

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
3 FAMILY DIVISION
4
5

CAUSE NO: FAM 66 OF 2014

6 BETWEEN:

7
8 AND

9
10 AND



DJ

Petitioner

11
12 BJ

Respondent

13
14 RK

15 Co-Respondent
16
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18 **Appearances:**

Mr. C. Fee for the Petitioner

Ms. Karin Thompson for the Respondent

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21 **Before:**

Hon. Mr. Justice Richard Williams

22
23 **Heard:**

4th September 2015

24
25 **Transcript Delivered:**

7th September 2015
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28 **TRANSCRIPT OF EX TEMPORE JUDGMENT**
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30 1. This evening, I now give this Ex Tempore Judgment at the close of today's
31 hearing. It is not intended to read like a formal written ruling. It will have to be
32 perfected and copies of it will be made available to the parties. As this judgment
33 is being given so promptly I invite the parties to interject if they feel any of the
34 figures mentioned are inaccurate. The Co-Respondent has not attended today's
35 hearing.
36

1 2. Consideration today is given to the Petitioner wife's Summons filed on 1st June
2 2015. The parties should have that Summons in front of them, so I need not read
3 out each paragraph. It primarily relates to the order of the Chief Justice made on
4 23rd July 2014. I can summarise the orders sought therein as being:

5 (i) a variation, so that orders for certain payments currently being made by
6 the husband directly to entities or to persons other than the wife be paid
7 in the same set amount to the wife, who will then in turn become solely
8 responsible for physically making the payments to the third parties/other
9 entities;

10 (ii) clarification of the Order made by the Chief Justice and to assess the
11 level of, and order payment of, any arrears proved to have arisen since
12 the date of the Chief Justice's Order; and

13 (iii) for the disclosure set out in the wife's request for further and better
14 particulars, in particular at paragraphs 18 to 25, which relate to the
15 husband's partnership.

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17 3. There is some overlap with the issues I had been asked to determine at the
18 hearing on 14th November 2014. At that hearing I was unable to deal with some
19 of the issues raised in the wife's Summons then before the Court, because of the
20 short service of her affidavit on the husband and as there was an application
21 made for an adjournment to afford him the opportunity to consider the same,
22 give instructions and to file an affidavit in reply. Having given that opportunity
23 for the reasons stated, I am disappointed that the husband has failed to take the



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opportunity to file an affidavit to address the evidence in the wife's affidavit filed on 1st June 2015 and, if needed, in her affidavit filed on 12th November 2014. Sadly for the husband, although I have had the opportunity to hear from him under affirmation today, he has not produced any documentary evidence to back up his oral evidence.

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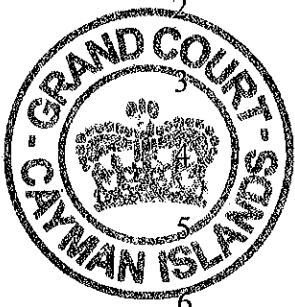
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4. I gave an Extempore Ruling on 14th November 2014. In that ruling I set out the relevant background. I do not intend to repeat that detail in this ruling as the parties may refer back to what was set out therein.

5. At the outset of today's hearing Mr. Fee sought to persuade me that I should not permit the husband to give oral evidence about the issues raised in the wife's Summons and her affidavits, and contends that I should simply reach my decision on the evidence then before the Court, namely the contents of the wife's affidavits. He submitted that his client would be severely prejudiced if I permitted the husband to give oral evidence today. Despite his forceful submissions, having regard to the overriding objective, I took the view that the husband should be permitted to present oral evidence, but I indicated there may be cost implications as the hearing would now become a more extended one. I also indicated that, if at the close of his evidence in chief, the wife felt she required an adjournment to enable her to properly meet that evidence, then such an application could be made and would likely be granted. No such application was made by her.



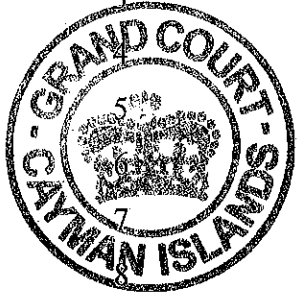
1 6. When the parties came into Court they informed me that, following negotiations
2 this morning between the parties, they have sensibly agreed that the divorce
3 Petitions should move along on an uncontested basis. With this in mind, a draft
4 Amended Petition is to be prepared. The husband and wife have signed a draft
5 copy of the Amended Petition today, to reflect their agreement. Once the
6 Amended Petition has been drafted it should be served on the Co-Respondent.
7 Thereafter, if an order is filed, signed by all three parties, I will administratively
8 grant leave to amend the Petition in those terms.

9
10 7. The parties have also agreed that the issue about the enforceability of the pre-
11 nuptial agreement has been resolved, all parties agreeing that it may be enforced.
12 Mr. Fee indicates that this was communicated to the wife's attorneys in
13 February 2015. Accordingly the husband's Summons of 3rd September 2014 is
14 withdrawn on a no order for costs basis.

15
16 8. By her Summons, I am asked by the wife to vary the terms of the Chief Justice's
17 July 2014 Order, not by changing the amounts determined to be appropriate by
18 the Chief Justice, but by changing the mechanics of the Order to enable the wife
19 to take on a greater responsibility for making payments, rather than relying on
20 the husband to do so.

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22 9. In my Ex Tempore Ruling given at the November hearing I stated:
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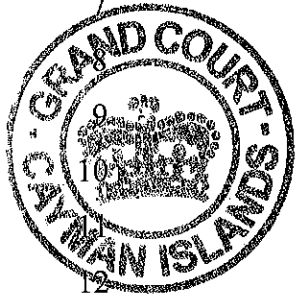




1 *"When I look at the order, the minute of order and the affidavits*
2 *before the Chief Justice, it seems plainly clear to me that the*
3 *exercise conducted by the Chief Justice and the parties was to*
 replicate payments set out in the payments schedules in the
 affidavit of the wife in the order. It also seems clear to me that the
 intention was that they be divided into different schedules in the
 order, (i) one section to reflect payments that the husband was
 directed to make to third parties, that is set out in paragraph 1 of
 the order and (ii) one section to reflect payments that the husband
 was directed to make directly to the wife, that is set out in
 paragraph 2 of the order. This makes a great deal of common
 sense. This would be particular helpful and important now that the
 payment method for direct payments to wife will be through the
 Court Funds Office.

9 *It is submitted by Mr McGrath that the entries in paragraph 1 of*
10 *the perfected order for toiletries and diapers \$250 per month, co-*
11 *payments for medical insurance \$25 and additional medical*
12 *costs/pharmacy of \$50 should all be moved into the table at*
13 *paragraph 2 of the order. It is also submitted that the entry*
14 *entertainment (playgroup, motions) in paragraph 1 should*
15 *similarly be moved, but there is no amount set out for payment in*
16 *the order.*

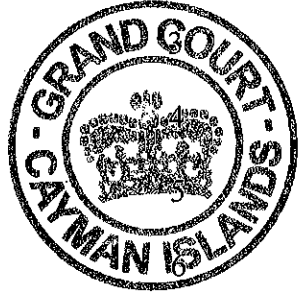
17 *The position of the husband appears to be that was not the*
18 *arrangement that the Chief Justice intended in his order. He says*
19 *that he goes out and buys the diapers and the Chief Justice did not*
20 *intend him to pay diaper money to the wife for her to go out and*
21 *purchase them. He says that makes the co-payments for medical*
22 *insurance and the additional medical costs/pharmacy expenses,*
23 *and the chief justice was aware of that that is why they were put in*
24 *the first paragraph.*



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It is not for me to second-guess what the Chief Justice intended, especially as the parties have such differing views. However, if I may be so bold as to make an observation when applications come before me dealing with what can be termed as being day-to-day expenses, I much prefer a position where the person who the parties intend to be the one who will be responsible for meeting the cost of items such as diapers, provides for them in monetary terms of the other party, rather than physically going out and purchasing the items and delivering them to the other party. Better position in a case such as the one for me, would be for the wife to satisfy the court about the amount she requires as a contribution towards the cost of diapers, that the husband is ordered to pay that sum of money over to the wife, and the wife is then responsible for going out to purchase the items rather than him having to buy them and carry them over from 'Costules' to the mother's home. There is also another reason, for in some cases an arrangement where the husband wishes to retain the responsibility for actually buying day-to-day items, introduces an element of control by him over the wife in the way that she operates her day-to-day life. Each party should be in a position to manage the day-to-day responsibilities independent from the other party, each party should be responsible for organising their lives knowing what their respective financial obligations are and what they have to pay out and what they would be receiving".

10. I referred the parties to this excerpt from my Ex Tempore Ruling during today's hearing. I repeat it again in this Ex Tempore Judgment, as my view has not changed. I still feel that what can be characterised as more day-to-day payments should be made by the wife for the same reasons I stated back in November.



1 11. That said, on the evidence before me, I am satisfied that the more discrete
2 payments for occupational therapy and speech therapy should remain with the
husband. He must make those payments as and when they fall due. The
respective payments will be in the region of \$500 and \$650. He should provide
copies of the payments within five days of payment to the wife.

7 12. I also order that the husband is to make full payments for music therapy and
8 educational cognitive therapy as and when they fall due. Again he should
9 provide copies of payments within five days to the wife. This order is made on
10 the basis that these payments are made in full and by the due date in the
11 estimated amounts.

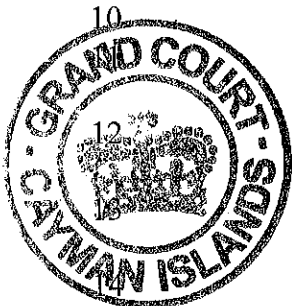
12
13 13. A failure by the husband to make any of these payments in compliance with this
14 order may result in the Court further varying the mechanics of payment by
15 requiring him to make payments to the wife as a part of the global maintenance
16 order.

17
18 14. As already mentioned, I do believe that there is a difference between payments
19 made to these entities and payments which relate to what may be termed more
20 day-to-day expenses. I am satisfied that it is appropriate, more efficient and
21 likely to result in less disputes for the level of the global child maintenance order
22 to be increased on the basis that the wife will take over the sole responsibility
23 for physically paying certain expenses from that global figure.

1 15. Therefore, rather than the husband being responsible for actually paying certain
2 expenses, there will be an increase of \$3,482 in the global child maintenance
3 sum which will rise from \$3,700 to \$7,182 per month. The only proviso I add to
4 that is that this figure may change when clarification is given by the Chief
5 Justice about the 'disputed' areas of his July 2014 Order.

6

7 16. I reach the \$7,182 figure by relying upon the figures determined by the Chief
8 Justice as being appropriate monthly contributions by the husband to certain
9 expenses. These include:



- \$2,000 for nanny/child care/ nanny overtime /pension/insurance;
- \$240 for swimming classes;
- \$250 for toiletries and diapers;
- a total of \$167 for entertainment activities including Motions;
- \$25 for co-payments for medical insurance;
- \$50 for additional medical costs/pharmacy; and
- \$500 for travel to the Hope Haven Children's Centre.

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19 17. Although it is disputed whether the Chief Justice's Order included a provision
20 for payment of \$250 for clothing/educational toys/tools/resources, I am satisfied
21 that this is a payment that should be made moving forward by the husband and I
22 add that thereby making the \$7,182 figure.

1 18. The \$7,182 figure does not include the uncertain future costs and running costs
2 of the nanny's motor-vehicle. I leave this as a payment for the husband still to
3 make, as and when such payments are required.

4
5 19. Accordingly, I am satisfied moving forward that the husband should make a
6 monthly child maintenance payment of \$7,182. I repeat that this figure is
7 reached by my primarily having regard to the figures which the Chief Justice
8 deemed to be the appropriate figures for the husband to contribute to various
9 child expenses. Of course, these expenses may vary from month to month and it
10 would be inappropriate for an interim order to vary each time such a change
11 occurs.

12
13 20. It is important for the wife to understand that, by successfully seeking a
14 variation of the mechanics of the order, she will now take on the responsibility
15 for making the payments and meeting those heads of need for the child and that
16 the husband's liability for making regular payments comes to an end with his
17 responsibilities now restricted to those separate specific payments I order him to
18 make.

19
20 21. To his credit, the husband has indicated that if there are any additional
21 reasonable expenses, especially recommended by Hope, to address/meet the
22 child's special needs he would be willing to meet those. He accepts that is the
23 intention set out in paragraph 1 of the Chief Justice's July 2014 Order. Although





I am not going to make specific orders for these payments, I note that the husband has indicated that these payments would include the applied behavioural analysis and the Gemini reading program.

4

5 **Arrears**

6 22. There is an issue in relation to arrears, I am helped by the schedule that appears
7 at page 83 of bundle and the contents of paragraph 43 of the written submissions
8 filed on behalf of the wife.

9

10 23. The husband accepts that in August 2014 and September 2014 he failed to pay
11 the full amount of the child maintenance order, namely \$3,700. It is agreed that
12 in August he paid only \$2,700 and in September he paid only \$2,900. He felt
13 justified in paying this reduced amount because the wife's rental bill was less
14 than the \$2,200 which the Chief Justice had stated in his Order to be an
15 appropriate figure when reaching his global maintenance figure. I am not
16 satisfied that it was appropriate for the husband to unilaterally vary the global
17 maintenance figure for this reason and, as I said before, the various heads of
18 expenditure which make up the outgoings for a global figure will change from
19 month to month. I am therefore satisfied that those figures add up to \$1800
20 arrears in the child maintenance figure provided in paragraph 2 of the Order.

21

22 24. In relation to the Haven travel expenses for two visits, one in December 2014
23 and one in May 2015, the husband indicated that he paid a total of \$1,700



1 towards the child's flights. I accept that he also had his own expenses as he also
2 formed a part of the December visit. The wife indicated that she had incurred
expenses of \$2,149 for those two trips which she contends should have been
covered by the husband pursuant to the July Order. She seeks refunding of only
that amount, which is in fact \$384 less that she would be entitled to if she sought
the full \$500 per month. I am satisfied that arrears of \$2,149 have arisen under
that head of expenditure.

7
8
9 25. The husband concedes that he failed to make the 'Motions Unlimited' payment
10 and accepts that the figure may be \$100. I am satisfied that the figure of \$100
11 should be added towards the arrears for that head of expenditure.

12
13 26. The husband accepts that, if there is found to have been a mathematical error in
14 paragraph 2 of the Chief Justice's July 2014 Order, he will be liable for arrears
15 of \$75 for each of the 30 months since July, which would amount to an
16 additional \$975. Of course, if the Chief Justice does not agree that there is an
17 error in the judgment, then that those arrears would not exist and would not be
18 added to the total arrears.

19
20 27. As I said at the November hearing, I do not feel it proper for me to amend the
21 Chief Justice's Order. I reiterate to the parties that they should invite the Chief
22 Justice to review the Order and, if appropriate, to amend that Order under the
23 slip rule and clarify whether the Order accurately reflects what he decided.

1 28. There is a dispute about whether there should be arrears under the head of
2 clothes/educational toys of \$250 per month. I have already indicated that
3 moving forward I feel that those payments should be made and should be
included in the global child maintenance figure to be paid to the wife. However,
in relation to possible arrears under that head, the same position should be taken
in relation to the diapers payments and clarification sought from the Chief
Justice.

8

9 29. I have heard from both the parties in relation to these payments and considered
10 the wife's affidavit. The wife contends that the husband may only have made
11 sporadic payments. The husband contends that he has made the payments in full.
12 It is for the husband to satisfy me that he has made those payments outlined in
13 the Order and the absence of an affidavit with exhibiting supporting
14 documentation causes him some difficulty in doing so. I am willing to give him
15 some credit for making sporadic payments, the best I can do on the limited
16 evidence before me is assess that at \$50 per month. Accordingly, I determine
17 that there is a shortfall of \$200 for each of the 13 months under the
18 clothes/educational toys head. I state that this is on the evidence that has been
19 placed before me, which is the best I can do. Therefore, if the Chief Justice,
20 when asked to clarify his Order, confirms that this head of expenditure was
21 intended to be specifically set out in his Order and had been inadvertently left
22 out, then the total arrears figure would increase by \$2,600.

23



1 30. Although there is no issue about whether the Chief Justice ordered \$250 for
2 toiletries and diapers, there is a dispute between the parties about whether the
3 husband made the payments. By failing to file an affidavit with supporting
documentation, the husband places me in the same difficulty in ascertaining
4 what, if any, payments he has made. I am satisfied that the Chief Justice found
5 that the minimum payment for this particular need of the child would be \$250
6 and that anything in excess of that amount would be paid by the wife. On the
7 limited evidence before me, I can only find on the balance of probabilities that
8 the father contributed around \$50 per month. Therefore, arrears under this head
9 over the 13 months up to 3rd September 2015 are assessed at \$2,600.
10

11
12 31. The husband also accepts that in relation to the payments set out in paragraph 3
13 of the Chief Justice's July Order he only paid for the 'Diaper Genie' and
14 therefore there are arrears of \$1,110.
15

16 32. Accordingly, without adding in the figure still requiring clarification from the
17 Chief Justice, I find that the arrears figure is \$7,759. From this figure a credit of
18 \$2,300 must be given for cheques received in September 2014 from the father's
19 attorney and therefore the total arrears figure is assessed at \$5,559.
20

21 33. However, if the Chief Justice when clarifying the terms of his Order amends it
22 under the slip rule in favour of the submissions made by the wife, then there

1 may be an additional \$2,600 for the clothes/educational toys and \$975 for the
2 error in the total of schedule 2 to be added to that arrears figure.

3

4 **Disclosure**

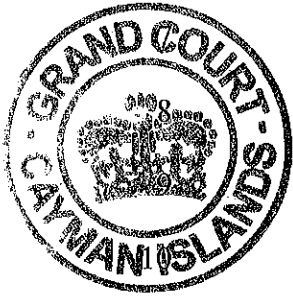
5 34. I am now going to move to the disclosure issue contained in paragraph 4 of the
6 wife's Summons. This relates primarily to paragraphs 18 to 25 of the wife's
 Request for Further and Better Particulars which was provided to the husband's
 attorneys on 11th July 2014. When the matter came before me in November 2014
 I ordered that the husband file his Request by or on 28th November 2014 and
 that the wife could file any supplemental Request for Further and Better
11 Particulars by the same date. I made clear to the parties that the parties were to
12 reply to the Requests by or on 19th December 2014.

13

14 35. Having considered the very helpful judgment of the Chief Justice *In The Matter*
15 *of W* [2004-05 CILR 554] and having considered the terms of the parties' pre-
16 nuptial agreement dated 16th February 2012, I am satisfied that the disclosure
17 sought at paragraphs 18 to 22 and at paragraphs 24 to 25 of the wife's
18 aforementioned Request for Further and Better Particulars are proportionate,
19 relevant and appropriate. It seeks information from the husband, which he
20 possesses and it is not from his firm.

21

22 36. I order the husband to provide that disclosure requested in paragraphs 18-22 and
23 24-25 by 9th October 2015.



1 37. When I make this disclosure order, I have regard to the Confidential
2 Relationships (Preservation) Law, which the Chief Justice touched upon *In the*
3 *Matter of W*. I am satisfied that there has been an opportunity for his firm to
4 take advice and if they deemed it appropriate to oppose the application. They
5 have been aware, due to correspondence sent to them earlier in the year by the
6 wife's attorneys, that this application was being made and they have had ample
opportunity to address it if they sought to do so. They have not sought to do so.



(Submissions made by parties as to when the arrears are to be paid)

10
11 38. I order that the arrears assessed at \$5,559 are to be paid in full by 9 October.

12

13 39. If the Chief Justice agrees with the position taken by the wife in relation to the
14 terms of his July 2014 Order, then the arrears arising under those two heads are
15 to be paid within 21 days of the Chief Justice communicating his decision to the
16 parties.

17

18 40. For the avoidance of doubt, the child maintenance orders to be paid to the wife
19 are to be paid into the Court Funds Office by the first day of each month
20 commencing on 1st October 2015.

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(Parties make submissions in relation to costs)

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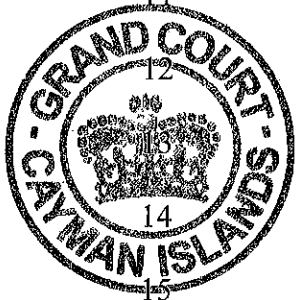
1 **Costs**

2 41. Having given my decision and the reasons for making it, an application is made
3 on behalf of the wife for the husband to pay her costs of this hearing and for the
4 preparation for this hearing.

5
6 42. The powers of this Court to make orders arise under section 21 of the
7 Matrimonial Causes Law (2005 Revision), which must be read in conjunction
8 with GCR Order 62, rule 4. The governing rule is that costs will follow the
9 event. The wife submits that she has been the successful party at this hearing.

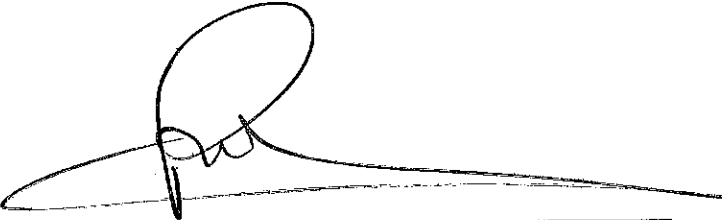
10 Added to the cocktail of factors to be considered when considering costs is the
11 fact that the length of the hearing has been extended to a full day, primarily due
12 to the husband's failure to provide an affidavit which has required him to give
13 oral evidence. If he had provided an affidavit of course that may have narrowed
14 the issues down prior to the hearing. I did indicate at the outset of the hearing
15 that his failure to provide an affidavit, even though he has known about the
16 summons and the contents of the wife's latest affidavit since June, may have
17 cost indications.

18
19 43. Having regard to the content of the Summons and the nature of my order, the
20 wife has on the whole been the successful party, save for some minor areas. I
21 accept that it has been useful having the matter come before me so that the
22 Order can be clarified and hopefully made easier to operate in the future.
23 However, I do not feel that the husband has given due thought to this prior to the



1 hearing, especially as I have correspondence before me that shows that the
2 wife's attorneys have sought to address the issues, for which she has been
3 successful today, prior to coming to Court.

4
5 44. I have a very wide discretion as to what order for costs I can make. I am
6 satisfied that the husband should pay the wife's costs, but in considering the full
7 circumstances and I am satisfied that should be restricted to 50% of the wife's
8 costs of today's hearing and preparation of today's hearing. The order for costs
9 will be on the standard basis and costs will be taxed if not agreed.

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

