

19-B-12

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2 FAMILY DIVISION

3 CAUSE NO. FAM 139 OF 2011

4

5 P v P

6

7

8 Appearances: Mr. Graham Hampson of Hampson & Company for the Petitioner

9 Mr. Shaun McCann of Campbells for the Respondent

10 Before: The Honourable Justice Richard Williams

11 Heard: 19th March 2012

12

13 Court Reporter: M.W. Newell, C.S.R.

14

15 EX TEMPORE RULING

16

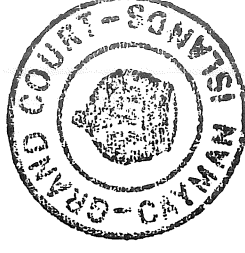
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18 **WILLIAMS J.:**

19 1. This is an *ex tempore* ruling, as the parties need an immediate decision. It will not read
20 as neatly as a written ruling, but, importantly, it will enable the parties to know
21 immediately at the close of this hearing the reasons behind my decision. You will see
22 that this ruling is being transcribed.

23

24



1 **Procedural Background**

2 This is an application brought within the Petition of divorce filed by the husband on the
3 16th June 2011. The undefended Petition was proved on 9th December 2011.
4

5 3. On 16th September 011, the Respondent wife issued a Summons for Directions. Amongst
6 a number of standard directions sought in relation to the final ancillary relief proceedings,
7 she also sought an order for interim periodical payments for both herself and the four
8 children of the marriage. These relevant children are LRP (DOB 26 August 1996), MAP
9 (DOB 15 March 1999), NPP (DOB 25 October 2000) and MAP2 (DOB 9 August 2005).
10 Since the parties separation the children have primarily resided in the former matrimonial
11 home with the mother, but they enjoy regular staying access with their father.
12

13 4. On 10th January 2012, the parties filed a Consent Order in which agreed directions were
14 set out. The order also contained provision concerning the mechanics of the father
15 collecting and returning the said children for access. The parties did not make any
16 provision in the consent order for interim spousal or child support from the husband. The
17 order reflects at paragraph four that the father, by consent, submitted to a non-molestation
18 non-use of violence injunction against the wife or her property and an injunction
19 restraining him from entering the former matrimonial home at DTW, George Town, save
20 in the case of an emergency or necessity and in either case, in the interests of the
21 children. I note that this provision is termed as being an order, but the wording in
22 paragraph five of the said Order makes it appear to be an undertaking as it provides "*the*
23 *Petitioner will be bound by these promises until further order of this Court.*" It has been
24 agreed today that paragraphs four and five of that Order will be discharged and be

1 replaced with a “without prejudice” written undertaking that will last until 30th September
2 2012. It is also agreed that cross undertakings will be given to reflect the parties’
3 promise that they will not discuss the case with the children.
4

5 5. By a Summons dated 1st February 2012, the primary Summons put before me today, the
6 wife seeks a number of orders:
7

- 8 • Firstly, an Order on the first day of each month that the Petitioner pay a global
9 sum of CI\$6,000 maintenance for her and the four children of the marriage.
- 10 • Secondly, that the pay a lump sum of CI\$20,000 in respect of her legal fees.
11

12 6. For Completeness sake, I note that the Respondent has also filed a Summons on 12th
13 March 2012 seeking Orders in relation to care and control of and access to the children. I
14 am not dealing with this latter Summons today. I am also not dealing, save by the giving
15 of directions, with a Summons containing the Respondent’s application to remove the
16 children from the jurisdiction for their education.
17

18 7. The Respondent has to date filed three relevant affidavits, one sworn by her on 7th
19 February 2012, another on 10th February 2012, and finally, one on 12th March 2012.
20

21 8. The Petitioner has filed two relevant affidavits, one on 10th February 2012 and the second
22 on 12th March 2012.
23

1 9. I have carefully considered the contents of all o these affidavits, as well as the exhibits
2 attached thereto. This disclosure affidavit technically is not before me.
3

4 **General Background**

5 10. For the purpose of this ruling, unlike the position at the final ancillary relief hearing, I
6 need not delve too deeply into the background.
7

8 11. That said, the parties, after a courtship that lasted approximately four years, were married
9 on 23rd July 1994. The parties have been married for almost 18 years. It is a marriage of
10 some length and could not be termed a short marriage.
11

12 12. At the time of the celebration of the marriage the Respondent was only 22 years of age
13 and the Petitioner 30.
14

15 13. It is contended by the Respondent that the Petitioner commenced a relationship in 2007
16 with Ms. U, his current girlfriend with whom he cohabits at their jointly recently acquired
17 property in Snug Harbour, George Town.
18

19 14. It is agreed by the parties that the two properties on DTW, one of which is the former
20 matrimonial home (valued at CI\$625,000 in October 2011) and the other which is an
21 income generating rental property (valued at CI\$365,000 in October 2011) are
22 matrimonial assets. There is an issue as to whether the property purchased for
23 US\$120,000 in 2001, (which is valued by the Respondent as being approximately
24 300,000 Euros) which is in the Petitioner's sole name in Padova, Italy, and the

1 aforementioned property registered in the husband and Ms. U's names should be
2 considered as matrimonial assets in these proceedings. The wife contends that the
3 purchase funds for the Snug Harbour property could have originated from matrimonial
4 assets.

5
6 15. It appears that Snug Harbour was purchased in September of last year for around
7 US\$730,000. The Petitioner states that his girlfriend provided CI\$164,000 and he put in
8 CI\$434,600 towards the purchase. The Petitioner states that he provided some cash and
9 that he intended to borrow US\$325,000 from CZ, a wealthy friend of his, but in the end
10 borrowed US\$225,000.

11
12 16. The wife is unemployed and it appears that her contribution to the marriage, although not
13 particularly in the workplace, has been a substantial one caring for the children of the
14 family, thus enabling the father to be freed up to concentrate on progressing his career in
15 businesses.

16
17 17. The Petitioner is a successful restaurateur holding a significant interest in two well-
18 known and respected restaurants in Grand Cayman. He is to be commended, as he
19 started out in Cayman as a waiter and through hard work and enterprise advanced his
20 career with the "behind the scenes" support of his wife. The first is RR which was
21 acquired in July, 1999 by the ordinarily resident company NSL, a company in which the
22 Petitioner, who has Caymanian Status, holds 60% of the shares and Mr. AM the
23 remaining 40%. This business became up and running at a time when the mother was at
24 home caring for LRP who was two years of age and MAP who was only four months old.

1 18. In 2008, the Petitioner and Mr. M opened LR, apparently with funds derived from the
2 financial success of RR. The ordinarily resident company, SES, does business as LR and
3 all of the shares of the company are held by NSL. Although the Register of Members
4 reflects the 60/40% divide, it appears to be accepted that all profits have historically been
5 share equally between the Petitioner and Mr. M.
6

7 19. The Respondent contends that at different times of the marriage she assisted by
8 performing different roles in the restaurant. The nature and degree of this assistance is
9 not agreed between the parties. This is not an issue that I need to determine today and, in
10 any event, I reiterate that it is accepted in the husband's affidavit that she contributed to
11 the marriage by the work she undertook as a housewife and mother.
12

13 20. As early as June 2009, the Petitioner had been put on notice by Campbells, Attorneys-at-
14 Law, that they had been retained by Mrs. P concerning possible discussions surrounding
15 the dissolution of their marriage and suggesting that attempts should be made to resolve
16 the same without recourse to contentious litigation. It does not appear that this offer,
17 which would have required Campbells' involvement, was taken up at that time.
18

19 21. However, it seems that there were negotiations between the parties themselves it is
20 contended by the Petitioner that this culminated in a final Consent Order being reached
21 between the parties.
22

23 22. On studying the fee note provided by Hampson & Co., it appears that firm became first
24 involved in or around 3rd May 2011, after the initial draft of the purported agreement had

1 been reached. It is clear that the original draft of Consent Order was amended more than
2 once after Hampson's retention. From the entry on 31st May 2011, Hampson's was
3 notified by the husband, their client, who appeared to have concerns about the order and
4 Campbells' involvement. It appears that even after being aware of the possible retention
5 of Campbells that Hampson's, who were at the time preparing their client's divorce
6 Petition and supporting documentation, again amended the purported Consent Order.
7 This was done without any reference to Campbells.

8
9 23. The first time there seems to have been a communication between the two firms was
10 when Campbells filed the Acknowledgment of Service in August 2011. Regrettably, this
11 was after the date of the final draft of the purported Consent Order. Although this Court
12 is anxious that settlement should be reached between the parties, to minimize cost of
13 litigation there should be parity of arms. Both parties, before consenting to a substantial
14 ancillary relief order, particularly in a case like this where there are potential issues in
15 relation to the identifying of matrimonial assets, should only do so after there has been
16 full and frank disclosure from the other party and preferably upon receipt of some legal
17 advice. The unrepresented party, especially if it is the one who does not have control of
18 the family finances and thus day-to-day knowledge of them and has limited funds to
19 enable her to seek legal advice, should be encouraged by the party that has legal advice to
20 seek legal advice before a draft Consent Order is finalized.

21
22 24. What Mr. P refers to as being a final Consent Order, he says was not signed until June
23 2011, a date after he had received advice upon the Consent Order and made resultant
24 amendments, a date after he and Hampson were aware that Campbells may have been

1 retained, or at the very least were assisting Mrs. P. It is not clear, but it appears that Mrs.
2 P did not meet with Hampsons herself and that the firm acted solely on the instructions of
3 their client and this may well be why they did not recommend to her to seek legal advice
4 concerning the proposed Order.

5
6 25. It appears that Mr. P felt that there was a final Consent Order and did not expect once that
7 he had issued the Petition that ancillaries would again become an issue. It is for this
8 reason, he says, that he started to reorganize his financial affairs, in particular, purchasing
9 the property in Snug Harbour with his cohabitee. I have been informed that under the
10 Consent Order Mrs. P was to retain the former matrimonial home and the neighbouring
11 income generating property on DTR in return for relinquishing any claim that she said
12 she may have had in relation to the two restaurant businesses. Mr. Hampson stated at
13 paragraph 11 of his Skeleton Argument that in the purported Consent Order his client had
14 offered periodical payments for the children at \$1,000 per child per month, a total of
15 \$4,000. That would be over and above the income that the wife would be receiving from
16 the rental property. However, he would, of course, no longer be responsible for the
17 outgoings on that property. Mr. Hampson indicated that the terms of the Consent Order
18 would still and are being offered by his client.

19
20 26. It appears that there were some negotiations between the attorneys concerning the
21 possibility of the parties attending mediation. However, it is unclear whether this
22 mediation is aimed at resolving the parties' financial differences as well as child related
23 matters. Even at this stage of the proceedings, I would encourage both parties to seek

1 mediation and that mediation be of a comprehensive nature concerning all the
2 outstanding issues between the parties. However, it requires the consent of both parties.

3

4 27. In a letter sent to Campbells dated 30th December 2011, Hampson stated that their client's
5 position in relation to interim maintenance as follows:

6 *“Whilst we have advised our client to make provision for his family, and*
7 *he is fully prepared to do so, the request that your client receive CI\$7900*
8 *from family assets for maintenance of a house that has no mortgage is*
9 *excessive and unrealistic. Our client's monthly salary is CI\$5700 and the*
10 *fortunes of the restaurant have been greatly struggling of late. There have*
11 *been no dividends. Our client, nevertheless, had to pay the school fees,*
12 *the activities and all other expenses including his own home, which he*
13 *only committed himself to when you client agreed to the Consent Order.*

14

15 *The family is joined, a fixed monthly income is thus CI\$7600. We would*
16 *suggest that, bearing in mind the fact that our client is paying the bulk of*
17 *the children's expenses, that the fixed income is shared at this time.*
18 *Therefore, this produces a pro rata income of CI\$3950 per party and, as*
19 *your client is receiving the rental income direct, our client will agree to*
20 *pay an additional per month CI\$2050 on 3rd January 2012, this should be*
21 *adequate whilst matters are resolved. Your client's expenses are not*
22 *admitted.*

1 *In order to help defray the costs, our client is more than happy to have the*
2 *children for two weeks of every month so that the load is not borne solely*
3 *by your client. This is sensible and fair.*
4

5 28. This letter represents the current position of the Petitioner husband on the application
6 before me.
7

8 **The Law**

9 29. The final ancillary relief matters are not yet in a position to move on to a final hearing.
10 Further disclosure is required and answers to requests for further and better particulars
11 similarly, as well as joining evaluation of the two businesses and of the
12 husband's/parties' interests therein. I am told that the parties are soon to agree a letter of
13 instruction for Mr. B who will undertake that task.

14
15 30. Having regard to the fact that the Respondent has limited financial resources, there is a
16 need for maintenance orders to be made in the interim. The Respondent is in financial
17 difficulties as a result of the breakdown of the marriage and is not able to wait for money
18 until the final hearing. In the order I make today, I am to bridge the gap up until the final
19 determination of ancillary relief and it is a temporary measure. Both parties should
20 understand that the order I make today is not a final order and the Court in such
21 circumstances, on the more limited evidence supplied and available at this stage,
22 endeavours to put in place a fair holding order.

1 31. The parties should not see the order I make today as indicative of the final level of
2 periodical payments, and the attorneys or the parties should not use it as a yardstick.

3

4 32. As set out in s.19 of the **Matrimonial Causes Law (2005 Revision)**, the Court shall have
5 regard first of all to the best interest of the four children and then move on to consider the
6 responsibilities, needs, financial and other resources and actual and potential earning
7 powers and the deserts of the parties. What I have to do is take into account the income,
8 outgoings and needs of each party as they appear at this time and make an order that will
9 guide the Respondent over until the final hearing without causing undue hardship to the
10 Petitioner. As is the normal course, the hearing has involved consideration of the budgets
11 of the parties as set out in their written evidence without oral evidence. This is not a
12 hearing for the Court to make findings about either party's credibility. In **Campbell v**
13 **Campbell** (1998) 1 FLR 828, CA the approach commended was not to look in detail at
14 the payer's budget but to see whether the maintenance was a fair proportion of his overall
15 net income. The Court will not critically accept what either party says is their financial
16 position if there is reason to believe that something has been hidden. The duty of full and
17 frank disclosure arises from the outset of the case **G v G (Maintenance Pending Suit:**
18 **Costs)** [2003] 2 FLR 71, Charles J.

19

20 33. The approach of the Court when considering a maintenance pending suit, or interim
21 periodical payments, is succinctly stated in **T v T (Financial Provision)** [1990] FCR
22 169, [1989] Fam Law 438. and is set out at paragraph 4A, [711], issue 90 **Butterworth**
23 **Family Law**, one of the primary family law texts:

1 *“The primary aim of the court will be to make such an order, if possible,*
2 *which will give a spouse certainly sufficient money to discharge the day-*
3 *to-day outgoing and to feed, clothe and keep a roof over their head of that*
4 *spouse until the final adjustments and orders are made in relation to the*
5 *matrimonial asset and the finances after decree nisi.*
6 *...Where there are sufficient assets revealed by the parties, the usual*
7 *exercise for the court is to balance needs against resources and thus come*
8 *to a temporary figure until the whole question of the division of the*
9 *matrimonial property can be decided.”*

10
11 34. **Nicholas Mostyn QC** sitting as a Deputy High Court Judge in **TL v ML** [2005] EWHC
12 2860 (Fam) gave the following guidelines:

- 13 “1. *The sole criterion to be applied is ‘reasonableness’ in accordance*
14 *with section 22, which is synonymous with fairness.*
- 15 2. *A very important factor in determining fairness is the marital*
16 *standard of living, although that is not to say that the exercise on a*
17 *maintenance pending suit application is mainly to replicate that*
18 *standard.*
- 19 3. *In every maintenance pending suit application there should be a*
20 *specific budget for that application which excludes capital or long-*
21 *term expenditure which should be considered at a final ancillary*
22 *relief hearing. The budget should examine critically in every case*
23 *so as to exclude frenzied exaggeration.*

1 4. Where the affidavit or form E disclosed by the paying party is
2 deficient, the court should not hesitate to make any robust
3 assumptions about the ability to pay. The court is not confined to
4 the mere say-so of the payer as to the extent of any income or
5 resources. In such circumstances, the court should err in favour of
6 the payee.
7

8 **The Financial Position of the Respondent Wife**

9 35. The Respondent, as I said is unemployed and will be so for the foreseeable future, at least
10 it appears until the final ancillary relief hearing. Therefore she has no income capacity
11 from an employment source at this time. She is, therefore, reliant upon monies received
12 from the Petitioner and from any matrimonial assets that may generate income.

13
14 36. She has no disposable capital in her disclosed bank accounts. She does have just over
15 \$3,000 in her savings account. This amount cannot be utilised as it is a cash secured
16 credit card with a minimum balance of \$3,000. There is an issue as to whether a credit
17 card in her name had been cancelled by the Petitioner. Again, for the purpose of this
18 hearing, I need not go into that as it has been agreed that Mr. P will put \$3,000 into her
19 current credit card upon the Respondent's written undertaking that the \$3,000 place on
20 the said card will only be used in the case of an emergency and not for day-to-day
21 expenses.

22
23 37. Exhibited at "Tab 5" of the Respondent Affidavit sworn on 7th February 2012, she
24 exhibits a schedule of her outgoings as of 8th February 2012, which total C1\$7,293.82.

1 Exhibited at ‘P4’ of the Petitioner’s Affidavit sworn on 12th March 2012, is a schedule of
2 the Respondent’s outgoing totaling \$6,668. The same schedule had been provided to him
3 around 6th December 2011. At ‘P5’ of the same affidavit is a Scott Schedule prepared by
4 the Petitioner setting out in one column the Respondent’s claimed outgoings in December
5 2011; in the next column her claimed outgoings as of 8th February 2012, and in the final
6 column is his assessment of the appropriate figure for each head of expense.

7
8 38. On considering the same, I have the following observations:

9 - **Groceries at \$1,000** is appropriate.

10 - **Gardening** should be reduced to **\$175**.

11 - **Pool maintenance and chemicals**. Upon looking at the monthly fee set
12 out on the statement dated 31st December 2011 that should be reduced to
13 \$195. You will note I said pool maintenance and chemicals.

14 - **CUC \$700** is appropriate.

15 - **A/C maintenance and repairs**. In the absence of any evidence that there
16 is a need for this to be done at this time means it should be treated as long-
17 term expenditure and should not be covered at this stage. Therefore, the
18 amount will be **\$0**. However, if repairs become necessary, the Petitioner
19 will be expected to contribute to this matrimonial asset in the future.

20 - **Water**. In a household with one adult and four children, it will be
21 assessed at **\$150**, although I note that the December bill had a charge of
22 **\$86.77**.

1 - **Video Associates.** I am unclear what this is for and it seems to be a new
2 expense since December. For the purpose of this hearing it will not be
3 allowed in the amount and it will be \$0.
4 - **Weststar Cable.** \$85 is an appropriate figure.
5 - **Landline and mobile phone.** In the absence of any bills this will be
6 reduced to \$200 a month to be a reasonable figure.
7 - **Internet** will be assessed at \$100.
8 - Although the amount for **gas** appears to be for two cars, I assess gas for
9 one car at \$200 a month to be a reasonable figure.
10 - The requirement for a **helper** is agreed by the parties in the interim, so I
11 assess **\$1,000** as being reasonable.
12 - **General maintenance.** This is unspecific and may be termed a long-term
13 expenditure. It is inappropriate to set a figure today. Again, if this
14 matrimonial asset in which the children of the marriage reside requires
15 maintenance prior to determination of the suit, then the Petitioner, in a
16 case in which he is the only one of the parties with an independent
17 income, would be expected to assist with any repairs that are required.
18 - **Social** will remain at \$200 per month.
19 - **Hair and beauty treatments** will revert to December figure of \$85 per
20 month.
21 - **Children clothing** will be \$166.66. I note that the father puts his name as
22 the only person buying clothing, however both parties should be in a
23 position to do this.

1 - **Haircuts for the children.** Will be assessed at **\$30**. Again, both parties
2 should be in a position to do this.

3 - **Birthday gifts** will remain at **\$25**. It is not clear if this is for the children
4 or for third parties, so I will treat it as the latter.

5 - **Christmas gift, celebrations.** Christmas gifts is a long-term expenditure
6 not suitable for this hearing in March. However, I note that MAP's
7 birthday has just taken place in March and that LRP and MAP2 celebrate
8 their's in August. This will be before the end of the ancillary relief
9 proceedings and therefore I assess the figure as **\$300 divided by 6**
10 **months, March – August = \$50 per month.**

11 - **Pet maintenance and bills** will be assessed at the December figure of
12 **\$50.**

13 - **School uniforms** are not due until September. If the proceedings are still
14 ongoing when they have to be purchased and the Petitioner fails as he
15 promises or indicates to provide uniforms, then that would be a significant
16 change of circumstances enabling the Respondent to apply for a variation.
17 The Court expects the Petitioner to fully meet the needs of the children as
18 it relates to the replacement of school uniforms for the remainder of this
19 school year as indicated in his schedule.

20 - **House insurance.** The L House – upon the indication that the Petitioner
21 will continue to pay, no sum will be allocated. Failure by the husband to
22 do so will amount to a change of circumstances and enable the Respondent
23 to apply to the Court for a variation.

1 - Both parties should be able to provide **pocket money** and therefore the
2 amount will be reduced to **\$60** per month; in other words, \$60 if they wish
3 from each parent.

4 - There is no need for provision for **unexpected emergencies or**
5 **contingencies** as the Petitioner is now to provide **\$3,000** on a credit card
6 for such use by the mother.

7
8 39. Having regard to these deductions, the total of outgoings suitable for consideration at this
9 interim hearing are **\$4,545.49**. I find that this is the global figure that the Respondent
10 requires to enable her to support herself and the children in the interim. Neither party has
11 sought to place before the Court or sought the Court to make a separate order or figure
12 for spousal maintenance and child support. Having regard to this, I will for this interim
13 order adopt their approach and give a global figure. However, if ongoing spousal
14 maintenance is ordered at the final ancillary hearing, then the Court will at that time need
15 to make a separate order for the spouse, as well as a separate order for each of the
16 children setting out any relevant expiry dates.

17
18 **The Financial Position of the Petitioner Husband**

19 40. The Petitioner's evidence is that his monthly salary is \$5,700. In support of this
20 contention, I am told he has exhibited a statement of his wages from both restaurants to
21 his affidavit file on 10th January 20912. He states that he receives \$500 per month, I
22 believe, from a Mr. Z for looking after his properties in Cayman. In relation to his
23 outgoings, he says that he is totally responsible for paying all the school fees and other
24 child related expenses. At paragraph 15 of this second affidavit, which I have

1 considered, he sets out his outgoings which total \$962.50. His outgoings seem very
2 reasonable. Of course, he is fortunate that he can eat for free at the restaurants and have
3 his phone and insurance paid by the restaurants. He says in his affidavit that Ms. U pays
4 the mortgage, however it is contended that he does not have a mortgage, but instead, it is
5 a loan from Mr. Z, a wealthy friend. This will need to be clarified at the final hearing as
6 it is not accepted by Mrs. P that this property is encumbered by any loan. The husband
7 also indicates that to enable the L. House to be in a condition to be rented out, he has had
8 to pay \$2,105.67 in recent repairs.

9
10 41. As I mentioned earlier, this is not the hearing for making findings of fact that may affect
11 the credibility of each party. This is not the hearing nor the stage of proceedings to carry
12 out an in-depth forensic analysis of the parties' accounts and bank statements. However,
13 although likely not to the extent that the Respondent contends, it is evident that the
14 husband has, to a degree, access to some funds from the company's accounts over and
15 above his salary. However, the money is the business's money and he has a partner, so
16 he cannot simply take sums whenever he wishes without consultation with the partner
17 and possibly the company's accountants. It appears that monies that have been taken out
18 primarily came from annual profit sharing. In addition, he has in the past taken
19 considerable sums from LRP's and MAP2's now depleted student accounts. I accept that
20 some of the sums may have been used towards the purchase of the Snug Harbour
21 property and school fees. In May 2011, I am told he was able to obtain monies in the
22 region of \$10,000 to buy the Respondent a car, and in the summer take the whole family,
23 including Mrs. P, on a vacation to Italy. I do not want Mr. P to feel that I am criticising
24 for those last two acts.

1 42. I am aware of the approach commended by **Mostyn QC** in **TL v ML**, namely that the
2 Court should not hesitate to make any robust assumptions about the ability to pay. I am
3 note confined to the mere say-so of the Petitioner as to the extent of any income or
4 resources. As I said, in such circumstances, **Mostyn QC's** guidance was that the Court
5 should err in favour of the payee. I wish to make it clear that on the information before
6 me, I do not seek to make any findings concerning Mr. P's credibility. I do not find that
7 he has sought to hide assets, but do feel on the information provided that there is access
8 to sums, although he may not be comfortable doing so.

9
10 43. In his affidavit the Petitioner has painted a picture of his business struggling, or at the
11 very least suffering from the downturn in the global economy. Although Mr. McCann's
12 analysis of the receipts of the companies, which in itself is, of course, not evidence,
13 paints only half the picture and fails to take into account the apparently significant day-
14 to-day running costs of such businesses. It does appear on the limited information before
15 me that the businesses are running to a profit and although there may have been a
16 downturn in recent times, it is not as dire a position as the Petitioner contends in his
17 affidavit.

18
19 44. Of course at the final hearing, when there is full and frank disclosure by both parties and,
20 importantly, a valuation of the worth of the businesses, I will be in a position to make a
21 better informed finding. Any indications I give today do not fetter me in that way.

22

1 45. However, on the limited information before me, I am satisfied that the Petitioner is in a
2 position to pay slightly more than what he offers to reflect the global sum I have found to
3 be necessary to support the wife and his children in the interim.
4

5 **Conclusion – Interim Maintenance for Spouse/Children**

6 46. Thankfully, the L House on DTR has recently been rented out for a monthly rent of
7 C1\$1,950. The rental deposit has been brought to Court today by Mr. P and I believe that
8 it will be secured by on of the parties' attorneys. The parties have agreed that the
9 monthly rent should be retained by the Respondent. It is right that this amount is
10 deducted from the total amount that I have found is required by the wife for herself and
11 the children in the interim. **Therefore, the balance is \$2,595 per month. I am satisfied**
12 **that this is the appropriate global interim amount for the Petitioner to pay for the**
13 **Respondent and the children.** This amount is required although the children do enjoy
14 staying access with their father who is responsible for them at that time. It will give the
15 Respondent sufficient money to discharge the day-to-day outgoings and to fee, clothe and
16 keep a roof over the head of herself and the children until the final adjustments and orders
17 are made in relation to the matrimonial assets and the finances. This figure is set having
18 regard to the indications that Mr. P has given in his schedule about payments that he says
19 he will be responsible for. I make this order having regard to the children's interest first
20 and then going on to consider the other factors set out in s.19 of the **Matrimonial Causes**

21 **Law.**

22
23 47. I find that this is the appropriate amount, \$545 more than he was offering, after
24 considering both parties' financial positions.

1 **Payment of a Lump Sum for Legal Fees**

2 48. The Respondent seeks in paragraph 4 of the Summons dated 1st December 2011, pursuant
3 to **s.20(c) Matrimonial Causes Law**, an order of the Court that the Respondent pay
4 C1\$20,000 towards meeting her legal fees. Paragraph 10 of her affidavit sworn on 8th
5 March 2012, puts the Respondent's fees to date in the region of US\$30,324.19. She
6 estimates that legal costs will increase due to the analysis of financial disclosure to
7 around US\$40,000 even before preparations for trial. If all of the child related issues
8 require determination, including the application for removal from jurisdiction, their legal
9 fees, it is contended, could exceed US\$75,000.

10
11 49. The Petitioner opposes the payment as he contends that he does not have the sum of
12 money available in his bank accounts or at all. He confirms that he has paid
13 US\$14,932.78 to his attorneys already. He states that he has further fees of
14 US\$15,080.49 which he has not paid due to insufficient funds.

15
16 50. Mr. Hampson expresses concern about Campbells' fee notes exhibited at "Tab 4" of the
17 Respondent's affidavit sworn on 8th March 2012. I understand this concern and if a
18 greater sum than C1\$20,000 was being sought, if there clearly were no additional costs
19 incurred to date and especially if there was a significant difference between the amounts
20 owed by the parties to their respective attorney, I would have required a fully detailed
21 itemized bill to have been provided before make a decision today. If there are to be any
22 further claims for legal fees to be paid by the husband, such an itemized bill will be
23 required, especially having regard to the Practice Direction No. 1/2011 which sets out the
24 hourly rates to be applied at a taxation on the standard basis.

1 51. Mr. Hampson further contends that a taxing officer may well not allow charges incurred
2 before the date of the written retention retainer agreement between Campbells and the
3 Respondent dated 10th February 2012. Campbells do not agree and no specific authority
4 has been shown to the Court to verify this approach in this jurisdiction. I understand that
5 taxing officers here do not give detailed reasons for their decision. I go no higher than
6 this, but say that the Petitioner may be contending that the retainer agreement is, in effect,
7 a sham as the intention all along was that the Respondent would not be charged fees by
8 Campbells as her father had been a corporate manager there for over 20 years. Again,
9 this is not agreed by Mr. McCann. There is no such rigid rule, it appears, in relation to
10 written retainer agreements, but any taxing officer would have a discretion to take such
11 matters in mind when exploring the background and thereafter setting any levels to be
12 paid. It would be a matter for the taxing officer.

13
14 52. The Respondent contends that she has no assets and no security for borrowing by way of
15 a litigation loan. It was raised the first time during Mr. Hampson's submissions today
16 that a charge could be placed against the L House and the money borrowed be used to
17 pay fees. This has not been greatly explored and at this stage I am unable to determine
18 its viability, especially as it would likely fall to Mr. P to make any repayments or increase
19 the level of maintenance to allow Mrs. P to do so. There would also be costs associated
20 with setting up such a charged loan. That said, it may still be an appropriate avenue to
21 consider if any future applications are made.

22
23 53. In a letter dated 6th March 2012 the Respondent's attorneys made it clear that they were
24 not prepared to enter into an agreement whereby their client offered a charge upon the

1 ultimate capital recovery in this matter in respect of her legal fees. That letter has been
2 sent to their client. They went on to say that they could not agree to await payment until
3 after the final ancillary relief hearing in this matter.
4

5 **The Law in Relation to the Payment of Legal Fees**

6 54. In the case of **B v B** FAM 80/2011, I stated in a similar application:

7 “On 18th August 2011, **Quin J** made an order for the payment of legal fees
8 in the sum of \$10,000 after considering the ruling of **Hollman J** in the
9 English case of **A v A** Maintenance Pending Suit: Provision for Legal
10 Fees [2001] 1 FLR 377 and the ruling of **Graham J** in the Caymanian
11 case of **Huig Zuiderent v Patricia Layne Zuiderent D122/2000** where
12 interestingly, Mr. McCann, who appears before me, persuaded the Court
13 that it had jurisdiction in Cayman to make such an Order.”

14
15 55. I went on to say in **B v B**:

16 “I am similarly satisfied having reviewed the cases, and it is accepted by
17 the parties, that this Court may make such order. I also endorse **Graham**
18 **J**’s sentiments about the nature of the interim orders and the fact that as at
19 the final ancillary relief during the interim orders will be reviewed and the
20 final orders will take into account sums already paid out, including
21 payments towards legal fees.”

22
23 56. I went on to say in **B v B**:

1 *“As stated in Sears Tooth (A Firm) Payne Hicks Beach (A Firm) 2 FLR*

2 *116 at 118H-119A by Wilson J when he referred to:*

3 *“ ... a grave widespread problem encountered increasingly in the*
4 *Family Division: namely, how can a spouse, usually a wife, who is*
5 *ineligible for legal aid but who has negligible capital, secure legal*
6 *advice and representation in order to pursue her right against the*
7 *husband, particularly one that is rich, litigious or obstructive or*
8 *show financial sources are complex or unclear.””*

9
10 57. I continued:

11 *“This concern is at least equally applicable to the Cayman Islands where*
12 *legal aid, at least before the recent restrictive legal aid reforms in*
13 *England, was more difficult to obtain in such cases. In addition, in the*
14 *absence of direct taxation in the form of income tax, the benefit that one*
15 *would have in England after reviewing such accounts, even after an*
16 *ingenious accountant who has had an opportunity to work on them is not*
17 *present here, thus potentially making a party’s financial circumstance less*
18 *clear.”*

19
20 58. I went on to say:

21 *“In this case the Petitioner finds herself in such a position and although at*
22 *this stage of the proceedings I will not say that the father is litigious or*
23 *obstructive or particularly rich, (something I would again say in the case*
24 *before me today), there is some complexity to his financial affairs.*

1 (Again, something I would say in the case before me today). The mother
2 may be described in similar terms expressed by **Hollman J** and
3 commenting about the wife at page 387 of A v A when he said:

4 “ ...always be dependent on a husband. She is locked into a bitter
5 struggle with him, whose outcome is of intense importance to her.
6 She had acute need for good legal representation and in which her
7 lawyers do not have always to be desperately economizing relative
8 to the husband.” ”

9
10 59. **Hollman J** went on to say at page 382 that the cost of the suit are:

11 “ ...Up to the provision of a roof over her head and food in her mouth, the
12 wife’s most urgent pressing need and expense...She simply cannot make
13 any progress with a dominating issue in her life if she cannot pay her
14 lawyers, and to which the state will not provide...”

15
16 60. Again in B v B I further stated:

17 “I accept that in both A v A and Huig Zuiderent v Patricia Layne
18 Zuiderent it appears there is no doubt that the husband’s and the
19 matrimonial assets were well in excess of the levels claimed for legal fees
20 at the time of the hearing.”

21
22 61. I went on to say:

23 “I also accept that in A v A, unlike the matter before me, the Court found
24 that the husband was paying huge sums on litigation.”

1 62. So, unlike the matter before me, I am not saying the husband is paying huge sums, so I
2 am distinguishing A v A to that degree.

3

4 63. My general observations in B v B about cases which have been referred to me by the
5 parties at this hearing apply to the matter before me. I say that because I accept that Mr.
6 Hampson hasn't had a chance to see the case of B v B, but I refer then to cases which the
7 parties have put before me and I do so to show it is an approach that I have taken, at least
8 in part, in these Courts.

9

10 64. It appears to me that both of the parties' legal fees to date are at a similar level, around
11 about \$30,000. The Petitioner, unlike the Respondent, has already been able to pay
12 approximately half of those fees. Although there may be assets of some significance, this
13 is not what is often termed "a big-money case". This is why I had asked the parties'
14 attorneys to submit their fee notes.

15

16 65. It seems to me though that it is not unreasonable for either attorney to have \$20,000 of
17 their fees to be paid at this stage if it is feasible. The Summons does not seek a greater
18 sum. If any further sums are sought in the future, the court will have to look at the
19 circumstance as they exist at that time, hopefully with a clearer and more informed
20 picture about the valuation of any interest that the husband may have in the businesses.
21 The order made today should not be seen as an indication that future requests will
22 necessarily be made as a matter of course.

23

1 66. However, the parties should carefully consider the merits of mediation and/or informed
2 negotiations before the costs really escalate and eat into any assets that may be available.
3 It would be a great pity that even if the wife were found to have an interest in the
4 businesses, that upon the conclusion of the valuation of the businesses it was found not to
5 amount to an unduly considerable sum. I say this because if that was the situation after
6 the valuation was obtained and the costs then escalated further, the parties other assets,
7 for example, the two DTR properties, possibly the Italian property (if it were found to be
8 a matrimonial asset) and any matrimonial interest found to be in the Snug Harbour
9 property would likely be greatly diminished. Of course, either party upon full and frank
10 disclosure would be entitled to seek to protect their position as it relates to costs pursuant
11 to Calderbank. I echo the concern that significant matrimonial assets that would be best
12 retained for their and their children's lives after the divorce after these proceedings are
13 conclude may be well swallowed up in legal fees. To keep costs down, again I say they
14 should both endeavour to voluntarily give full and frank disclosure and answer questions
15 or requests for further particulars which are made in proportion to the size of the assets
16 thus enabling timely, sensible and informed negotiations to take place.

17
18 67. I return to the question of legal fees. The issue in this case is whether there is a source on
19 which any payment can be made by the Petitioner of C1\$20,000. The Court must, of
20 course, have regard to the requirement of equality of arms affording each party a
21 reasonable opportunity to present their case. As I said, the husband, unlike the wife, has
22 already had the opportunity to pay, rounding it up, around US\$15,000 in fees.

23

1 68. It is clear that the Respondent wife does not have any readily available source from
2 which she could pay the fees. As I have already said, the husband's position is less clear.
3 However, for reasons already stated in the maintenance or interim maintenance
4 considerations, it does appear that he has been able in the past to source money over and
5 above his salary from the businesses, as well as from the accounts of the children and
6 other sources. He has been able to take a vacation to Italy with the children and his
7 partner, however, I accept that he had one of the boy's flights and his flight paid for by
8 health insurance. I note that he says that the hotel and ancillary expenses were kindly
9 met by his family in Italy. I also note that he is able to accompany the boys on a school
10 skiing trip at the end of this month to the United States. The mother, of course, is not in a
11 position to take such trips at this time and it puts her in a rather precarious position in
12 relation to the children for her to insist that trip doesn't take place, although at this late
13 stage any deposits would likely be lost.

14
15 69. I accept that **Thorpe LJ** in the English Court of Appeal's decision in **Moses-Taiga v**
16 **Taiga** [2005] EWCA Civ 1013 expressed the view that such orders should only be made
17 in exceptional circumstances. He commented on the exercise of the power to award such
18 maintenance in a suit which might be struck down for some fundamental reasons that:

19 *“there is manifestly a risk of unjustified irrecoverable payments, but that*
20 *has to be balanced against the risk of denial of access to justice for the*
21 *Petitioner, if she has not the means to sustain herself and the litigation*
22 *pending determination.”*

23
24 70. In relation to legal costs, he further observed:

1 “*So if the applicant has no assets, can give no security for borrowings,*
2 *cannot guarantee an outcome that will enable her to enter into an*
3 *arrangement such as that which was upheld in Sears Tooth v Payne Hicks*
4 ***Beach**, then there is no source of funding of the litigation other than the*
5 *approach to the court for maintenance pending suit that will include a*
6 *substantial element to fund the cost of litigation. Obviously in all cases*
7 *the dominant safeguard against injustice is the discretion of the trial judge*
8 *and it will be in cases that are demonstrated to be exceptional that the*
9 *court will consider exercising the jurisdiction. But I am in no doubt that*
10 *in such exceptional circumstances section 22 can in modern times be*
11 *construed to extend that far.*

13 71. The test for exceptional circumstances as endorsed by **Mostyn QC** in **TL v ML** was that
14 the Applicant needed to prove the following:

- 15 a. She had no assets – but that is the positioning the case before me
16 today. When I say assets, readily available.
- 17 b. She could not raise a litigation loan. Well, on the information
18 before me today, I believe that to be the position in the case before
19 me. However, at any later hearing an expiration as to a charge
20 against the joint property is something that the Court could
21 consider.
- 22 c. She could not persuade her attorneys to enter a **Sears Tooth**
23 agreement. Well, it has been held that a simple statement from her
24 solicitors or attorneys stating that they were not prepared to enter

1 into a **Sears Tooth v Payne Hicks Beach** charge would ordinarily
2 deal with this requirement. Again, that is the position in the case
3 before me.
4
5 72. It is right to say that the rigidity of that test was considered by **Hedley J** in **C v C**
6 (**Maintenance Pending Suit: Legal Costs**) [2006] 2 FLR 1207 and **Wilson LG** in the
7 Court of Appeal in **Currey v Currey** [2006] EWCA Civ 1338, [2006] All ER (D) 218
8 (Oct). The following principles after those cases appear to have been established:
9 1. The test laid down in **Moses-Taiga** and **TL v ML** was illustrative as
10 opposed to definitive. In **C v C**, the case was viewed as “exceptional” as
11 the husband was a wealthy man – not necessarily the position of the case
12 before me – who owned the bulk of the assets needed investigation.
13 2. Apart from having no facility to fund the litigation, the applicant did not
14 otherwise need to show that his or her case was exceptional.
15 3. The initial inquiry of the court was whether the applicant could
16 demonstrate that he or she could not reasonably procure legal advice and
17 representation by any other means.
18 4. The word “exceptional” was obstructing the proper exercise of the court’s
19 jurisdiction.
20 5. There is no public funding available to the applicant as would provide him
21 or her with legal advice or representation at a level of expertise up to the
22 proceedings.
23

1 73. Although accepting that orders for legal fees should not be the norm, I am satisfied that
2 this case may be considered to fall under the exceptional test at this stage. The wife has a
3 need to meet costs liabilities if she is to be able to bring her case before the Court.
4 However, I firmly reiterate that I am only content at this stage to make an order up to
5 CI\$20,000. The husband could not be criticized if he felt able and in a position to bring
6 up his total payments to his attorney to a similar level.
7

8 74. As I am of the view that the Respondent will need time to arrange his affairs, which may
9 involve making arrangements with third parties, I will give the Respondent 28 days to
10 make this payment. The parties will have liberty to apply in relation to this order.
11

12 75. In relation to the removal jurisdiction Summons, Mr. McCann has requested 21 days in
13 which to file and serve his affidavit. That will take us to 9th April 2012. The Petitioner's
14 affidavit should be filed and served by 7th May 2012. That Summons can thereafter be
15 listed for a 30 minute direction before me at 9:00 a.m. on 22nd May 2012. However, I
16 will discuss with counsel further at the end of this ruling if that date is convenient.
17

18 76. Lastly, as I have already mentioned, the parties are willing to give undertakings on a
19 "without prejudice" basis and once I see the forms which I believe counsel has assisted
20 completing, I will explain those undertakings and if I am satisfied that the parties
21 understand them and the consequences of breach, I will ask them to sign the same and
22 accept the undertaking. They will of course each be given copies to take away.

1 **WILLIAMS J.:**

2 77. Is there anything I have missed?

3

4 **MR. HAMPSON:**

5 78. My Lord, the only thing I have, there is paragraph 3 of the Summons at Tab 4 of the
6 bundle in relation to the Petitioner paying the cost of the valuer.

7

8 **WILLIAMS J.:**

9 79. Hasn't there already been a discussion about that? I thought that all the issues in relation
10 to Mr. B were going to be left to a discussion between the parties.

11

12 **MR. McCANN:**

13 80. That was my understanding.

14

15 **MR. HAMPSON:**

16 81. I'm grateful.

17

18 **WILLIAMS J.:**

19 82. I should say for the record though that if it transpires that the Petitioner, who I accept as a
20 result of my order, although he may not be content with it, would have to pay \$3,000 for
21 the credit card which he's volunteered, C\$20,000 will, on top of that, if he is the only
22 person who can, pay Mr. Bullmore. Of course, those types of expenditure are all matters
23 which will be in the melting pot and for consideration at the end of the case when it
24 comes to divide whatever assets are in place. I think I mentioned that during the hearing

1 or words to that effect, although of course at this stage I would not be so bold as to say it
2 will be discounted by that amount particularly. It will be a matter that the court will take
3 into account when considering the assets of the parties at that time.
4

5 **MR. McCANN:**

6 83. My Lord, the only thing I would ask, we do have a lot of the information already from the
7 affidavit in support of the Summons and we were suggesting 30th March, two weeks.
8

9 *******Discussion re timetable*******
10

11 **WILLIAMS J.:**

12 84. Mr. and Mrs. P, you are going to give undertakings. Mr. P, yours are going to replace the
13 terms of the Order in relation to not using violence, not harassing, pestering or molesting
14 and not entering or attempting to enter the property, and also the clause which has been
15 agreed between the parties in relation to not discussing the case with the children.
16

17 85. As I said at the outset, that is given without prejudice. It is given without findings of any
18 fact. It is simply a promise from you to me or to the Court as to the future, okay? It has
19 the same effect though as a Court Order. Some Judges view a breach of undertakings as
20 more serious than of an Order because it is actually a voluntary given promise.
21

22 86. I have to tell you though, you can see the statement on the back of the form which I will
23 ask you to sign once it has been typed, which says, words to the effect that you
24 understand what an undertaking is, you have the consequences of breach explained to you

1 and that you could be sent to prison if it is found beyond reasonable doubt at a later
2 hearing that a term or terms of the undertakings have been breached. So, as I say, a
3 consequence of breach may result in a custodial sentence.
4

5 87. Mrs. P, you have heard what I said to Mr. P. Exactly the same applies to your
6 undertakings which you are going to be given without prejudice, and I understand that
7 you are willing to give an undertaking in the same terms about discussing the case with
8 the children and, as I said to you before, I think that is a useful provision having regard to
9 what was expressed to me about the children or the children being upset about getting
10 involved.
11

12 88. Secondly, that as I understand it is it going to be an undertaking not to use the credit card
13 so, likewise, in the utilisation of the \$3,000 that will be placed into the account, that will
14 be used only for expenses. My advice to you is if you do use that card just keep the slips
15 and keep the statements.
16

17 **MR. HAMPSON:**

18 89. Mr Lord, the only thing that occurred to me in terms of the maintenance...
19

20 **JUSTICE WILLIAMS:**

21 90. Do you mind if I say one more thing about the undertaking? You should each be given a
22 copy of the undertaking that you've given and copy of the other party's undertaking that
23 you should keep yourselves.
24

1 **MR. McCANN:**

2 91. I would seek an order in terms of maintenance, the order today, that I would have thought
3 the payment of \$2,050 on or about the 1st of this month, that we should have an additional
4 \$500 to be paid by the end of this week.

5

6 **JUSTICE WILLIAMS:**

7 92. You mean backdated? I'm minded to do it from the 1st of April. The reason why is
8 because Mrs. P will no doubt understand that Mr. P has been tasked with finding quite
9 considerable capital to meet the order that I have made today and I have to say I believe
10 he can, but I don't think it will be an overnight task and, therefore, I believe a bit of
11 leeway in relation to that maintenance payment is entitled. So that will be from 1st April
12 into Court please. And could I ask both counsel to put their heads together in terms of
13 the Order. I would ask that the preamble reflect that there are undertakings --- upon the
14 parties giving undertakings as set out in the undertaking forms. You don't need to spell
15 out what the undertakings are in a preamble. One of the paragraphs in the Order should
16 express the discharge of paragraphs four and five of that earlier Order. The Consent
17 Order should be replaced by the undertaking.

18

19 93. If, of course, you can't agree the wording of the Order, which I hope you can, just submit
20 to me what you have got with your comments and I will come up with an Order.

21

22 **MR. McCANN:**

23 94. The payment of the monthly maintenance via the Court can sometimes be a bit difficult.
24 Do you mind if the payment is made directly, cheque or however or into the spouse's

1 bank account. They should be able to sort this out themselves. I hate going via the Court
2 Office because of the administration, no disrespect.

3

4 95. You ordered it a few minutes ago, My Lord, paid into Court.

5

6 **JUSTICE WILLIAMS:**

7 96. That is the usual order.

8

9 **MR. HAMPSON:**

10 97. We are quite happy to pay it not into Court.

11

12 **JUSTICE WILLIAMS:**

13 98. Upon the basis that both parties agree that they wish the payment not to be made into
14 Court, I would allow it in this case, although it goes against my normal better judgment,
15 and having regard to the fact that these are two intelligent persons who no doubt will
16 make the appropriate records each time a payment is made and received. Protect
17 yourselves by doing that.

18

19 **MR. P:**

20 99. That is fine.

21

22 **JUSTICE WILLIAMS:**

23 100. Everyone says that to me in Court, but you'd be surprised when one party says it was
24 paid and not paid.

1 101. I would like to thank both counsel for their assistance and able submissions in this case.

2

3 **MR. HAMPSON:**

4 102. I'm obliged, My Lord.

5

6 **JUSTICE WILLIAMS:**

7 103. Mr. and Mrs. P, I know it is sensitive, please take on board some of my comments I made
8 about trying to see if there are any avenues to negotiation. In the end it will be in your
9 best interests, I promise you, but there has to be give and take on both your parts. The
10 money is yours, not the lawyers.

11

12 *****Court stands adjourned at 4:15 p.m.*****

13

14

15 **DATED this 19th day of March 2012.**

16

17

18 
Richard N. Williams

19 **JUDGE OF THE GRAND COURT**

