

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

**CAUSE NO. FAM 117 OF 2013 &  
FAM 76 OF 2014**

**BETWEEN:**

**HERBERT ANTHONY WALKER**

**Petitioner**

**AND**

**LEISA BETTY JARRETT**

**Respondent**

**Appearances:**           **The Petitioner in person**  
                                  **Mrs. Keva Reid of McKinney Reid & Co. for the Respondent**

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

**Heard:**                   **21 June 2016**

**Ruling Circulated:**   **22 June 2016**



**HEADNOTE**

*Family Law – divorce - financial provision – adjournment - third party to intervene in ancillary relief proceedings.*

**TRANSCRIPT OF EX TEMPORE RULING**

**The Proceedings**

1. I have before me the final ancillary relief hearing between Herbert Anthony Walker, the husband and Lisa Betty Jarrett, the wife. I trust the parties will not find me discourteous if I, for convenience reasons, refer to them hereafter as the husband and the wife.

## **Background**

2. On 14 April 2016 a notice of hearing was issued in which the final ancillary relief hearing was fixed for a one day hearing on 21 June 2016. Although the parties have previously appeared before me, it was to deal with the long-running dispute about the proving of the husband's Petition. The parties eventually agreed that the Petition would not be contested.
  
3. On 22 January 2016 the Chief Justice proved the Petition based on the ground of two years' separation by consent. He gave directions in relation to the ancillary relief proceedings, directing the parties to file their affidavits by 22 February 2016. The husband complied with this direction. Unfortunately the wife failed to do so. She provided the husband with a copy of the sworn affidavit on 17 June 2016 and leave was given to her to file that affidavit at the outset of today's hearing. The husband did not seek an adjournment despite the very late filing of the wife's affidavit.

## **Issue Arising**

4. At the outset of this hearing it has become apparent that the most substantial asset was the property known as 27 Miss Daisy Lane in West Bay ("the Property"). Unfortunately, due to dealings with the Property, there is a complex dispute about the beneficial interest of the husband and wife in the Property. It appears that the Property was previously owned by one of the brothers of the husband. At that





time it was bare land or possibly land with basic foundations upon it. Thereafter the Property was dealt with in such a manner that all three brothers and the wife may have an interest in the Property although it is registered in the name of only one brother, Herman.

5. I have to say that, from the written evidence currently before me, the arrangement is a rather confusing one and not fully explained. I only have affidavit evidence from the husband and wife and nothing from the husband's brothers. The husband's brother, Leroy, has attended Court today. I have explained to him carefully that he may have a right to intervene. He is considering whether he wishes to seek to intervene but, if the hearing were to proceed today, he said he was content to give oral evidence on the issue. The wife has indicated that, if the hearing were to proceed today, she would be content for Leroy to give oral evidence although he has not filed an affidavit.
  
6. Although this would be an unsatisfactory approach to such a central issue, I am satisfied that Leroy is aware of these proceedings and he has indicated a willingness for the case to proceed today. Of greater concern is the position of Herman, who is the only person who holds a legal interest in the Property. Prior to today's hearing, namely on 17 June 2016, Mrs. Reid quite rightly raised a concern that the two brothers may not have been put on notice about today's hearing and the application being made. Upon reading the piece of correspondence I, as it

turns out incorrectly, was of the belief that both brothers were aware of today's hearing and the proceedings and that Herman chose to play no part in them. The view I then took was that he was aware that an order could be made in relation to the Property which may affect his interest and that it was then a matter for him if he chose to play no part in the proceedings.



7. However, having heard briefly from the husband today, it is clear that he does not have a good relationship with Herman and he is unable to satisfy me that Herman is aware of today's hearing and of the potential detrimental consequences that may flow from orders made in relation to the Property. I note that one of the orders sought by the wife is for the Property to be sold, although I am not satisfied that that is an order the Court can make under the circumstances. There is also a dispute about the quantification of the beneficial interest held by the husband, the wife and Leroy in the Property.
  
8. Having regard to the overriding objective, the Court has an obligation to deal with matters in an expeditious and economical manner. With that in mind it would ordinarily be preferable if the Court were to use the time available today and hear the matter. However, the overriding objective also includes a requirement for the Court to deal with matters in a fair and just manner. In circumstances such as these where third parties have an interest that may be affected by orders made in the proceedings, the Court should provide them with the opportunity to apply to

be joined in the proceedings or, if they choose, at the very least have one of the parties file his affidavit setting out his position and the reasons for taking it in relation to the Property.

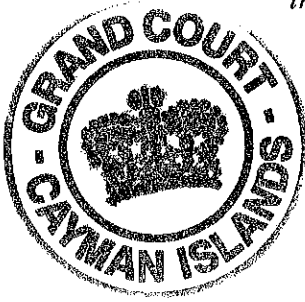
9. At paragraph 38 in *B v B* 2012 (2) CILR 124 I made remarks in relation to the approach in cases where a dispute arises about the ownership of property in ancillary relief proceedings between a spouse and a third party. I highlighted the guidance of Mostyn J. in *TL v ML and Others (Ancillary Relief: Claim Against Assets of Extended Family)* [2006] 1 FLR 1263. I stated at paragraph 38 that:

*“...those who come before the Court should pay regard to the procedural guidance given by Mostyn QC at paragraph 36 concerning cases where a dispute arises about the ownership of property in ancillary relief proceedings between a spouse and a third party when he stated:*

*“The following things should ordinarily happen:*

- i) the third party should be joined to proceedings at the earliest opportunity;*
- ii) directions should be given to the issue to be fully pleaded by points of claim and points of defence;*
- iii) separate witness statements should be directed in relation to the dispute; and the dispute should be directed to be heard separately as a preliminary issue, before the FDR.”*

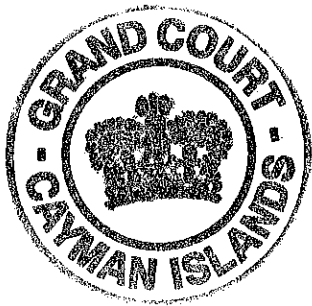
*It is accepted that we do not have the same rules as those that apply in England and Wales, but the general approach recommended above, with modifications to take into account local practice, is commendable.”*



One of those modifications in the case before me is that there is not necessarily a need for a preliminary hearing on the issue and it could, if the parties agreed, be dealt with at the final ancillary relief hearing.

10. In the case of *AKS v JS & RS & HS* Fam 201/2014 in my judgment handed down on 11 February this year, I ruled that the Court had jurisdiction to permit a third party to intervene in ancillary relief proceedings. I commented upon *B v B* and *TL v ML* and noted that, in the case of *Rodriguez v Ebanks and R.L. Ebanks (Intervening)* [2014 (1) CILR 264], the Chief Justice in 2014 recognised that the Court had such a power.

11. In *AKS* I went on to consider *Edna Evelyn Tebbutt v Haydn Sandy Haynes-Susan Haynes* [1981] 2 All ER 238 in which Lord Denning stated that:



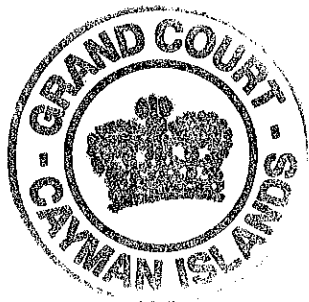
*"If an intervener comes in making a claim for the property, then it is within the jurisdiction of the judge to decide on the validity of the intervener's claim. The judge ought to decide what are the rights and interests of all the parties – not only of the intervener, but of the husband and wife respectively – in the property. He can only make an order for the transfer – to the wife – of property which is the husband's property. He cannot make an order for the transfer to the wife of someone else's interest. So – in order to make an order under section 24 - it must be within the jurisdiction of the judge to determine what are the various rights and interests in the property – not only of husband and wife – but also of any other persons who claim an interest."*

12. In *AKS* I also remarked upon the case of *Rossi v Rossi* [2007] 1 FLR 805 in which Mostyn J. stated at paragraph 34 that:

*“If, as is plainly the case, there is a substantive power within the ancillary relief proceedings to determine a third party’s interests then it has to follow that the determination must be binding on him for which purpose he has to be a party. Even if the Rules did not expressly provide for the power to join (which they do) then in order to give effect to the substantive power that procedural power would have to be implied.”<sup>1</sup>*

13. Unfortunately, it does not appear that the issue concerning the third party interest in the property was raised by the husband and wife when they came before the Chief Justice in January 2016. That may well have been because both parties were in person at that hearing.

14. I remind myself of my following remarks set out at paragraph 18 in *AKS*, when I said:

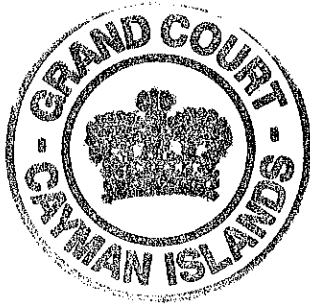


*“I have outlined the above details to illustrate that there is a substantive issue concerning a possible beneficial interest for the Proposed Intervenors in the former matrimonial home which requires determination. Whether this is resolved within the ancillary relief proceedings or within separate civil proceedings, I am satisfied that the issue will have to be resolved before the Court is in a position to properly exercise its duty under s.19 of the Matrimonial Causes Law (2005 Revision) (“MCL”). I am fortified*

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<sup>1</sup> My emphasis by underlining.

*in reaching this conclusion by the observation of Wilson J. in T v T and Others [1996] 2 FLR that the issues required to be resolved involving the intervenor were "directly relevant to the duty of enquiry" that he had under s.25 Matrimonial Causes Act 1973. I also am guided by Lord Justice Brightman's observation in Edna Evelyn Tebbutt v Haydn Sandy Haynes-Susan Haynes [1981] 2 All E.R. 238 that:*

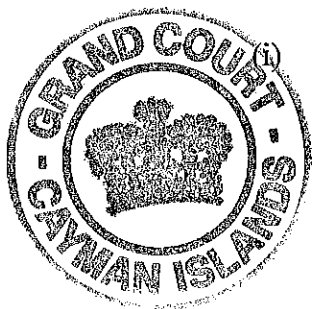


*"It is fundamental to the section 24 jurisdiction that the judge should know over the property he is entitled to exercise his discretion. If there is a dispute between a respondent spouse and a third party as to the ownership of a particular item of property which stands in the respondent spouse's name, that dispute must be resolved before the judge can make an effective final order under section 24. There are only two ways of resolving such a dispute. Either the Family Division proceedings must be adjourned pending the trial of the claim in other proceedings, or the dispute must be decided in the section 24 proceedings by allowing the third party to intervene."*

15. I find those remarks to be applicable in the case before me. Regrettably this means that we have a one day hearing which is clearly not in a position to proceed today and that any order made in the absence of, in particular, Herman may be prejudicial and unfair to him. Herman is entitled to be made aware of the proceedings and to seek to intervene in these proceedings if he so wishes. If he intervened he could give his own evidence, cross-examine the wife, cross-examine his brother and cross-examine witnesses. Any evidence given by him may well clarify the position about the dealings of the relevant persons with the Property and help with the determination about the interest they hold in it. If Herman

chooses not to attend, then that is a matter for him, but he must first be afforded the opportunity. It would be highly inappropriate for the Court dealing with the ancillary relief to go on and make orders in relation to the Property in his absence without him having any knowledge of the hearing or without him being informed about the issues for determination in relation to the Property in which he has the legal interest.

16. Accordingly I adjourn this hearing. It is not part-heard so it may come before any Judge. I feel it appropriate to give case management directions and with this in mind I order that:



a copy of the husband's affidavit filed on 22 February 2016 and of the wife's affidavit filed on 17 June 2016 as well as a copy of this Judgment and the order from today's hearing should be served upon Herman;

- (ii) as Mrs. Reid has indicated that she would take over responsibility for serving Hermon<sup>2</sup>, she should draft a brief accompanying letter drawing his attention to the order made after this hearing, to this Judgment and to his right to apply to intervene;
- (iii) as this adjournment will now enable the husband to carefully review the wife's belatedly filed affidavit, he should file and serve his affidavit reply no later than 19 July 2016;

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<sup>2</sup> She is entitled to approach the husband for financial assistance to meet the cost of service.

- (iv) if the husband's brothers do not intend to intervene, the husband should use his best endeavours to file and serve affidavits sworn by them. The affidavit sworn by Leroy Smith is to be filed and served by or on 19 July 2016. The affidavit sworn by Herman be filed and served within 28 days of Herman being notified of these proceedings in compliance with paragraph 16 (i) and (ii) above;
- (v) no further affidavits may be filed without leave of Court;
- (vi) parties have leave to fix the final hearing for the first open date after 26 August 2016 – with a one-day time estimate – that hearing may come before any Judge; and
- (vii) there be a mention hearing on 19 August 2016 at 12:00 p.m.



**The Hon. Justice Richard Williams  
JUDGE OF THE GRAND COURT**

