

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

3  
4 **CAUSE NO: FAM 105 OF 2015**

5 **BETWEEN:**

6 **DJ**

**Petitioner**

7  
8 **AND**

9 **SJ**

10 **Respondent**  
11  
12  
13

14 **Appearances:**

**Mr. Phillip Ebanks for the Petitioner**  
**Ms. Sonia Bush for the Respondent**

15  
16  
17 **Before:**

**Hon. Mr. Justice Richard Williams**

18  
19 **Heard:**

**30 December 2015**

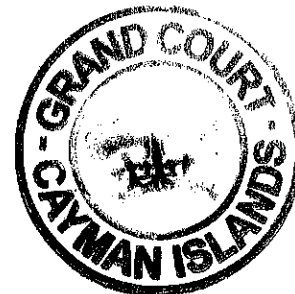
20  
21 **Ex Tempore Judgment:**

**30 December 2015**

22  
23 **Transcript of Judgment**

24 **Circulated:**

**31 December 2015**  
25  
26  
27  
28



**HEADNOTE**

29 *Family Law – Maintenance pending suit for spouse – principles to be applied.*  
30  
31

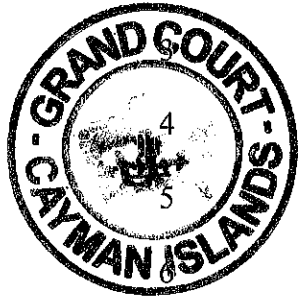
32 **EX TEMPORE JUDGMENT**  
33

34 1. I have before me the Respondent wife's Summons dated 21 December 2015.

35 The Summons seeks an interim periodical payments order for the wife and is

36 supported by her affidavit sworn on 21 December 2015 and her affidavit sworn

37 on 15 October 2015.



1 2. The Summons comes within proceedings for divorce initiated by the husband's  
2 Petition for Dissolution of Marriage dated 1 June 2015. The Petition was  
contested as evidenced by the wife's Acknowledgement and Answer both filed  
on 19 June 2015. At this morning's hearing the parties have agreed that the  
husband's Petition may proceed on an uncontested basis. Accordingly, leave is  
given to the wife to withdraw her Answer and to the husband to withdraw his  
7 Reply. I will prove the Petition when the husband files the application and draft  
8 order in accordance with the Rules.

9  
10 3. The husband is a Cayman national. The wife is a Jamaican national. The parties  
11 were married on 21 June 2008 and therefore it has been a relatively short  
12 marriage. There are no children of the marriage.

13  
14 4. The parties came before this Court on 3 December 2015 for a first appointment  
15 hearing. At that hearing the Court was informed that, at that time, the wife  
16 opposed the divorce petition. The Court made no order at that hearing hoping  
17 that the parties, with the assistance of their attorneys, would be able to resolve  
18 the contested petition issues.

19  
20 5. At the first appointment hearing there was uncertainty about the wife's ability to  
21 be employed in the jurisdiction due to immigration issues. The wife's Residency  
22 and Employment Rights Certificate ("RERC") expired on 15 July 2015 and she  
23 told the Court that she had been informed by Immigration that, as she was still



1 married, she could not obtain a work permit. The wife was informed by the  
2 Caymanian Status and Permanent Residency Board Secretariat by a letter dated  
3 1 December 2015 that her RERC was not renewed, as the Board determined that  
the marriage was “*unstable*” and “*not intact*”. The wife was informed of her  
right to appeal to the Immigration Appeals Tribunal within 28 days of  
communication of the decision, which she received on 3 December 2015. The  
wife has indicated to the Court today that she has not appealed the Board’s  
8 decision.

9  
10 6. On 21 December 2015 the wife filed the Summons before me and requested an  
11 urgent hearing for consideration to be given to her application for interim  
12 financial support. The urgency is due to the fact that the wife has no income  
13 since the end of November 2015 and, as confirmed by the Acting Director of  
14 Boards and Work Permits in her letter to the Court dated 24 December 2015, she  
15 “*does not currently possess any facility which allows her to be gainfully*  
16 *employed in the islands.*”

17  
18 7. The Court was informed by the wife’s attorney that the husband’s attorney was  
19 out of the office until 27 December 2015. The husband’s attorney says that he  
20 informed her that he was not back in the office until 29 December 2015. With  
21 this information in mind the Court allocated today’s date for the hearing of the  
22 Summons. The Court emailed both attorneys with details of the hearing date on  
23 21 December at 2:10 PM and, in the email, replicated my suggestion that the

1 husband should file an affidavit containing details of his income/outgoings and  
2 that the wife should produce the above-mentioned letter from Immigration  
3 confirming whether or not she was able to work at this time.

4  
5 8. To the husband's attorney's credit an affidavit with exhibits has been produced.  
6 Due to the shortness of time the husband has been unable to swear his affidavit.  
7 Upon the husband confirming on oath the veracity of the content of the affidavit  
8 and his undertaking to have the affidavit sworn, I am content to treat the  
9 affidavit as the bulk of his evidence. I have therefore considered the contents of  
10 the affidavits and the submissions of both of the attorneys. I also permitted both  
11 parties to give brief oral evidence and the content of the same has formed a part  
12 of my deliberations.



13  
14 **The Law**

15 9. In any order I may make today I aim to bridge the gap up until the final hearing.  
16 This morning the parties were able to have discussions outside of Court and it  
17 appears that agreement may be reached in relation to the wider ancillary relief  
18 issues. It appears that the only areas requiring clarification before a consent  
19 order can be reached are in relation to the equity in the parties' motor vehicles  
20 and the value of their pension funds. It appears that the parties are hopeful that  
21 once this information is obtained a consent order can be filed. Having regard to  
22 the limited issues in this ancillary relief case, if a draft consent order signed by  
23 both of the parties is submitted along with a consent order information form, I



1            may be able to approve the order administratively. If the parties exchange details  
2            in an efficient manner, there appears to be no good reason why the ancillary  
3            relief order could not be proved within three months. With this in mind, any  
4            order I make today is intended to be a temporary measure. Both parties should  
5            understand that today's order is not a final order and the Court in such  
6            circumstances, on the more limited evidence supplied and available at this early  
7            stage, only endeavours to put in place a fair holding order.

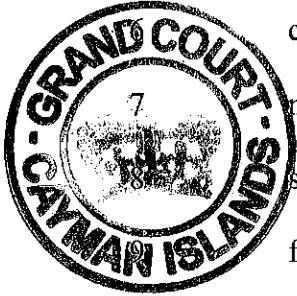
8  
9    10.    The parties should not see any order I make today as indicative of the final level  
10           of periodical payments or in fact whether any final order for spousal periodical  
11           payments is appropriate. The attorneys or the parties should not use any order  
12           made today as a yardstick.

13  
14    11.    As set out in s.19 of the Matrimonial Causes Law (2005 Revision), the Court  
15           shall have regard first of all to the best interests of any children of the marriage,  
16           and then move on to consider the responsibilities, needs, financial and other  
17           resources, actual and potential earning power and deserts of the husband and  
18           wife. There are no children of this marriage, so I may concentrate on the parties'  
19           financial circumstances.

20  
21    12.    What I have to do is to take into account the income, outgoings and needs of  
22           each party as they appear at this time and make an order that will tide the wife

1 over until the final determination, whilst at the same time striving to minimise  
2 any hardship to the husband.

3  
4 13. This is not a hearing for the Court to make findings about either party's  
5 credibility. In *Campbell v Campbell* (1998) 1 FLR 828, CA the approach  
6 commended was not to look in detail at the payer's budget but to see whether the  
7 maintenance was a fair proportion of his overall net income. The husband in the  
8 schedule attached to his unsworn affidavit said that his income is \$5,221.13  
9 from the Port Authority and \$1,000 per month from a Bus Transport Company,  
10 giving a total of \$6,221.13. His income from the Port Authority is confirmed by  
11 letter from that employer dated 23 December 2015. The Court will not  
12 uncritically accept what either party says is their financial position, if there is  
13 reason to believe that something has been hidden.



14  
15 14. The approach of the Court when considering maintenance pending suit for a  
16 spouse is succinctly stated, referring to the case of *T v T (financial provision)*  
17 [1990] FCR 169, [1989] Fam Law 438, at paragraph 4A [711] issue 90  
18 Butterworth Family Law as follows:

19 *"The primary aim of the court will be to make such an order, if*  
20 *possible, which will give a spouse certainly sufficient money to*  
21 *discharge the day-to-day outgoings and to feed, clothe and keep a*  
22 *roof over the head of that spouse until the final adjustments and*  
23 *orders are made in relation to the matrimonial assets and the*  
24 *finances after decree nisi. .... Where there are sufficient assets*  
25 *revealed by the parties the usual exercise for the court is to*

1                    *balance needs against resources and thus come to a temporary*  
2                    *figure until the whole question of the division of the matrimonial*  
3                    *property can be decided.”*  
4

5    15.    Nicholas Mostyn Q.C., then sitting as a Deputy High Court Judge in *TL v ML*  
6                    [2005] EWHC 2860 (Fam), gave the following often referred to guidelines:

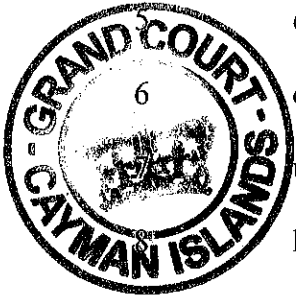
- 7                    1. *The sole criterion to be applied is ‘reasonableness’ in*  
8                    *accordance with section 22, which is synonymous with*  
9                    *fairness.*  
10                  2. *A very important factor in determining fairness is the marital*  
11                  *standard of living, although that is not to say that the exercise*  
12                  *on a maintenance pending suit application is merely to*  
                      *replicate that standard.*  
14                  3. *In every maintenance pending suit application, there should be*  
16                  *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*  
18                  *critically in every case so as to exclude frenzied exaggeration.*  
20                  4. *Where the affidavit or Form E (in this jurisdiction affidavit as*  
21                  *we do not ordinarily use Form E’s) disclosed by the paying*  
22                  *party is deficient, the court should not hesitate to make any*  
23                  *robust assumptions about the ability to pay. The court is not*  
24                  *confined to the mere say-so of the payer as to the extent of any*  
25                  *income or resources. In such circumstances, the court should*  
26                  *err in favour of the payee.”*

27    16.    When I consider this matter today, I am guided by and I apply the above legal  
28                    principles.  
29



1    **The Parties' Positions**

2    17.    The wife seeks interim maintenance totalling \$1,050. This figure would cover  
3           \$750 for her rent and an additional \$300 for food. The wife indicated that for  
4           December 2015 she would be willing to receive a prompt payment of \$750 to  
          enable her to pay rent already due and that the larger amount sought could  
          commence in January 2016. She indicated in the interim she would have to rely  
          upon the kindness of her friends for food. The figure requested by her would  
          leave a considerable monthly shortfall for her when considering all of her  
          reasonable outgoings.



9  
10

11   18.    The husband offers \$2,000 over a four-month period, I believe at a rate of \$500  
12           per month commencing on his payday towards the end of January 2016. The  
13           husband also offers to pay for a flight ticket for the wife so that she can return to  
14           Jamaica.

15

16   19.    The wife's position is as set out in her affidavit. She has no income for the  
17           foreseeable future and this position is highly unlikely to change prior to the final  
18           ancillary relief order and the granting of the certificate for dissolution of the  
19           marriage. At that stage, if the wife is unable to obtain a work permit, then the  
20           likely reasonable outcome would be for her to return to Jamaica where there  
21           would be no employment restrictions. The husband may then be required to give  
22           some financial assistance to enable her to repatriate. If the wife were able to  
23           remain in the Cayman Islands with gainful employment it appears that she



1 would likely be able to find employment with a monthly income of CI\$2,800  
2 which would make her self-sufficient and not reliant upon spousal support from  
the husband. Having regard to the likely time periods set out in paragraph 9  
4 above, it is reasonable for the wife to remain in the Cayman Islands until the  
5 conclusion of these proceedings and for the husband to provide some financial  
6 support during that period. The husband has given no financial assistance to his  
7 wife from the end of November 2015, a date after which she was no longer able  
8 to work.

9  
10 20. In her October 2015 affidavit the wife sets out her outgoings. The wife today  
11 accepts that some of those outgoings are not ones relevant to an interim  
12 maintenance hearing and has today slightly varied some of the figures contained  
13 in the affidavit. The wife indicates that she has the following interim outgoings:

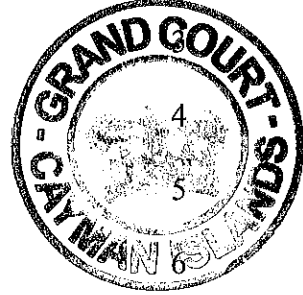
14	Rent	\$750
15	CUC	\$150
16	Water	\$ 75
17	Groceries	\$500
18	Telephone usage	\$125
19	iPhone repayment	\$140 <i>(last payment February 2016)</i>
20	Internet/cable	\$ 75
21	Petrol	\$250
22	Car insurance	\$150 <i>(payments to be made only in</i>
23		<i>January, February and March</i>
24		<i>2016 for the whole year)</i>
25	Hair Care	\$ 75
26		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

The wife's monthly outgoings therefore total \$2,290. Even if one were to reduce or disregard some of the figures such as iPhone repayment, Internet/cable, car insurance her outgoings to meet the day-to-day needs would exceed the \$1,050 that she seeks. In fact, if one was to restrict her rental and food outgoings that figure would amount to \$1,250. I do not accept the husband's contention that the rent is excessive. It is clear to me that she has needs of at least \$1,200 per month and that this would be the bare minimum to meet her interim day-to-day needs.

21. On the evidence before me it does not appear that the wife has any capital upon which she could draw in the interim. There are no balances in her bank accounts. She owes around US\$900 on a credit card for which there are minimum monthly payments of US\$80 and she has a loan with Credit Union with an outstanding amount of \$3,000. The wife has a motor vehicle, no evidence has been given about its value, but it does not appear to be a significant asset.

22. The husband's position has been set out in his unsworn affidavit and in his oral evidence today. As already mentioned, his disclosed monthly income is \$6,221.13. He stated in oral evidence that the amount may be reduced, especially during the summer holidays. That said, the period of time I am now considering is for the next 3 to 4 months and therefore I am satisfied that his income figure should be taken at \$6,221.13. During the marriage the husband has conceived a child out of wedlock with a woman who co-habits with him at his parents' home. He informs the Court that his partner works as a carer for his



1 grandmother who also resides in the home, but she has been unable to work in  
2 recent time as the child is only two months old. It appears from what he is  
3 saying that the intention is for her to start work again in the near future, but he  
4 does not know what her income will be.

5  
6 23. In the schedule attached to his draft affidavit, the husband states that his  
7 outgoings are as follows:

8	Land loan	\$ 882.83	<i>(deducted straight from salary)</i>
9	Car loan	\$ 737.37	<i>(deducted straight from salary)</i>
10	Credit Union Debt		
11	Consolidation	\$1,072.08	<i>(deducted straight from salary)</i>
12	Escrow payment	\$1,000.00	<i>(deducted straight from salary)</i>
13	Petrol	\$ 300.00	
14	Monthly phone &		
15	iPhone repayment	\$ 232.07	<i>(last payment February 2016)</i>
16	Medical insurance		
17	for baby	\$ 371.27	
18	Contribution to parents'		
19	property	\$ 625.00	
20	Groceries with baby foods		
21	and needs	\$ 400.00	
22	Dish Network satellite		
23	television	\$ 110.87	
24	Attorney's fees	\$ 500.00	
25	Car licence fee	\$ 19.58	<i>(\$235 per year)</i>
26	Car insurance	\$ 83.00	<i>(\$996 per year)</i>
27	Clothing	\$ 25.00	



28  
29 The husband therefore contends that his outgoings in relation to the interim  
30 hearing should be regarded as being \$6,358.97. I am not satisfied that the long

1 term expenses on clothing, car insurance, car licence fees, attorney's fees should  
2 be taken into account at this hearing. Those total \$627.58. The Dish Network fee  
3 of \$110.87 is a luxury expense which can be removed. This would reduce his  
4 outgoings to \$5,620.52, leaving a disposable income of \$600.61. Other  
5 expenditure such as his cell phone bill and repayment, his contribution to the  
household, the level of his petrol bill and even his repayment on the loans  
should not be regarded as priority payments over the need to ensure that the  
wife's basic day-to-day needs are met. He has an obligation to arrange his  
financial affairs to enable his wife's basic day-to-day needs to be met in the  
interim



10

11

12 24. I am acutely conscious that I must endeavour to be fair to both parties when  
13 making what I hope will be a short interim order designed to last until the final  
14 ancillary relief hearing or approval of a submitted consent order. I accept that  
15 the order I make today will cause hardship for the husband, but it is still  
16 hardship not at the level being experienced by the wife.

17

18 25. I have an obligation to ensure that the wife has sufficient income to meet her  
19 day-to-day needs prior to the contested interim financial provision hearing.  
20 What is clear is that I need to make some form of holding order to try to best  
21 meet the wife's interim needs, in the light of the wife losing her employment,  
22 and her resultant current dire financial circumstances.

23

1 26. I must do so having regard to the factors set out in s.19, including as best I can  
2 on the limited evidence, each party's financial position.

3

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

6

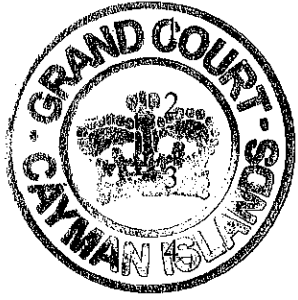
7 **Conclusion and Orders**

8 28. On the limited evidence before me at this hearing, I find that the appropriate  
9 interim figure for spousal maintenance is \$1,200. However, I have regard to the  
10 husband's financial difficulties this month and have taken notice of the wife's  
11 concession and therefore order that only \$750 is to be paid by 4 January 2016  
12 and thereafter that \$1,200 is to be paid by or on 28 January 2016, 28 February  
13 2016 and 28 March 2016. Those payments can be varied if a consent order is  
14 reached by the parties disposing of the ancillary relief proceedings prior to 28  
15 March 2016. If it appears that a consent order is not going to be reached then  
16 either party may apply to the Court for reconsideration of interim maintenance  
17 for the period after 28 March 2016.

18

19 29. I accept that the figures reached are not ideal for either party, but I have in mind  
20 that such interim maintenance will enable the wife to maintain a roof over her  
21 head by paying rent and provide basic food on the table during this period of  
22 forced unemployment. The figures will also enable the husband to meet some of  
23 his expenses and I am satisfied that for a short period of time he will be able to





remain in his parents' home without making the current more informal contributions that he says that he is paying to that household. I accept that he will not be able to meet all of his other outgoings.

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

8

9 31. I feel that it is important to also give directions in relation to the final ancillary  
10 relief proceedings, especially as the Petition is no longer going to be contested.  
11 When I give these directions, to endeavour to keep costs down, I build in  
12 sufficient time for the parties to attempt to reach a consent order before filing  
13 further evidence. Accordingly, I direct:

14 1. Both parties to file and serve any further affidavits (themselves and  
15 witnesses) in relation to ancillary relief by or on 29 January 2016;

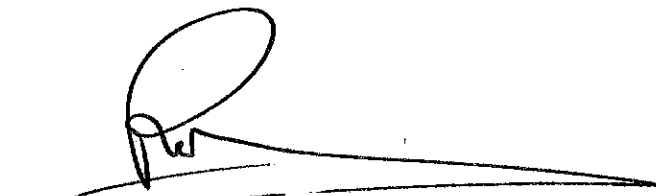
16 2. Requests for Further and Better Particulars to be served by or on 12  
17 February 2016;

18 3. Replies to Requests for Further and Better Particulars to be filed by 26  
19 February 2016;

20 4. Both parties have leave to fix the final ancillary relief hearing on the first  
21 open date after 11 March 2016 with a one-day estimate;

- 1           5.     The Practice Direction in relation to bundles is to be fully complied with;
- 2           6.     Both parties are to promptly apply for any subpoenas requiring the
- 3                 attendance of persons for cross-examination; and
- 4           7.     The matter to come before the Court for a mention hearing on 4 March
- 5                 2015 at 9:30 AM.

6  
7  
8  
9  
10  
11



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

