they should be issued in the Grand Court and then be transferred to the Summary Court. Applications to enforce affiliation orders in proceedings which have not previously been before the Grand Court should now always be brought in the Summary Court.

37. Having regard to the above I exercise my discretion and transfer this application made in stayed Summary Cause Number 382/2002 back to the Summary Court. The Summary Court unquestionably has wide powers of enforcement and for the purpose of s.34 of the Summary Jurisdiction Law (2006 Revision) it has the same powers as a Judge of the Grand Court. It is right and proper that it be the Summary Court that adjudicates on the enforcement of the substantive element of its own order which was made on and has not been varied since 12 January 2001.





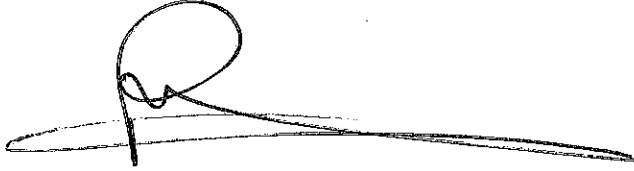
38. The Grand Court has an inherent power to regulate its own process and I accept that this is not unlimited and does not extend to the assumption of jurisdiction which it does not otherwise have. The interests of justice enable the Grand Court to use its inherent jurisdiction to order a transfer of these proceedings (which are clearly summary in nature) back to the Summary Court to enable that Court to enforce its own order in the Court which the Law intended to be the one in which all affiliation proceedings should be conducted. As, upon this transfer, the affiliation proceedings are no longer ongoing in the Grand Court, the Summary Court proceedings are no longer stayed.

39. A copy of this Ex Tempore Judgment should be provided to the Family Proceedings Unit, to the Summary Court Registry, to the Chief Magistrate and to the parties. Following which, consultation should be held with the parties concerning the listing, in the Summary Court, of the mother's application for enforcement. At today's hearing the parties both have provided the Court with their contact details and these can be found on the Background Information form placed in the file.

Footnote

40. It is unclear since the advent of the Schedule 1 of the Children Law what meaningful purpose the Affiliation Law now serves. In England and Wales affiliation proceedings were abolished in April 1989. It appears that the Law's main purpose may be that s.12 gives jurisdiction to the Summary

Court to make paternity testing orders. It is questionable whether it is appropriate to retain this piece of legislation primarily for that purpose rather than providing the power to order testing by other legislative means.



Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT

