

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

3
4 CAUSE NO: FAM 158 OF 2014

5 BETWEEN:

6 LN

7 Petitioner

8 AND:

9 MN

10 Respondent
11
12

13 **Appearances:** Mr. Guy Dilliway-Parry from Priestleys for the Petitioner
14 Mr. Conor Fee from Samson & McGrath for the Respondent
15

16 **Before:** Hon. Mr. Justice Richard Williams
17

18 **Heard:** 19 June 2015
19

20 **Date of Circulation**
21 **of Draft Judgment:** 9 October 2015
22

23 **Date of Judgment:** 26 October 2015
24
25
26



27 HEADNOTE
28

29 *Financial Provision - Ancillary Relief – Lump sum order – Insufficient assets to meet both*
30 *parties' long-term needs - Effect of poor health of party and high costs of associated care when*
31 *considering division of capital.*
32
33

34 **JUDGMENT**

35 1. This is an application for ancillary relief by the Petitioner LN, aged 58, who is a
36 Philippine national and a naturalised Caymanian. The application is made
37 against her 86 year old British husband MN, who having lived in the Cayman
38 Islands since the early 1970's, is a naturalised Caymanian. She did not file a
39 Summons for ancillary relief but her Amended Petition dated 18 June 2015
40 contained the relief sought.

1 2. I hope that the parties will not be offended if from now on I refer to them, for
2 convenience, as the husband and the wife. There are no children of the marriage.

3
4 3. It was agreed that due to the husband's inability to attend Court because of his
5 ongoing serious ill-health that the hearing could proceed in his absence. The
6 husband's son RN, who has power of attorney executed by his father on 29
7 August 2014, was in attendance. RN stated that his father had entrusted him
8 with management of his financial affairs for the past several years and that he
9 saw his priority as being:

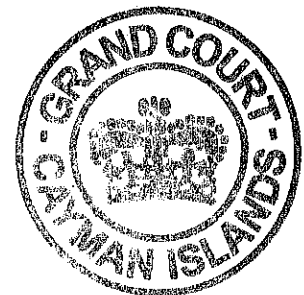
10 *"to ensure that my father's finances are managed most effectively*
11 *for him, and in such a way as to provide him with suitable and*
12 *appropriate care in the most cost- effective manner for as long a*
13 *period of time as possible."*

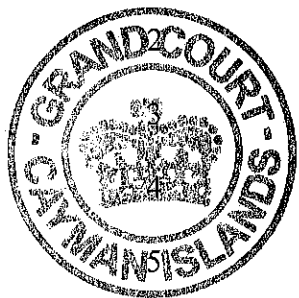
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15 RN filed affidavit evidence and the wife's attorney confirmed that he did not
16 seek to cross-examine RN or the husband.

17
18 **BACKGROUND**

19
20 **THE PARTIES**

21
22 4. The parties met in the Philippines in 1982. The wife contends that they then
23 embarked on a long distance relationship during which the husband visited her
24 twice, once in 1985 and once in 1986. The husband contends that their
25 relationship commenced after his retirement, having been a lawyer, in 1986. The
26 wife was employed as a registered full-time nurse from 1982 until she moved
27 from the Philippines to the Cayman Islands in December 1987. She stated that





1 she came here on the understanding that the husband would financially provide
for her and that she would not have done so if she felt this was not the case. She
said that her husband did not encourage her to work. From the time of her move
to the Cayman Islands, the wife has been financially dependent on the husband.
She cohabited with the husband at a property in Bodden Town, Grand Cayman
6 (“the matrimonial home”) for about 27 years, since 1987.

7

8 5. The parties were married in the Cayman Islands on 30 April 1994. The husband
9 was 64 years of age, had already been retired for 8 years, and his income was
10 derived from his pension and very small payments from minor investments.

11

12 6. Ten days prior to the marriage, the husband provided the wife with a
13 letter/agreement dated 22 April 1994 in which he set out his financial position
14 and his proposals for what should happen if the parties ever divorced. In the
15 document the husband stated that if the wife wished to consult an attorney about
16 the content to enable her to decide whether she still wished to marry him, then
17 he would fund that. At paragraph 8 of the document the husband stated:

18 *“If you are agreeable to marry me on the basis of the*
19 *understandings that I have set out above I will expect you to*
20 *countersign this letter to confirm your agreement to these*
21 *provisions and we can then proceed to set an early date for our*
22 *marriage.”*

23

24 The wife at the foot of the letter wrote:

25 *“(L), I have decided I don’t want to see an independent lawyer to*
26 *discuss this letter.”*

1 Although RN refers to the letter/agreement as being a prenuptial agreement both
2 counsel conceded, when I asked for clarification about their position, that the
3 document should not be treated as a binding prenuptial agreement. At paragraph
4 29 of the skeleton argument filed on behalf of the husband it is accepted that the
5 document is not binding on the wife, but it is submitted that it is:

6 (i) a contemporaneous record of the extent of the husband's assets at
7 the time the parties married which can be compared to the asset
8 position at their separation and;

9 (ii) a record of the wife's intention that she was happy to enter into the
10 marriage on the basis that if it came to an end she would not
receive anything. The husband's capital assets were in the region
of CI\$385,400 (US\$470,000) at the time of the marriage and on 21
11 August 2014, just after the divorce petition had been filed, they
12 totalled CI\$367,007 (US\$447,570).
13



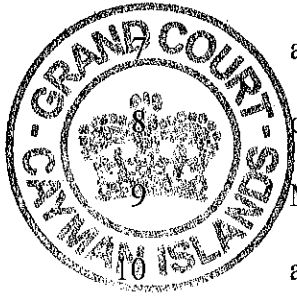
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15

16 7. In the document the husband made clear that his source of income was his
17 pension which was US\$51,336 per year from which he was obligated to pay his
18 former wife US\$14,404 year, leaving him with a disposable income of
19 US\$36,936. He highlighted the possibility of there being partial or complete
20 non-payment of his pension in the future as it is not a trustee fund pension. He
21 informed her that there is a provision that increases his pension income having
22 regard to inflation, but that would not amount to a sizeable increase. The
23 husband said that he also had a small shareholding in HSBC with shares of a

1 value of US\$7,300 which produces a very small dividend income and a small
2 income from a fixed deposit of approximately US\$39,000.

3
4 8. In the document he provided detail of his capital, the first was the matrimonial
5 home which he valued at US\$120,000. He stated that the house at Shawnigan
6 Lake with adjoining lot was worth around US\$150,000. Both of these properties
are held in the name of Masric Ltd (“the Company”) of which the husband is the
owner and president. The husband provided details of the Masric Limited
Mutual Fund Holding in the Fidelity Europe Fund which was worth US\$161,000
and stated that he had about US\$39,000 on deposit at Queensgate Bank and
Trust. He said that his capital assets at that time amounted to US\$470,000.



11
12
13 9. In the document the husband went on to outline that:

14 *“In the context of my assets as described above and consistent with*
15 *my wish that my son (RN) should have the bulk of the capital of my*
16 *estate after your death, it is my present intention to provide upon*
17 *my death (assuming that you survive me) that you will receive not*
18 *less than:-*

- 19 (a) *US\$25,000 in the way of a capital payment and*
20 (b) *the income from US\$150,000 for the rest of your life and*
21 (c) *such personal chattels as I may decide in my discretion to*
22 *leave you in my will;*

23 *and I emphasise that the above is just as I have written it namely*
24 *my present intention which means that if you behave as a good*
25 *wife and do not subject me to the temper tantrums of suppressed*
26 *rage which you have exhibited on too many occasions in the past 7*
27 *or more years of our co-habitation I may be influenced to increase*

1 *the amount of your benefit from my estate provided of course that I*
2 *have not had to "raid" my capital because of problems with my*
3 *pension or other presently unforeseen reasons."*

4
5 The husband went on to say that if his wife showed a good understanding of
6 how to manage money he could change his present thinking and provide instead
7 that, out of the above-mentioned US\$150,000, she would receive more as an
8 additional outright payment and consequently less in the way of income. He
9 concluded that:

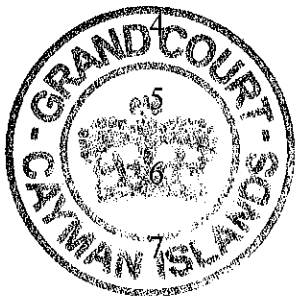


10 *"Whilst I certainly don't think that our marriage will fail and*
11 *ended up in separation or divorce should this occur I wish you to*
12 *know that I would not make any provision for you of the kind*
13 *which I have described above and I would not consider that I was*
14 *obligated to provide you with any meaningful future income."*

15
16 10. In around 2009, due to the liquidation of his former employer, his pension was
17 reduced, a possibility highlighted in the April 1994 premarital document. Also
18 his capital position has reduced, especially as a consequence of the recent
19 significant costs relating to his ongoing care. RN rightly contends that:

- 20 (i) the husband has not acquired any new assets or sources of income
21 since the drafting of the pre-marital document;
- 22 (ii) that his financial position is worse than it was at the date of the
23 marriage; and
- 24 (iii) that the parties had been living off the pension and capital which
25 the husband had built up "*before their relationship began.*"

26



1 11. On 15 August 2014 the wife filed her Petition for the Dissolution of the
2 Marriage. The husband filed his Acknowledgement on 29 August 2014
3 indicating an intention to defend and he also filed his Answer to the Petition on
4 the same date. Leave was granted on 19 June 2015 for the wife to file an
5 Amended Petition. On the same day, with the parties' consent, the requirement
6 to file an Acknowledgement was waived and the Amended Petition was proved.
7 The parties separated in May 2014, so this was a 20 year marriage.

8

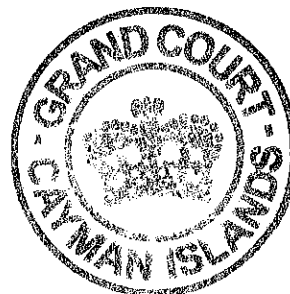
9 12. The wife states that she is "*reasonably healthy*" although she has been advised
10 by her gynaecologist to undergo a CAT scan for a recent undisclosed complaint.
11 Although she has been unemployed since her arrival to the Cayman Islands, and
12 despite her being aged 58, the wife stated in her evidence that she had an income
13 capacity of CI\$1,000 per month. She stated that she has no pension, but intends
14 to contribute towards the pension from any monies that she would receive from
15 the matrimonial estate.

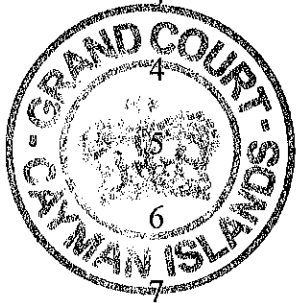
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17 13. Unfortunately, the husband has a history of poor health commencing in around
18 1998 when he had to undergo a quintuple bypass. The wife said that his health
19 began to deteriorate in or around 2009 and that she had to care for him,
20 especially as he had mobility issues. RN stated that in January 2014 the
21 husband's health greatly deteriorated and he now requires live-in 24-hour care.
22 He suffered a heart attack in February 2014 and required extensive treatment in
23 Jamaica due to related medical complications. He spent six weeks in hospital

1 and six weeks recuperating in a cottage which they had to rent near to the
2 hospital in Jamaica before returning to Cayman on 3 May 2014.

3
4 14. RN stated that he asked the wife if she wanted to accompany the husband when
5 he went for his treatment in Jamaica, but she stated he should go. The wife, in
6 her oral evidence, said that she was not sure whose choice it was that RN would
7 accompany the husband and although she was wanted to do so she was told that
8 she could not. RN stated that he went with his father and made the necessary
9 arrangements for his treatment, including 24-hour sitter nursing while he was in
10 the hospital room and later in the cottage. The sitter nurses' attendance at the
11 cottage was later reduced to four days and seven nights a week, with a visiting
12 nurse attending five days a week to dress the husband's wounds. When it
13 became evident that the husband had to remain in Jamaica for ongoing treatment
14 for considerably longer than the predicted five days, RN rented the two-
15 bedroom, two-bath cottage close to the hospital. RN said that he then arranged
16 and paid for the wife's travel to Jamaica and set up a Jamaican dollar checking
17 account in their joint names so that she could easily pay bills. The wife in her
18 oral evidence said that she stayed in Jamaica for three months whilst the
19 husband was recovering. She said that the caregivers worked 12 hours each and
20 they did not sleep there and at that time and on their days off she cared for the
21 husband. The wife contended that she gave greater care to the husband than the
22 level outlined by the husband.





1 15. When the husband returned to the Cayman Islands, it was not feasible for him to
2 live in the matrimonial home for accessibility reasons. RN found a suitable
3 ground floor property in South Sound, which he modified to be wheelchair
4 accessible. RN then made the arrangements for a Jamaican live-in carer, and for
5 two temporary carers to cover pending her arrival from Jamaica. The wife said
6 that, upon their return from Jamaica, she was involved in his care all the time,
7 especially as the carers came for three or four days for only five hours during the
8 day and during the night between 6 PM and 6 AM except for days off.

9
10 16. The husband is "*generally compus mentus*", but by 9 June 2014 was under
11 psychiatric evaluation for cognitive deficits, possibly dementia.¹ "*Supervision*
12 *and supportive care*" was partly required to counter the "*risk for worsening of*
13 *his memory and cognitive deficits and the consequences of mental confusion.*"

14
15 17. The 15 May 2014 letter from Tina McLean, Patient Services Representative at
16 the Health Services Authority, highlights that husband has limited mobility
17 requiring him to use a zimmer frame due to his physical condition. RN states
18 that the husband is wheelchair-bound for travel outside the home and the
19 zimmer frame could be used only for limited distances. She stated that he had
20 "*severe vascular disease with amputation*" and "*requires assistance with all*
21 *activities of daily living*" which includes "*hygiene, supervision of medication,*
22 *feeding and nutrition.*"

23

¹ Letter from Rachel Meera Balraj, Consultant Psychiatrist, 9 June 2014.
151026 LN v MN Judgment

1 18. The report dated 5 May 2014 from Dr. Lindberg Simpson, the surgeon who
2 treated the husband in Jamaica in February 2014, stated that the husband had
3 been referred to him for coronary angioplasty. The doctor stated that, due to the
4 presence of a necrotic ulcer to his right great toe, the toe and his second toe were
5 amputated.

6
7 19. RN, in his evidence stressed that his father would need substantial and costly
8 ongoing care. He said that:

9 *"On his return to Cayman it was understood by all of us that his
10 care needs from then on would be significant. He needs 24 hour
11 care, at a level far in excess of what had been required to assist
12 him prior to February 2014.*

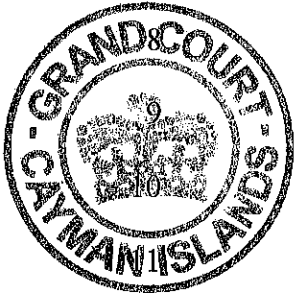
13 *It was anticipated that his care would be carried out by a live in
14 carer along with (L) and myself, when I am able; I work full-time
15 as an investment analyst, am married with a wife who also works
16 full-time and we have two young daughters aged two and seven."*

17
18 20. Although there was some disagreement about the hours the caregivers had given
19 when she was living with the husband after his surgery, to her credit, during
20 cross-examination, the wife importantly conceded that she accepted:

21 *"that the husband needs 24 hour care now and for the foreseeable
22 future – professional care."*

23
24 21. RN stated that on 26 May 2014, she being aware that the live-in carer
25 arrangement had not been secured or put in place, the wife told him that she had
26 purchased a one-way ticket to leave Cayman on 31 May 2015 to go to the
27 Philippines and that and she did not know if/when she would return. It is evident

1 from the Butterfield bank statements² that the wife had booked the ticket to the
2 Philippines by paying a deposit on 9 or 12 May 2014, and the balance on 22 or
3 23 May 2014. RN contends that the Butterfield bank statement exhibited at page
4 142 of the bundle establishes that there was sufficient funding in the account for
5 her to have purchased a return ticket if she had wanted one. He says this is
6 because the one-way ticket she purchased cost CI\$1,176.41, that in July she was
7 able to purchase a return ticket for CI\$1,581.93 and that after purchasing the
one-way ticket in May 2014 there was still CI\$1,092.69 left in the account. The
wife contends, supported by the content of her friend TS's email of 9 June 2014,
that the one-way ticket was half the price of the return. She stated in her oral
evidence that she did not have sufficient money in the joint account to buy a
return ticket. The wife said that she had not asked the travel company what the
cost of return airfare was, but when she and TS looked at US Airways' website
the price was shown as being over \$2,000. Neither party placed before the Court
any satisfactory documentary evidence containing the actual costs of return
flights at that time. When the wife was shown paragraph 10 of TS's affidavit, in
which he said that he helped her to get the flight ticket and at the time she did
not know how long she would need to be away to recover, she accepted that the
content was right but the first thing she was looking at was the cost of the return
flight. The wife reiterated what she stated in emails to her friends, namely that
she had only flown to the Philippines with her hand luggage and fully intended
to return. RN said that, at the wife's request, he gave her US\$1,000 in cash and



² Page 142 of the bundle.
151026 LN v MN Judgment

1 he informed her that there was C\$600 in the joint account which she could
2 access with her debit card.

3

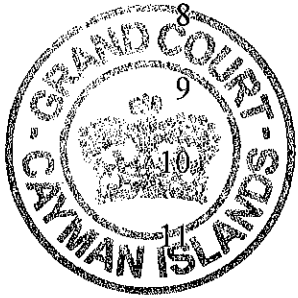
4 22. The husband said that she gave him no reason for her decision for leaving, but
5 he understood it was because she was unhappy with the challenges surrounding
6 the care for the husband and because she and RN had disagreements about the
7 care arrangements. The wife stated that she left because she was utterly

8 exhausted and at "at breaking point." The wife indicated that she had only
9 planned to go away for two weeks to a month and had fully intended to return.
10 She stated in her oral evidence that there was a lot of pressure on her and she
11 could not sleep at night. She said that RN was being rude and aggressive
12 towards her and that she could not cope. She said that she had no friends here to

13 support her emotionally. However, she then went on to say that she did have
14 friends here, but they were all leaving for their holidays. I note that in the bundle
15 there are highly supportive emails from her friends in which they outlined the
16 support they had given to her before she departed and what they were giving to
17 her during her absence in the Philippines. The wife stated in her oral evidence
18 that she had last been in the Philippines in 2012 and that she had only been back
19 there four times during the term of the marriage.

20

21 23. The wife said in her affidavit evidence that, despite her exhaustion, she
22 deliberately delayed her departure to allow for the husband's carer to arrive. In
23 her oral evidence she said that although the live-in carer had in fact not arrived
24 by the time that she had booked the ticket they had found someone and she told





1 the Court that the Immigration Work Permit had already been granted. When the
2 bank account statement, highlighting the date upon which the flight ticket was
3 purchased, was shown to her during cross-examination, the wife then conceded
4 that she did not know if the work permit had been granted. She also went on to
5 concede that by the time she bought the ticket on 26 May 2014 she did not know
6 when the full-time carer was coming, as she was not the one arranging that. She
7 accepted that when she purchased the ticket there was no certainty about when
8 the carer was going to arrive.

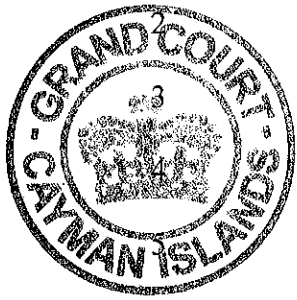
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10 24. RN stated that fortunately on the 27 May 2015, at least four days after the wife
11 had paid the remaining balance of the cost of her flight ticket, approval was
12 communicated from the Department of Immigration for the full-time carer to
13 start work³, and she was able to fly into the Cayman Islands on 29 May 2015,
14 two days before the wife's departure. RN stated that as the wife had left he
15 would now need to find a second live-in carer, but until one was located he
16 would keep on the Caymanian visiting day and night carers to supplement the
17 full-time carer.

18

19 25. RN stated that, while she was in the Philippines, he and the wife were in email
20 contact. The wife said that, upon her arrival in the Philippines when she
21 telephoned her husband to tell him that she had arrived safely, RN took the
22 phone and told her that she had abandoned his father, that he was now
23 responsible for his care and that she could not speak to his father but only to

³ Email from the Immigration Department 27 May 2014 at 10:10 AM – page 144 of the bundle.
151026 LN v MN Judgment



1 him. RN said that the wife had contacted the full-time carer seeking her to get
2 the husband to agree to buy her a return ticket to Cayman. RN intervened as he
3 felt it was not appropriate for the carer to be put in this awkward position and
4 this is one of the reasons why he asked the wife to communicate directly with
5 him.

6

7 26. RN refers to emails in which the wife was telling people 'on-island' that she was
8 considering divorcing the husband, that RN was going to sell the matrimonial
9 home and that she was entitled to at least 50% of the proceeds of sale in the
10 matrimonial home.⁴ I note that at paragraph 9 of her affidavit sworn on 14
11 August 2014, the wife appears to state that approximately 2 weeks before that
12 was when she was informed by RN that he intended to sell the home. In her
13 affidavit sworn on 24 April 2015 the wife said what she meant was that she had
14 been informed that a sale had actually been agreed and that he intended to sell
15 the home imminently, not that she realised the first time that he intended to sell
16 the home. In an email sent on 8 June 2015 to her friend HL⁵, she stated that she
17 would try to ask for a return ticket from RN and that she would go to the "*legal*
18 *aid services*" in Cayman whose services had been suggested to her. In emails
19 from HL and TS on 9 June 2015⁶, only 6 days after she had left Cayman and
20 before RN had communicated to her that the husband did not wish to see her,
21 these two friends were saying that they had offered to take the wife to legal aid
22 prior to her departure to the Philippines. RN said that he passed on all of this

⁴ Page 149 of the bundle.

⁵ Pages 147 & 149 of the bundle.

⁶ Pages 145 & 146 of the bundle.

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1 information to the husband, who did not feel able to make a decision about
2 funding her return. RN, having seen these emails, wrote to the wife on 10 June
3 2014 stating that he was aware of correspondence concerning the possible
4 actions and in order not to cause further distress to the husband asked her to
5 remain with her family support network in the Philippines until the husband
6 could fully consider the position.⁷ The wife said that she had been willing to
7 look after the husband indefinitely but could not do so due to his refusal to see
8 her, thereby contributing substantially to the care expenses which are being
9 incurred.



10

11 27. RN contacted the wife when he became aware on 18 and 19 June 2014 that the
12 husband would need a blood transfusion and that the remaining toes of his right
13 foot would need to be amputated possibly on 24 and 25 June 2014. In an email
14 sent on 20 June 2014⁸, he told the wife that there were sufficient funds in the
15 joint account to enable her to purchase either a one way or return ticket to
16 Cayman. The wife indicated that it was RN's idea that she buy a return ticket,
17 because he and the husband wanted her to go back to the Philippines where it
18 would be cheaper for her to live. She stated that she only bought the return ticket
19 because she knew that the husband did not want her anymore, was concerned
20 that if she could not find a job she then might have to go back to the Philippines
21 and that she needed to have the ticket just in case she did not have the means to
22 purchase one at a later date.

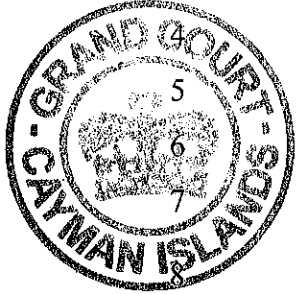
23

⁷ Page 155 of the bundle.

⁸ Page 156 of the bundle.

1 28. On Sunday 29 June 2014 at 7:44 AM the wife told RN in an email⁹ that she was
2 having problems trying to get a return ticket to Grand Cayman. In the same
3 email she said that:

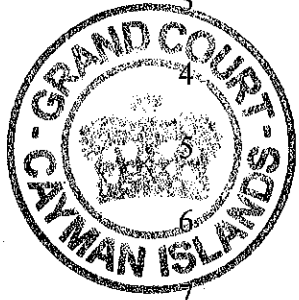
“As I told you before I want to see (the husband) and say goodbye properly and sort out my things in Cayman.”



4
5
6
7
8 The wife indicates that prior to sending this email she had had a Skype call with
9 RN during which he had told her that the husband no longer wanted her in his
10 life. During cross-examination she stated that her statement did not mean that
11 she only intended a temporary visit and reaffirmed that she had intended to
12 return and live in the Cayman Islands. She said in re-examination that she had
13 not spoken to her husband since she had left, but when she kissed him and said
14 goodbye before her trip she thought that things were fine and she wanted to
15 return to see if he really did not want her anymore. Mr Fee informed the Court,
16 that RN wished to be fair and point out that, when the wife indicated that she
17 wished to say goodbye properly, the husband was not faring well and was going
18 into surgery and it was not certain whether he would pull through the operation.

19 29. The wife said in the 29 June 2014 email that she hoped that there was sufficient
20 money in the account because on the following day she intended to purchase the
21 thirty day open return ticket. RN replied at 12:32 PM by email informing her
22 that she could stay at the matrimonial home and use money in the joint account,
23 but he could not tell her what sort of reception she would get from the husband.
24 At 6:50 PM on the same day, prior to the wife purchasing a ticket, RN told her

⁹ Page 157 of the bundle.
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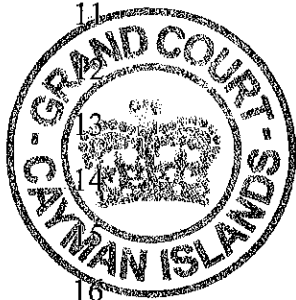
1 in an email¹⁰ that he wanted her to know before she purchased a ticket that,
2 when he had informed the husband that she intended to return to the Cayman
3 Islands to see him, the husband indicated to him that he did not wish to see her.
4 RN recommended that if she did return and stay at the matrimonial home, she
5 should plan on short visits, at pre-agreed times so that he and his carers could
6 expect her. The wife said that she asked if she could go back to the apartment
7 where the husband was living, but RN said she should not do so because there
8 was no space due to the care-givers being there.

9
10 30. The wife purchased a ticket and returned to Grand Cayman on 3 July 2014. RN
11 said the wife informed him that she had purchased the return ticket and was due
12 to return to the Philippines on 5 August 2014, but she later informed him that
13 she had changed this to an open ticket.

14
15 31. RN stated that on the Saturday after she returned she saw the husband, who told
16 her that he did not wish to see her. The wife stated in her oral evidence that, two
17 to three days after she arrived and when she saw her husband in the presence of
18 RN, the husband told her that he did not want to speak to her anymore and that
19 RN was his spokesman. In her affidavit the wife said that she had been cut off
20 financially, but she accepted during cross-examination that she had been wrong
21 to do so as RN had agreed to put money into the joint account into which the
22 pension was being paid and that she knew she had access to funds from that
23 account.

¹⁰ Page 158 of the bundle.
151026 LN v MN Judgment

1 32. RN said that he and the wife remained in communication, and although he was
2 trying to see “*what she wanted from the situation*” nothing was forthcoming
3 until her Petition was served on 16 August 2014. The wife contends that she had
4 no alternative but to petition for divorce, as she was being told that the husband
5 no longer wanted anything to do with her and that the matrimonial home was
6 about to be sold leaving her with no money, no income and no home. She said in
7 her oral evidence that she would have resumed her position as his wife if the
8 husband had been receptive towards her and that is why she came back to the
9 Cayman Islands. She stated at paragraph 5 of her affidavit sworn on 21
10 November 2014 that her decision to issue the Petition had been vindicated as:



11 *“The matrimonial estate was and is being depleted rapidly and*
12 *(the husband) and RN clearly are prepared to leave me with*
13 *absolutely nothing despite all the years I have spent as a dutiful,*
14 *loving and caring wife. It is clear that while (the husband’s) recent*
15 *intention was that I should be provided for after his death (I note*
16 *that I was named as the main beneficiary of his Will of the 9th June*
17 *2011) the result of a continuance of the present circumstances for*
18 *even a few years would have been to leave me destitute.”*
19

20 The wife contends that the husband could rely upon RN to support him, whereas
21 she has no one. However, I note in the email to RN sent on 15 April 2014¹¹ she
22 says:

23 *“My family in the Philippines are well-off.”*
24

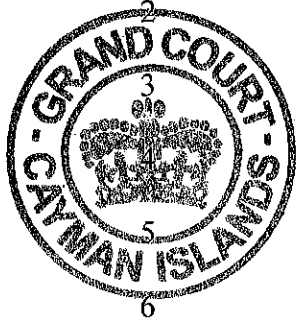
25 33. The wife said that RN had told her that if she went back to the Philippines he
26 would give her \$10,000 and \$400-\$500 every month, although he did not

¹¹ Page 152 of the bundle.
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1 specify for how long those payments would be made. The wife said she told RN
2 that she did not wish to live in the Philippines and on the same day that she filed
3 her Petition, namely 14 August 2014, the wife filed a Summons for interim
4 support and injunctive relief. The wife was seeking an order that she be granted
5 exclusive use of the matrimonial home, an injunction preventing the sale of the
home, an order for the husband to pay the strata fees, insurance and utility bills
related to the home and US\$5,200 per month spousal maintenance. That
Summons was amended, and that pleading was filed on 16 September 2014. The
Amended Summons included an application for the husband to pay CI\$1,500 to
cover the cost of a forensic accountant to assess and then report on the
matrimonial assets.



10 cover the cost of a forensic accountant to assess and then report on the
11 matrimonial assets.
12
13 34. The wife's Summons came on before Panton J. (Actg) on 23 September 2014.
14 The Learned Judge -
15 (i) gave permission to the husband to sell the property;
16 (ii) dismissed the injunction application;
17 (iii) granted exclusive occupation of the matrimonial home to the wife;
18 (iv) ordered the husband to meet all payments for strata fees, insurance and
19 utility bills associated with the home pending the sale;
20 (v) ordered the husband to pay interim spousal support to the wife in the
21 sum of CI\$2,500 per month after the sale of the matrimonial home
22 pending final ancillary relief;



- 1 (vi) ordered the sum of \$1,500 to be made available from the marital estate to
2 cover the cost of a forensic accountants report concerning an assessment
3 of the matrimonial assets; and
4
5 (vii) ordered that CI\$5,000 be made available from the marital estate to cover
6 the wife's legal costs.

7 35. The wife says that following her return she has kept her expenditure to a very
8 low level. She does not buy new clothes and has only been out to restaurants one
9 or two times. She said she had to borrow money from friends to pay for her
10 attorneys' retainer fee, which she had only been able to pay back a month before
11 the hearing.

12
13 36. The matrimonial home was sold in late October 2014 and the net proceeds
14 totalling CI\$197,066.73 were retained in the Company's accounts. The
15 Company's accounts have funded the husband's essential outgoings and the
16 wife's maintenance throughout their relationship. The wife says that, after the
17 sale of the matrimonial home, she moved into a property for three months where
18 the rent was CI\$800 per month. Thereafter, in February 2015, she moved to
19 cheaper accommodation, a one-room cottage in which she shares a bedroom
20 with another person and shares the kitchen. She says she sleeps in the bed and
21 the other individual, who was a stranger to her before they shared, sleeps on a
22 settee in the same room. For that accommodation, she discloses the rent is only
23 \$250 per month and this excludes utilities. It is evident that she is living a frugal
24 lifestyle.



1 37. On 26 November 2014, the Chief Justice gave consent directions. In compliance
2 with the directions the husband served a Request for Further and Better
Particulars which were replied to by the wife. The first Notice of Hearing set
this matter down for hearing on 16 April 2015. Due to the non-availability of a
Judge to hear the matter, that hearing date was vacated and on the 20 May 2015
the matter was set down for hearing on 19 June 2015.

7

8 THE LAW AND PRINCIPLES TO BE APPLIED

9 38. The Law pertaining to the making of periodical payment orders and to the
10 division of matrimonial assets is governed by s.19 of the Matrimonial Causes
11 Law (“the Law”), which reads as follows:

12 *“In dealing with all ancillary matters arising under this Law the*
13 *court should have regard first of all to the best interests of any*
14 *children of the marriage and thereafter to the responsibilities and*
15 *financial and other resources, actual and potential earning power*
16 *and deserts of the parties¹².”*

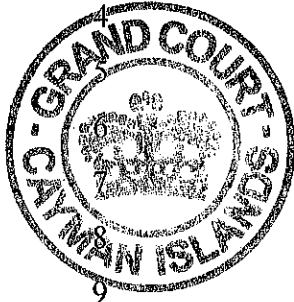
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18 39. S.19 of the Law must be read in conjunction with s.21 of the Law, of which the
19 relevant parts for my consideration in this matter provide as follows:

20 *“At the time of pronouncing a decree under this law, the court*
21 *shall, as appropriate, make order for:*

22 (a)

¹² My emphasis by underlining as there is no child of the marriage.
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- 1 (b) the disposition of matrimonial property, including the
2 matrimonial home¹³;
- 3 (c)
- (d)
- (e) making financial provision from the property of either spouse
 for the other spouse;
- (f) providing for periodical payments to be made by either spouse
 for the benefit of the other spouse; and
- (g) costs."

10

11 40. S.19 and s.21 of the Law give the Court a wide discretion when it comes to
12 financial provision and any awards made to the parties. The Courts in the
13 Cayman Islands, in deciding whether to exercise their powers under s.21 and, if
14 so, in what manner have, when considering what is fair in all the circumstances
15 of the case, traditionally had regard not only to the matters set out in s.19, but
16 also the relevant factors raised in s.25(1) of the Matrimonial Causes Act 1973,
17 and now s.3 of the Matrimonial and Family Proceedings Act 1984 in England
18 and Wales.¹⁴ The factors to be considered include:

- 19 (i) The income earning capacity, property and other financial
20 resources which each of the parties has or is likely to have in the
21 foreseeable future;
- 22 (ii) The financial needs, obligations and responsibilities which each of
23 the parties to the marriage has or is likely to have in the
24 foreseeable future;

¹³ My emphasis by underlining.

¹⁴ *Doak v Doak and Riley* [2002] CILR 224, [17], [21], [22], *Wight v Wight* CICA 6 of 2006 [62], *Wood v Wood* [2009] CILR 255, [12] and *McTaggart v McTaggart* (2011) 2 CILR 366[39].
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1 (iii) The standard of living enjoyed by the family before the breakdown
2 of the marriage;

3 (iv) The age of each party to the marriage and the duration of the
4 marriage;

5 (v) Any physical or mental disability of either of the parties to the
6 marriage;



7 (vi) The deserts of the parties, including contributions made by each of
8 the parties to the welfare of the family (to include contributions
9 made by each of the parties to the accumulation of matrimonial
10 assets as well as non-matrimonial property) and any contribution
11 made by looking after the home caring for the family;¹⁵

12 (vii) The value to either of the parties to the marriage of any benefit (for
13 example, a pension) which, by reason of the dissolution of the
14 marriage, that party will lose the chance of acquiring; and

15 (viii) The conduct of each of the parties. If that conduct is such that it
16 would in the opinion of the Court be inequitable to disregard.

17

18 41. Sir John Chadwick P. in *Valerie Ayala Gordon v Jefferson Raymond Watler*
19 CICA (Civil) 13/2014 ("*Gordon*") paragraph 12 reiterated the principles set out
20 in *McTaggart v McTaggart* [2011 2 CILR 366] ("*McTaggart*") and the
21 approach to be taken to the case law emanating from England and Wales when
22 he stated:

¹⁵ *Wight v Wight*, 2006 CILR 1 Zacca P. at paragraph 33.
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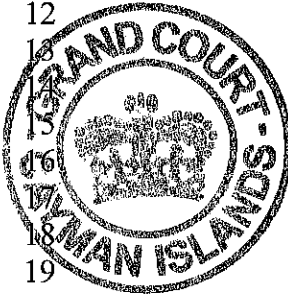
1 “12. The correct approach to the division of property in ancillary relief
2 cases was set out by this Court in *McTaggart*. At paragraph 40 of the
3 judgment in that case the Court said this:

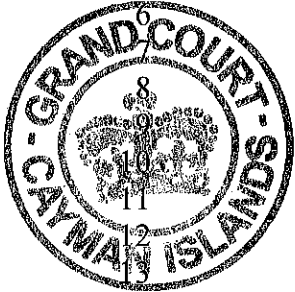
4 “40. We were referred by the parties, both in the skeleton arguments
5 lodged on their behalf and in oral submissions made in the course of the
6 hearing, to a plethora of judicial decisions in England and Wales and to
7 a few decisions in this jurisdiction. Observations made by experienced
8 judges are, of course, of assistance to an understanding of the
9 application of the section 19 factors; but it must be kept in mind that
10 most cases in this field are decided on their own facts and that there is a
11 risk that extensive citation may confuse rather than illuminate. It is not
12 necessary, I think, to look further than the decision of the House of
13 Lords in *Miller* - and in particular the speeches of Lord Nichols and
14 Baroness Hale - in order to identify the principles. Leaving aside, in this
15 context, the best interest of the children, which (as I said) are
16 paramount, there are three strands: need, compensation and sharing
17 [2006] 2 AC 618 at paragraphs [10]-[16] per Lord Nichols and at
18 paragraphs [138]-[143] per Baroness Hale. The ultimate objective, as
19 Baroness Hale explained at paragraph [144], is to give each party an
20 equal start on the road to independent living. She said this:

21 “[144] Thus far, in common with my neighbour and learned friend
22 Lord Nicholls of Birkenhead, I have identified three principles which
23 might guide the court in making an award: need, generously
24 interpreted, compensation and sharing. I agree that there cannot be
25 a hard and fast rule, but whether one starts with equal sharing and
26 departs when need or compensation supplied a reason to do so, or
27 whether one starts with need and compensation and shares the
28 balance, much will depend on how far future income is to be shared
29 as well as current assets. In general, it can be assumed that the
30 marital partnership does not stay alive for the purpose of sharing
31 future resources unless this is justified by need or compensation. The
32 ultimate objective is to give each party an equal share start on the
33 road to independent living.”

34
35 When Baroness Hale referred to “sharing” in that context, she had in mind -
36 as her speech demonstrates - sharing of all the assets; not simply sharing the
37 assets which could be classified as matrimonial property. This court went on
38 in *McTaggart* to say this, at paragraphs 42 and 43:

39 “42. In this jurisdiction a court will need to consider whether, having
40 proper regard to the section 19 factors, an order under section 21(b) of
41 the Law for the disposition of the matrimonial property will make
42 appropriate provision for the relevant party in respect of the three
43 strands: need, compensation and sharing. If not, then the court will need
44 to go on to consider whether to make an additional order under section





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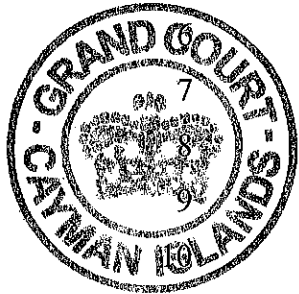
*21(e), that is to say, an order making financial provision for that party out of property of the other party. 43. It seems to me reasonably clear - and I would so hold - that, if satisfied that an order under section 21(b) of the Law, or the combination of orders under section 21(b) and (e), would make appropriate provision for the relevant party in respect of the three strands of need, compensation and sharing, the court should not, without good reason, make an order for periodic payments under section 21(f). To make an order for periodic payments in circumstances where such an order is unnecessary because appropriate provision can be made by the disposition of matrimonial property either under section 21(b) or by a capital adjustment from the separate property of the other party under section 21(e) would be inconsistent with the principles of clean break to which Lord Scarman referred in *Minton v. Minton*, [1979] AC at 608.*

There are two principles which inform the modern legislation. One is the public interest that spouses, to the extent that their means permit, should provide for themselves and their children that the other of equal importance is the principle of clean break, the law now encourages spouses to encourage bitterness after family breakdown and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down. It would be inconsistent with this principle if the court could not make, as between the spouses, a genuinely final order. ””

*Those observations must be read in the light of the observations in *Miller* - and in particular those in the speech of Baroness Hale to which I have referred - that the ultimate objective is to give each party an equal start on the road to independent living.”*

42. When deciding whether to make an order under s.21(b), and from where any such order should be made, as made clear by the Court of Appeal in *McTaggart*, I am required to consider and decide which assets can be considered as being matrimonial property. In the combined House of Lords appeals of *Miller*, Lord Nicholls described matrimonial property as “*property acquired during the marriage otherwise than by inheritance or gift.*” Its distinguishing feature is that it is “*the financial product of the parties’ common endeavour.*” In *McTaggart*, Sir John Chadwick P approved Lord Nicholls’ view.

1 43. When carrying out this exercise I am assisted by further guidance given by Sir
2 John Chadwick P. In *W v W* [2009 CILR 225] the President reiterated the
3 importance of the principles set out in (i) *Wight v Wight* 2006 CILR 1
4 (“*Wight*”); (ii) *White*; and (iii) *Miller*. Referring to Forte J.A.’s ruling in *Wight*,
5 the President stated that the Court should construe s.19:



“On the basis of the new approach to the institution of marriage and the fact that it is a union of partners. Each therefore would be entitled to equal share of the assets acquired in the marriage¹⁶, unless there is a good reason to depart from that principle.”

11

12 44. The President understandably then referred to the guidance given in the English
13 cases concerning property brought into the marriage by one of the parties. This
14 included reference to what Lord Nicholls stated at page 610 in *White* at 610 and
15 repeated by him in *Miller* at paragraph 23, namely:

16 “Plainly, when present, this factor is one of the circumstances of
17 the case. It represents a contribution made to the welfare of the
18 family by one of the parties to the marriage. The judge should take
19 it into account. He should decide how important it is in the
20 particular case. The nature and value of the property, and the time
21 when and circumstances in which the property was acquired, or
22 among the relevant factors to be considered. However, in the
23 ordinary course, this factor can be expected to carry little weight,
24 if any, in a case where the Claimant’s financial needs cannot be
25 met without recourse to this property.”

26

¹⁶ My emphasis by underlining.
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1 45. I have carefully considered the case authorities which the parties have referred
2 me to. I also have regard to the principles outlined above, and set out in similar
3 detail and terms in my judgment dated 6 March 2015 in *AT v JT* FAM 34 of
4 2012¹⁷. The principles highlight that the Court is charged with dividing the
assets in a fair and equitable manner, whilst trying to see if there can be a clean
break. Both parties agree that this case is one in which there should be a clean
break. There is no claim made by the wife in relation to the husband's pension,
8 which he built up prior to his retirement and therefore also prior to the marriage
9 and the parties' cohabitation.

10

11 **THE HUSBAND'S EMPLOYMENT, INCOME AND OUTGOINGS**

12 46. The 86 year-old husband clearly has no increased income capacity. His income
13 from his pension and very small investment income totals around CI\$1,642 per
14 month. Due to his severe health condition his outgoings are substantial. RN has
15 prepared an updated budget of his monthly needs and based on a monthly
16 average they are assessed at CI\$7,993. This figure includes his maintenance
17 obligation towards his 83 year-old former wife, who herself is not in good
18 health, and I am satisfied that this payment is a strict responsibility that must
19 continue to be met.¹⁸ These figures in the table which begins at page 165 in the
20 bundle have not been forcefully challenged by the wife and it means that, after
21 taking into account his monthly pension, the husband has a shortfall of CI\$6,351
22 per month. I accept this figure and am satisfied that RN has used his best

¹⁷ A copy of that judgment was provided to each of the attorneys during the hearing.

¹⁸ Having regard to s.19 of the Law and the helpful practice for consideration at s.25(1) of the Matrimonial Causes Act 1973, and now s.3 Matrimonial and Family Proceedings Act 1984 in England and Wales.

1 endeavours to keep the medical and care costs at a reasonable level whilst at the
2 same time ensuring his father's reasonable needs are met.

3
4 47. The husband contends that his clearly and substantial evident needs should be
5 met from the available capital, namely from his own assets and from his share in
6 the matrimonial home. It is submitted that to meet his needs, he should receive
7 60% of the remaining proceeds from the matrimonial home which are being held
8 in the Company's account. The wife recognises that the husband has these
9 needs, but submits that her medium to long term needs outweigh his lifelong
10 acute needs.

11

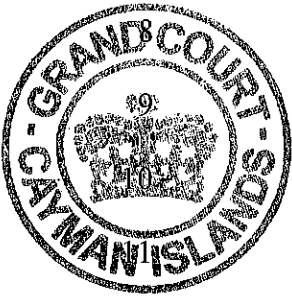
12 **THE WIFE'S EMPLOYMENT, INCOME AND OUTGOINGS**

13 48. The wife, unlike the husband, does have an income capacity, something which
14 she concedes.¹⁹ The 58 year-old wife who has not worked since she moved to
15 the Cayman Islands in 1987, although at the time she was a fairly recently
16 qualified registered nurse, does not have a great earning capacity. At paragraph
17 13 of her affidavit sworn on 21 November 2014 she puts her maximum income
18 capacity in the Cayman Islands at CI\$1,000 per month. She said that she would
19 have to look for a low skilled job and that she was not certain that she would be
20 able to find employment. The wife indicated at one point that she had been
21 looking for work and at another point she said that she had not really looked for
22 a job since the commencement of these proceedings. The wife also accepted that

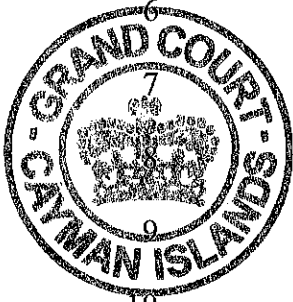
1 if she had started looking for work by now that that would have helped everyone
2 financially, but she had not done so as she was “*terrified to go out.*”

3
4 49. The wife indicated that she wished to remain in the Cayman Islands and it “*was*
5 *not an option for her*” to live in the Philippines. She stated that when she went
6 to the Philippines in June 2014 it was only for a brief recuperation and she
7 always intended to return here. She said she had a sister in Manila and that she
had lived with her 74 year-old mother in the island of Samar. There is no helpful
detail of the wife’s income capacity in the Philippines, but she informed the
Court that there was no work to be found on Samar where residents live a rural
lifestyle. She stated that she had three sisters and two brothers and she did not
own any property in the Philippines and was not likely to inherit any property
there in the foreseeable future because she was not sure what would happen to
her mother’s property. As the wife is entitled to try and remain in the Cayman
Islands, her home for around twenty-seven years, the Court should also have that
in mind when considering how the relevant assets may be distributed to meet
both parties’ needs. In the end the wife will have to decide where she can
realistically live, at her age, on the limited resources available to her post-
divorce.

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21 50. The wife set out her outgoings, totalling C\$2,305, at paragraph 9 of her
22 affidavit sworn on 21 November 2014. This figure included her estimate of
23 C\$800 per month for renting a one-bedroom property. It is submitted by the
24 husband that, as she has moved into a property in which she now pays only

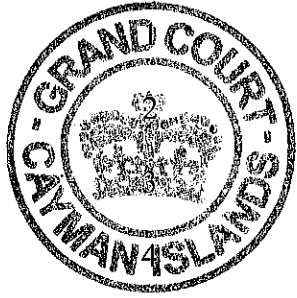


1 CI\$250 per month where she shares one-bedroom with another person, she
2 sleeping in the bed the other person on a settee, her rental outgoing figure should
3 be reduced by CI\$550. I am not satisfied that, moving forward from the interim
4 holding situation, it would be appropriate to so reduce that figure. I am satisfied
5 that CI\$800 per month is a reasonable amount for rent for a satisfactory property
6 if the wife is to remain in the Cayman Islands and that her current cramped and
7 shared living arrangements can only be deemed as being appropriate and
8 temporary until the final capital distribution. Despite the parties' difficult
9 circumstances, I must still have regard to the standard of living the parties had
10 prior to separation, albeit accepting that the same standard cannot be maintained
11 on the available capital.



12
13 51. The husband contends that the wife's claimed outgoing figures are not
14 substantiated by any supporting evidence and that they are disproportionately
15 high when compared with the same line-item in the husband's disclosed
16 outgoings. I am not satisfied that this is a justification for departing from her
17 figures, and I have regard to the significant difference in the parties' ages and
18 ability to get out and about and the effect that this may have on items listed in
19 their outgoings.

20
21 52. When looking at the wife's bank statements from 7 October 2014 to 31 March
22 2015, she received CI\$14,800 in credits and withdrew CI\$8,275.99, leaving a
23 balance of CI\$6,224.01. It is contended that this shows that her needs are not as
24 high as set out in her budget in her affidavit as she has been able to make



savings. It is submitted that the analysis of the spending shows that her outgoings are in the region of CI\$1,379 per month and therefore, if she works to her maximum income capacity of CI\$1,000, she only requires an additional CI\$379 per month.

5

6 53. When asked in cross-examination about why she had been able to save money
7 during the six month period, she said the figures did not show what she needed,
8 for example, clothes. The wife said by "*trying to be frugal*" she was able to pay
9 the bills, pay the rent and "*to save as well.*" She said she did not send any
10 money to the Philippines.

11

12 54. It is clear that the savings came about because the level of interim periodical
13 payments was set by the Court having heard from counsel from both parties and
14 reviewing the documents then filed by the parties²⁰ and the wife then changed
15 her circumstances by living in greatly downgraded and shared accommodation
16 resulting in lower rent and reduced related household outgoings.

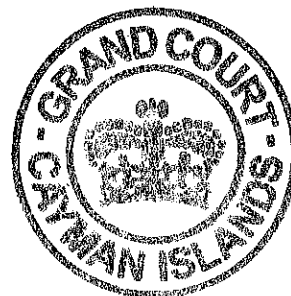
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18 55. It is also submitted by the husband that her real intention is to return to the
19 Philippines and, that being the case, her needs would be greatly reduced due to
20 the much lower cost of living in that country compared to the Cayman Islands.
21 On the evidence before me, despite her movements in June 2014 and the content
22 of some of the emails before the Court, I am not able to find on the balance of
23 probabilities that she intends to return to the Philippines rather than, at least

²⁰ See preamble to the order of Pantou J dated 16 September 2015
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1 initially try to, remain residing as a naturalised Caymanian in the Cayman
2 Islands, her home for 27 years. I note that the husband's proposals set out in the
3 skeleton argument are made on the basis that the wife wishes to remain in the
4 Cayman Islands and that is how I will approach my determination.²¹

5
6 56. Following my review of the wife's outgoings and the husband's challenge to
7 them, my only observation is that it is unclear why her medical expenses would
8 be \$250 per month, although I note that her medical insurance premium is put at
9 \$180 per month so the coverage at her age would be minimal. The wife's
10 outgoings set out in her affidavit are not an exhaustive list of all of her outgoings
11 and cannot be viewed as being excessive. The limited withdrawals from the
12 Butterfield accounts, and the resultant savings in the accounts relied upon by the
13 husband, reflect a frugal expenditure on the current low standard of living she
14 endures in shared cramped accommodation which is inappropriate for a 58 year
15 old woman, especially having regard to her standard of living during the
16 marriage. If she had remained in the CI\$800 per month rental apartment on her
17 own, her reasonable outgoings on utilities would have been higher. I am
18 conscious of the fact that the wife would like to try to put some money into a
19 pension and therefore on the face of the figures her specific outgoings are
20 reasonable. Accordingly, I assess her reasonable monthly needs at CI\$2,305 if
21 she remains in the Cayman Islands.



22
23

²¹ Paragraph 62 of the skeleton argument.
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1 **THE APPROACH TO THE PARTIES' NEEDS**

2 57. One difficulty is that the available assets, having regard to the wife's maximum
3 earning capacity figure of CI\$1,000 for at best the next ten years, will not meet
4 her long term needs if she is residing in the Cayman Islands. On the other hand,
 even if the husband were to retain the 60 percent share of the remaining
 proceeds of sale of the matrimonial home²² which he seeks and all of the
 remaining assets held by the Company, which he contends should not be
 considered as being matrimonial assets and/or subject to division, this would not
9 enable his required outgoings to be met for the rest of his life.

10
11 58. The wife unattractively submits that RN, despite having a wife and two young
12 children, should be responsible for supporting the husband and meeting his
13 substantial medical and care costs when his allocated capital has been exhausted.
14 The circumstances in the matter before me can be distinguished²³ from those in
15 *Seaton v Seaton* [1986] 2 FLR 398 where the Court of Appeal "*on the special*
16 *facts*" of that case, upheld a decision dismissing a claim for periodical payments
17 made by a husband, who had been severely incapacitated by a stroke, as he
18 could rely upon the offer of full-time care from family members (his parents)
19 and thereafter from the State.²⁴ The correct approach to family members'

²² As per his written open offer in letter from his attorneys of 20 March 2015.

²³ *Seaton* can also be distinguished as emphasis was placed on the fact that the wife had made a substantial financial contribution to the marriage for several years before the divorce, without any contribution from the husband. It was held that it would be unjust to impose an ongoing obligation on the wife to support the husband out of her income which met her needs enabling her to live a reasonable life.

²⁴ The husband's case is that he could not live with RN and his family and that the CINICO coverage available to him will not assist him with the costs of his home-care in anyway and the majority of his mother medical expenses.

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1 support and its impact on this hearing is that advocated in Mr. Fee's closing

submissions namely that it:



“*May be the reality that they both fall back on their wider families – the court should not assume that one will and one will not and that one has a family who can maintain them and meet their needs so the other can enjoy a more luxurious lifestyle.*”

7

8 59. The wife conceded during cross-examination that the Court should:

9 “*Try to see if it can put each party on an equal footing to meet*
10 *monthly costs.*”

11

12 After she gave that answer I gave her an opportunity to clarify whether she
13 understood that Mr. Fee, when making reference to equality in his question, did
14 not mean an equal share but that they share proportionate to the parties’
15 respective needs. The wife answered that she accepted that the husband’s costs
16 were higher due to the care he requires and that what she needed is less. She
17 answered, when it was then put to her that the husband’s case was that the
18 money be divided in such a way that he would get considerably more due to his
19 greater needs:

20 “*What about me?*”

21

22 60. As brought to the parties’ attention by me during the hearing, the authors of
23 Matrimonial Property and Finance – Peter Duckworth, state at B3 that:

24 “*Poor health on the part of one spouse may create a need for*
25 *greater capital, for example to adapt the home or to finance*
26 *nursing care. However, the court must always perform a balancing*
27 *exercise.....*”



1 The authors then went on to say that the point may be reached in some cases
2 where it is not reasonable to expect the other spouse to underwrite the health
3 care of the first. When making that final comment, reference was made to the
4 *Seaton* case and to the case of *Ashley v Blackman* [1988] 2 FLR 278. The latter
5 case can also be distinguished from the matter before me. In *Ashley* the Court of
6 Appeal agreed with the husband that there should be a clean break and a
7 cessation of periodical payments. The case involved a wife who suffered from
8 chronic schizophrenia and, as she as she received various forms of social
9 security benefits, she would receive no personal benefit from the periodical
10 payments order because she would be eligible to recoup any reduction or loss of
11 periodical payments from the Department of Health and Social Security. I am
12 satisfied that, as well as having regard to each party's life expectancy, when
13 considering distribution of the capital assets I must have regard to the
14 requirement for the husband to finance his undisputed need for full-time care
15 and medical attention.

16
17 **THE PARTIES' ASSETS**

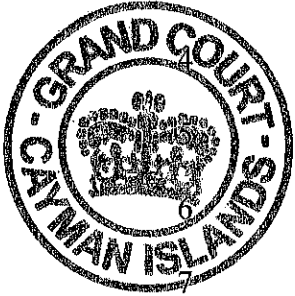
18 61. This is a difficult case, especially due to the husband's age and the significant
19 full-time care costs associated with his severe ill-health and when coupled with
20 the wife's age and lack of employment history. This is compounded by the
21 limited value of the total assets being held by the Company, and the husband's
22 now reduced income from his pension, which, even if it were appropriate to split
23 the same equally between the parties, would not be sufficient to provide for their
24 long-term or possibly medium term needs.



1 62. The wife has no personal/sole assets save for her bank account into which the
2 maintenance pending suit was paid, which as of June 2015 had a balance of
3 CI\$6,524.01. Both parties agree that the matrimonial home was a matrimonial
asset and therefore that the proceeds of sale should be treated as a matrimonial
asset. The husband contends that is the only relevant asset held by the Company
to be considered for division, whereas the wife contends that all of the funds
held by the Company at the time of the presentation of her Petition should be
8 considered as being matrimonial property. It is accepted by the wife that the
9 source of the funds were "*once pre-marital property*" but should now be
10 considered as a part of the marital property pot because it was a long marriage
11 and the property had merged or become entangled with matrimonial property. It
12 appears that Counsel for the wife overlaps the issue of what constitutes marital
13 property with the needs argument, namely that having regard to her age, the
14 wife's medium to long-term needs could not be met unless financial provision
15 for the wife can be made from these assets.

16
17 63. The value of the one agreed matrimonial asset, namely the proceeds of sale of
18 the matrimonial home in October 2014, was CI\$197,067. This was paid into the
19 Company's account. By 11 June 2015, due to sums provided to each party from
20 the Company's account (albeit the majority to the husband to meet his care and
21 health costs), the total assets had reduced by CI\$99,089. I agree that value of the
22 proceeds from the sale of the matrimonial asset should be reduced by this sum to
23 CI\$97,978.

24



1 64. The husband submits that, as the wife has the balance of CI\$6,524 in her bank
2 account accrued from the interim periodical payments made from the proceeds
3 of sale held in the Company's accounts, this should be regarded as a
matrimonial asset and deducted from the total figure, so the lump sum which the
Court determines should be paid to her from the Company account based on her
percentage of that asset should be reduced by CI\$6,524. I am satisfied that the
balance in the wife's account should be regarded as being a matrimonial asset
8 when calculating division for the reason stated by the husband. When I reach
9 this conclusion I also have regard to the fact that, from the preamble of, Panton
10 J's order the balance derives from periodical payments sums he ordered to be
11 paid and placed into that account from the Company account after he had
12 reviewed the documents provided by the parties and the submissions made by
13 the attorneys. Soon after the hearing the wife's outgoings significantly reduced
14 due to her voluntary change in accommodation.

15
16 65. Following circulation of the unperfected comment to the parties for comment
17 pursuant to Practice Directions No. 1/2004 -- "Corrections to Judgments" the
18 parties agreed that when calculating the matrimonial asset pot for the purposes
19 of the written judgment that there should be an add back of CI\$3,488 for
20 window replacement costs. The total remaining matrimonial assets at the time of
21 the hearing, including the money in the wife's account, therefore totalled
22 CI\$101,466.

23



1 66. The husband's case is that the wife should receive 40% of the CI\$101,466
2 balance, namely CI\$40,586.40. Having regard to the figure of CI\$1,305
3 (outgoings of CI\$2,305 minus income capacity of CI\$1,000) which I have
assessed for her monthly needs, if she were to remain in the Cayman Islands, her
home for the last 28 years, this would mean that if she did not invest in a
pension fund the lump sum and the balance in her account would sustain her for
just over two and seven months ($31 \times 1305 = 40,586$). The husband would
8 receive CI\$60,879.60 from his proposed 60% share²⁵ of the remaining balance
9 of the proceeds of sale plus CI\$169,940²⁶ figure for what he terms to be non-
10 matrimonial property. This total of CI\$230,819.60, having regard to his average
11 monthly needs which I have assessed at CI\$7,993 plus his monthly pension
12 income of CI\$1,642, would last for just over 3 years ($36.34 \times 6,351 = 230,819$).

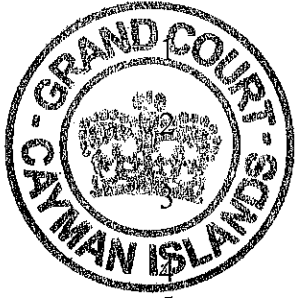
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14 67. I do not accept the husband's contention about the percentage. I find that the
15 matrimonial assets are the CI\$101,466²⁷. If each party were to receive 50% of
16 these assets, that figure would be CI\$50,733. As the wife already has CI\$6,524
17 in her account she would receive a lump sum of CI\$44,209 from the Company
18 account. As the wife would have CI\$50,733 to draw on, on her assessed needs
19 and having regard to her income capacity this amount would last her for just
20 under 3 years and 3 months ($38.87 \times 1,305 = 50,732.99$). The husband would
21 receive CI\$50,733 from the proceeds of the sale funds plus the CI\$169,940
22 value of the non-matrimonial property in the Company's accounts. This total of

²⁵ Also taking into account the CI\$6,524 balance in the wife's bank account ($97,978 - 32,667 = 65,311$).

²⁶ See paragraph 39 of the skeleton argument filed on behalf of the husband.

²⁷ This figure changed after reading the attorney's agreed comments submitted after they reviewed the unperfected judgment. The changed figure did not alter my conclusions or my reasons for reaching them.



CI\$220,673, having regard to his average monthly needs which I have assessed at CI\$7,993 and his monthly pension income of CI\$1,642, he could draw on the funds for just under 2 years and 11 months ($34.74 \times 6351 = 220,672.99$).

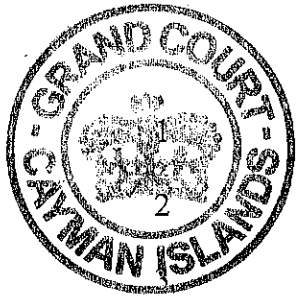
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6 68. The wife has a life expectancy of over 30 years. Unfortunately, due to his age
7 and ill-health the husband's submitted life expectancy is 5 to 6 years.²⁸ This is
8 regrettably a case where clearly there are insufficient matrimonial assets to meet
9 either parties' needs.

10

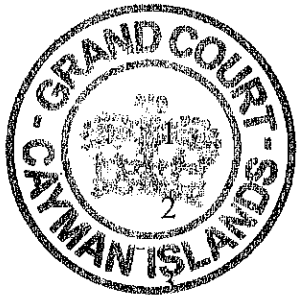
11 69. I have carefully considered the wife's submission concerning the other assets
12 held by the Company which I touched on in paragraph 62 above. I am not
13 satisfied, on the balance of probabilities, that they should be regarded as being
14 matrimonial assets. This is not one of those cases where there has been an
15 entanglement or merging of non-matrimonial assets with the matrimonial assets.
16 In fact, the above-mentioned April 1994 letter/agreement provided by the
17 husband just prior to the marriage assists the Court in reaching that conclusion
18 as it set out precisely what the financial position was at that time. It is evident
19 that there was no asset or even income accrual during the marriage by either
20 party. The clearly highlighted assets, which were already acquired, remained
21 separate throughout their entire marriage. Though I accept that the wife
22 relocated to the Cayman Islands and that it has been a marriage of some length, I
23 also note that there are no children of the marriage and the wife has made no
24 financial contribution to the marriage having relied upon the husband's income

²⁸ See paragraph 44 of the affidavit sworn by RN on 19 March 2015.
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from his pension throughout. The husband was already in full time retirement by the time they cohabited.

4 70. Having made this finding I go on to consider whether this is one of those cases
5 in which the Court, when considering need, compensation and sharing under
6 s.21(b) of the Law, finds that the disposition of matrimonial property will not
7 make appropriate provision for the parties. I have regard to this particularly in
8 relation to the wife's needs who, if unsuccessful in her submission that all of the
9 funds held by the Company are matrimonial assets, seeks to persuade the Court
10 to make an additional order under s.21(e) of the Law, namely for financial
11 provision for herself out of the husband's property. This type of submission is
12 ordinarily made where the failure to also consider the non-matrimonial assets
13 would result in the party who holds those assets having his need clearly met
14 while the other party does not. In the case before me, even on the wife's
15 proposals, both parties' needs would not be fully met and the husband's obvious
16 and present needs would be devastated and severely prejudiced. Having regard
17 to all of the factors, including again those set out in paragraph 66 above, this is
18 not one of those cases where it would be appropriate to make an order under
19 section 21(e). This is a conclusion that I have reached when carrying out the
20 balancing exercise highlighted at paragraph B3 in Duckworth in a case where
21 one spouse has a need for greater capital to finance his care. Having regard to
22 the level of the non-matrimonial assets and the wife's needs, if the husband's
23 reasonable needs had been at a similar level to the wife's and not at the high
24 level that they have to be at due to his real and significant health issues, then this



is a case in which the Court might have considered the non-matrimonial assets as such since they may have then met both parties' needs.

4 **CONCLUSIONS**

5 71. This is not a case in which the parties' conduct is relevant to the disposal. It is an
6 extremely sad case in which, no matter what approach the Court takes to both
7 parties' submissions on the appropriate division of assets, there could not be an
8 ideal conclusion for either party. I approach the case on the basis that both
9 parties are entitled to seek an order on the basis that they wish to remain in the
10 Cayman Islands. On the evidence before me, I am not able, on the balance of
11 probabilities, to uphold the husband's submission that the wife intends to leave
12 her long-term home here to live in the Philippines, a country she has only
13 visited four times during the marriage. I acknowledge that the order I make, in
14 the unusual circumstances of this case, is not ideal as it cannot meet either
15 parties' needs due to the level and nature of the assets.

16
17 72. Although I have approached it on the basis that the wife is entitled to try to
18 remain in the Cayman Islands, the quantum of the order due to the limited
19 resources available and the husband's dire circumstances may mean that the
20 wife will have to give careful consideration as to where she lives in the future.
21 Even if she were to move to the Philippines or any other country, the limited
22 lump sum she will receive would not meet her long-term needs and it is
23 arguable whether such a move by her should prompt an application by the
24 husband to vary this order without him first giving great thought to the merits of



such an application. With this in mind, I refuse the husband's application set out at paragraphs 71 and 72 of his skeleton argument for me to make the lump sum payment to the wife in instalments over time. The wife is entitled to have that lump sum and, upon receipt, make an informed decision about her future.

5

6 73. Having regard to all of the above and the factors in s.19 of the Law a lump sum
7 order should be paid to the wife from the remaining balance from the proceeds
8 of sale of the matrimonial home. Having carefully considered the figures,
9 recognising that regrettably neither party's long term needs can be met, I am
10 satisfied that the balance of the proceeds of sale of the matrimonial home should
11 be divided equally, each party receiving 50%. The lump sum paid out to the wife
12 should be reduced to reflect that the husband is entitled to a 50% share of the
13 balance in her account in June.²⁹

14

15 74. I accept the husband's submission that that balance should not be the balance
16 existing at the time of sale of the property in 2014, but the balance in June 2015,
17 namely the balance after the pre-final hearing payments out made from the
18 proceeds held in the Company's account to both parties between September
19 2014 and June 2015.

20

21 75. Due to the passage of time since the final hearing and this judgment, I am also
22 satisfied that a sum should be deducted from the wife's portion of the lump sum
23 in the same amount as any interim periodical payments that have been made to

²⁹ See paragraph 66 above.
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1 her from the Company accounts since June 2015. This means that the lump sum
2 will be a little lower than the CI\$44,209 figure set out at paragraph 67 above.
3 For clarification sake, the balance of the proceeds of sale of the home held in the
4 Company account for proportionate division should not be reduced by the
5 payments out made to the husband since June 2015 to meet his needs, as he will
6 meet those from the funds he will retain.

7
8 76. As sought by the parties there shall be a clean break, with no order for spousal
9 maintenance made.

10
11 **LEGAL FEES/COSTS**

12 77. Unless I hear from the parties within seven days of the delivery of the perfected
13 judgment that they wish to make further submissions on the issue, I intend to
14 make no order for costs.

15
16 78. I end by thanking both Counsel for their careful and well-argued presentation of
17 their clients' respective cases in this sensitive and troubling matter. I also thank
18 both parties for their extreme patience in awaiting this decision.

19
20
21
22
23 

24 **HONOURABLE MR. JUSTICE RICHARD WILLIAMS**
25 **JUDGE OF THE GRAND COURT**

