IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
FAMILY DIVISION

CAUSE NO: FAM 210/2014

BETWEEN:

VM

Petitioner

AND:

RM

Respondent

Appearances: **Mr. Conor Fee for the Petitioner**

Respondent in person

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

Heard: **7th January 2015**

Date of Judgment: **7th January 2015**

JUDGMENT

1. This is an Ex Tempore Ruling. It is not intended to read as a formal written ruling. A transcript of the same will be provided to the parties later today.

Application

2. I have before me the Petitioner wife's, VM's, Summons dated 8 October 2014. The Summons seeks orders for the Respondent husband, RM, to pay child and spousal maintenance totalling $6,660 per month. That order is still sought today.

The Summons also includes an application for a costs allowance order in the sum of $10,000. However, that application is no longer being proceeded with as the wife has since obtained legal aid. I hope that the parties will not regard me as being discourteous if I hereafter refer to them as the husband and the wife.

The Hearing Held on 20 November 2014

3. The Summons first came before me on 20 November 2014. As that hearing was squeezed in around lunchtime during a full Family Mention Day list I was unable to then offer sufficient time for a fully argued hearing. Also the husband, despite having had time to do so, had failed to provide any affidavit evidence or documentation to back up the brief oral representations made on his behalf, namely that he had an income of only $10,000 per month and the wife's income from him was not at the level of $6,600 per month and it was not derived by consent from his business entertainment account. With those circumstances in mind I stated:

> "*Even having regard to the general approach taken at interim financial hearings, I am not in a position today to make a fully informed determination about the arrangements that each party says existed. What is clear is that I need to make some form of holding order to try to best meet the wife and child's needs until there can be a fuller interim hearing in January, in light of the wife losing her employment, and her resultant current financial difficulties.*"

4. On 20 November 2014 I provided the parties with an immediate decision which was set out in an Ex Tempore Ruling. A transcript of that ruling was provided to

the parties shortly after the hearing. I ordered the husband to make two payments for spousal and child maintenance totalling $4,660 per month by means of a cheque to the wife, the first on 21 November 2014 and the second on 21 December 2014. I adjourned the fuller hearing of the summons until today, with a time estimate of half a day. I also directed:

(i) the husband to file and serve his affidavit evidence by or on 11 December 2014;

(ii) the wife to file and serve an affidavit in reply, if so advised, by or on 20 December 2014; and

(iii) that any directions in relation to the substantive ancillary relief hearing could be given at the end of today's hearing.

5. At that hearing I reminded myself that I had to be very careful to ensure that the husband was not prejudiced by my decision to accede to the wife's request to make orders at that time. When doing so I stated that:

> *"Neither party should hold any figure I order today as a yardstick for future hearings. The order will continue only until the January hearing, and it is designed to hold things as best I can until that date."*

I also said:

> *"I don't want anyone to read anything into this decision about how I will view and determine the figure at the next interim hearing which will last up to the final ancillary relief hearing. The amount I order in January may be greater or less than the figure ordered today."*

6. When fixing the sum for interim financial provision I remarked:

> *"On the limited evidence before me at this hearing, I find that the appropriate holding figure until January for child and spousal maintenance is $4,660. It is a very rough way of approaching the exercise, but I have in mind that the figure of $2,000 a month for groceries is excessive at this hearing and I'm not going to include in my calculations at this hearing the figures for any credit cards and, regrettably for L, I'm also going to remove the last section claimed in the table at paragraph 13 which is for clothing/pharmacy/ entertainment/extras for L, especially sad at a time when Christmas is coming up. The figure is designed to meet the day-to-day living expenses as they appear to me at this stage and is reached in the absence of any evidence filed by the husband.*
>
> *I believe, on the limited evidence before me, that the husband can afford to make a monthly payment of $4,660 with payments until January to meet the wife and child's needs."*

7. I also reminded myself that I was entitled to make interim spousal orders even though at the final hearing there may be an issue as to whether this is a case in which ongoing spousal maintenance is appropriate.

Background

8. The parties, who lived together from 1995, were married in October 2001, separating in late 2005. There are two children of the marriage, D aged 16 who lives with the husband and L aged 15 who lives with the wife. It does not appear that there will be any s.10 Children Law issues to deal with.

9. The wife's Petition was issued on 6 October and served on 14 October 2014. The wife filed an Amended Petition on 14 November 2014, the amendment being simply to plead sufficient particulars about the date of the parties' separation. At the November hearing I gave leave to the wife, if it was required, to file that amended petition. I was informed at the November hearing that the Amended Petition would proceed on an unopposed basis. In his Acknowledgment of Service filed on 2 December 2014 the husband indicated that he did not oppose the wife's Amended Petition being proved based on 2 or 5 years separation. This morning both parties invited me to prove the Amended Petition based on five years separation without the need for a formal written application to be made. Having regard to the overriding objective set out in paragraph 1 of the Preamble to the Grand Court Rules, namely for the Court to *"deal with every cause or matter in a just, expeditious and economical way"* I proved the Amended Petition without the requirement for a formal written application to be made.

The Husband's Non-Compliance with the 20 November 2014 Order

10. The husband has failed to comply with the directions given by the Court at the November hearing. He could have been in no doubt about the case management directions given, as an extract from my typed notebook containing my judgment with the terms of the order made was sent to him by the Court on 24 November 2014.

11. It appears from emails dated 10 December 2014 and provided to the Court by the husband that Mrs. K. Thompson, who had not been retained but who had assisted the husband at the November hearing, was informing him that she was unable to represent the husband. However I note that her personal assistant stated in an email sent to him by her that he should "*make every effort to comply with*" the Court's directions. In addition she provided him with a template which gave him guidance about the nature of the documentation he should provide.

12. She also advised him that if he required more time to file the affidavit that he should consult with the Court to seek an extension. On the same day he wrote to the Court seeking an extension, stating that due to pressure of work he was unable to provide the affidavit by the due date. On 15 December 2014 my personal assistant replied to him asking him about the length of the extension he required. This was followed up by a further email from my personal assistant on 17 December. A reply was received on 17 December 2014 in which the husband stated he had left a message for Mrs. Thompson and he would like to speak to her before he responded. Regrettably the Court has since received no further communication from him and the affidavit has still not been filed.

13. The husband has today indicated that he believed that Mrs. Thompson had been retained and that he had provided her with certain financial information in documentary form. He stated that the period between the November hearing and

today was the busiest time of the year for his business, and due to pressure of work he simply had not had the opportunity to comply with the directions.

14. This of course is not an excuse for non-compliance. I provided both parties with a copy of the ***Practice Circular No.1/2014 Requirement for Strict Compliance with Court Orders Made in the Family Division of the Grand Court.*** As I took them through the content of the Circular during this hearing I do not intend to now repeat the contents in this ruling. However, the Circular makes it abundantly clear that there is a requirement for strict compliance with case management directions made by the Court and that the "*burden of other work*" is not an excuse for non-compliance. The Circular also makes it clear that non-compliance will usually have a consequence, often that is by the making of a costs order.

15. The position of the wife is that her application should proceed today, especially as the previous order only made provision for maintenance payments up to 21 December 2014. She also contends that the Court should consider making an order today in the sum sought, namely $6,660 per month. Mr. Fee understandably contends that it would be inappropriate for the husband to give oral evidence and introduce any new documents for the first time during the hearing today, and that to do so would prejudice his client who is entitled to know prior to the hearing the case she is to face.

16. Mr. Fee contends that the husband has had ample time to comply with the Court's unequivocal directions and to provide the necessary information to verify and support his position. Mr. Fee also refers to the fact that the husband had the opportunity to do so prior to the previous hearing and had failed to take up that opportunity, and that the Court had felt it appropriate to give him this one further opportunity to do so. Mr. Fee reminded me of the following extracts from my Ex Tempore Ruling when making this submission:

> *"When considering the procedural background leading up to this hearing, I am entitled to have regard to the fact that the copy of the Summons and the affidavit in support were served on the husband on or around 16 October 2014, over a month ago. This has given him ample time to seek representation, to give instructions to counsel and to receive advice."*

and

> *"Although I'm of the view that the husband should have made better use of the time available in the month following service of the Summons and affidavit on him and leading up to this hearing to properly instruct Counsel and ideally submit at least a brief affidavit setting out his financial position, in which he would also have had the benefit of being able to comment on the wife's affidavit, I am acutely conscious that I must be fair to both parties. I must afford him a further opportunity to properly prepare his case, to file his evidence before I make an interim order designed to last until the final ancillary relief hearing."*

17. As the previous order made provision only until the end of 2014, I must make a fresh order to meet the wife and L's needs moving forward. I am satisfied that,

at the very least, an order for $4660, the same amount as that ordered in November should be made. If the husband sought to challenge that amount today he should have properly engaged with the proceedings and filed evidence which would have enabled him to properly argue his position and seek to persuade the Court as to what order he felt should be made.

18. If the husband had complied with the directions, I would have expected the wife to have filed her affidavit in reply addressing the issues raised in his affidavit. It does appear that the wife has an income capacity and I would have expected her to also outline her proposals in relation to her future employment. I would have expected the wife in her affidavit to elaborate on the areas of expenditure set out in paragraph 13 of her affidavit which I had commented upon in November, namely her groceries, credit card payments and clothing/pharmacy/ entertainment/extras for L – preferably with supporting documentary evidence.

19. I also indicated to the parties during today's hearing that, although the wife has an income capacity, due to the way that her employment was hurriedly terminated by the husband in September, coupled with the intervening holiday months, she could not have been expected to have already found employment already. I made clear that the Court expects her to use her best endeavours to find reasonable employment and if these divorce proceedings drag on and she fails to do so, that may be a reason for reviewing the spousal maintenance payments.

20. I indicated to the husband during the hearing that I intended to make an order at least in the amount of $4,660 made on the previous occasion, having regard to the fact that he had not produced any evidence at all to challenge the appropriateness of such a figure and the fact that he had been able to make the two payments. When I gave that indication, I was aware that he is also paying $1,800 for each of the two children's schooling and that he bears the responsibility for D who resides with him. I also had regard to the fact that the husband is ensuring that, pending the hearing of the ancillary relief application, he continues to insure the health of the wife and L.

21. I indicated to the parties that I intended to consider whether the amount should be increased. Thereafter, I afforded both parties the opportunity to comment upon the outgoings claimed in paragraph 13 of the wife's affidavit. I also indicated that the order made today would run until the final hearing of the ancillary relief, but if the husband chose to file affidavit evidence in support of the interim provision, he could have leave to also issue an application to review the interim financial provision order. If he did apply, then at that hearing the Court would be better placed to make a more informed decision by having the opportunity to consider the evidence from both parties. The 'ball was in his court,' if the husband chooses not to file an affidavit then a further interim hearing should not be listed.

22. The husband informed the Court that if the maintenance ordered remained at $4,660 per month, although he did not necessarily agree with the figure, it would be unlikely that he would seek a further interim hearing. However, if the figure exceeded that amount he may consider doing so.

The Law and the Governing Principles

23. In my November Ex Tempore Ruling I set out the applicable law and the principles to have regard to in interim maintenance applications. That analysis is still applicable when considering the application before me today. As this is again an Ex Tempore Ruling I simply reiterate that I rely upon the same case law and principles, but I do not seek to repeat the same in any detail again in this ruling. The parties have a copy of the extract from my notebook which contains the transcript of Ex Tempore Ruling and they may refer to that if they wish.

24. I remind myself that when making an order today I aim to bridge the financial gap up until the final hearing. Both parties should understand that the order I make today is not a final order and that Courts, on the more limited evidence supplied and available at the interim stage, only endeavour to put in place a fair holding order. I reiterate from the November ruling that:

> *"As set out in S19 Matrimonial Causes Law the Court shall have regard first of all to the best interests of both[1] children of the marriage, and then move on to consider the responsibilities, needs, financial and other resources, actual and potential earning power and deserts of the husband and wife.*

[1] My emphasis by underlining.

> *What I have to do is to take into account the income, outgoings and needs of each party as they appear at this time and make an order that will guide the wife over until the final hearing without causing undue hardship to the husband...*

25. Regrettably the husband by failing to comply with my directions has not provided me with any evidence concerning his means and his ability to pay. He has not provided evidence challenging the assertions made by the wife in her affidavit or to verify his belief that the wife is cohabiting. I add that if it turns out that he later satisfies the Court that the wife is cohabiting, her cohabitee would be expected to make a meaningful contribution towards the household expenses.

26. Due to his non-compliance and lack of any affidavit evidence, and although I am cognisant that he has stated that his income is only $10,000 and that the wife was not receiving $6600 from the business when she was employed, there is no evidence from the husband to support his contentions.

Conclusions

27. I note the parties' respective positions are the same as set out in the previous hearing and recorded in an Ex Tempore Ruling. I have regard to them today, but do not seek to set them out again in this ruling.

28. I feel the appropriate way of dealing with this application today is to have regard to all of the above governing principles, the parties' submissions and to consider what the reasonable needs of the wife and for L are. I am able to do this by reconsidering paragraph 13 of her affidavit and the parties' submission upon the same.

29. I am satisfied that, save for the below variations, the figures set out therein appear reasonable and should remain:

(i) Having regard to the fact that the wife's property is a three-bedroom apartment, I am satisfied that a CUC bill averaged over the period covering winter to early summer CUC can be reasonably assessed at $500/month;

(ii) **The grocery** bill should be set at $1,200/month, increased for the November permitted figure having regard to the clarification that the wife has to prepare L's lunch for school; and

(iii) On the evidence before me, the wife does have a credit card liability which she claims came about as a consequence of her having to use the credit card in the period after her employment termination in September and before the November hearing. I am willing to accept at this stage that the minimum monthly payment she has to make to the card company is $300 and therefore the amount should be $300 per month.

30. I note that the husband has indicated today that, having regard to the amounts he spends on D who is in his care, he believes the entry for clothing/pharmacy/entertainment and extras for L set at $500 to be reasonable. I therefore include this as a need, although I had discounted it when making the November 2014 order

31. Therefore I assess the total amount for interim spousal maintenance and child maintenance for L to be CI$5,560 per month. The parties have not asked me to apportion the global figure with separate figures for spousal and child maintenance. However, if the matter comes back before the Court for further interim hearing or at the final ancillary relief hearing, the Court will likely wish to make separate defined orders and the parties should be aware of that that when preparing for the hearing.

32. I order that the spousal and child maintenance totalling CI$5,560 should be paid by the husband by means of cheque to the wife by or on the 21st day of each month, commencing 21 January 2015. This order will last until further order of the Court, whether that be at the final ancillary relief hearing or at a further interim maintenance hearing listed if the husband files the requisite affidavit evidence.

33. I am keen to move the ancillary relief proceedings forward today, especially as the Amended Petition has been proved at this hearing. Having regard to the

husband's stated difficulties with preparation for hearings I am willing to give a little more time to file. I direct that:

(i) Both parties are to file and serve their affidavit evidence in relation to the ancillary relief proceedings by or on 17 February 2015.

(ii) Both parties have leave to file and serve a Request for Further and Better Particulars by or on 3 March 2015.

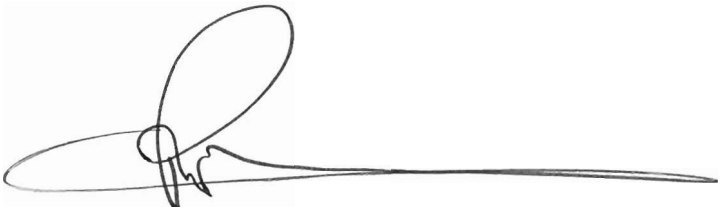
(iii) Both parties are to file and serve their Reply to any Request for Further and Better Particulars by or on 24 March 2015.

(iv) The ancillary relief application will be listed for a 30 minute mention hearing on 17 April 2014 at 9:30 a.m.

34. Despite the non-compliance from the husband in relation to my directions concerning the interim financial provision hearing, I do not intend to add a penal notice to the directions in relation to the ancillary relief case management directions given today. However I remind both parties of the requirement for strict compliance with directions given and the contents of the Practice Circular, a copy of which has been provided to them today.

35. As this hearing has been used effectively I do not intend to make any order of costs today against the husband. However, if the interim provision application comes back before the Court, requiring that further hearing because the husband seeks to take up the opportunity to present evidence which he should have

produced in compliance with the Court's directions before today, there may be cost consequences. Accordingly, I reserve the costs of today's hearing.



THE HON. MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT

The judgment in this matter is being distributed on a strict understanding that in any report no person other than the attorneys (and any other person identified by name in the judgment itself) may be identified by name or location and in particular the anonymity of the child and adult members of their family must be strictly preserved.