

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

3 **CAUSE NO. FAM 177 OF 2013**

4
5 **BETWEEN:**

6 **CMS**

7 **Petitioner**

8 **AND**

9 **RGS**

10 **Respondent**

11
12 **Appearances:** Ms. Vanessa Allard of Brooks & Brooks for the Petitioner
13 Respondent appears in person
14

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

16
17 **Heard:** 17 November 2014, 16 January 2015, 8 & 9 June 2015
18

19 **Wife's written submissions:** 2 July 2015
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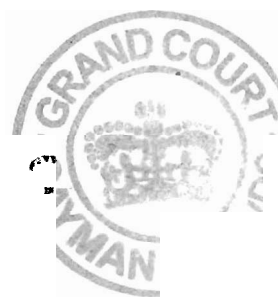
21 **Husband's written submissions:** 7 July 2015
22

23 **Circulation of draft judgment:** 4 August 2015
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25 **Date of judgment:** 10 August 2015
26

27 **Written Submissions on costs:** 18 August 2015 & 31 August 2015
28

29 **Date of Ruling on Costs:** 4 November 2015
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31
32
33



34 **HEADNOTE**

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36 *Matrimonial Causes Law (2005 Revision) – Contested divorce petition by the Wife*
37 *alleging unreasonable behaviour by the Husband (s.10(1)(b)) - Petition proved - Costs.*
38
39

40 **RULING ON COSTS**

41
42 1. On 10 August 2015 I delivered my judgment following a contested petition
43 hearing spread over four days concerning the Petitioner wife, CMS, and the

1 Respondent husband, RGS. I hope that the parties do not feel me discourteous, but
for convenience, I will again refer to them as the wife and the husband in this
3 ruling.

4
5 2. In the judgment I found that the wife had proved the pleaded particulars of
6 behaviour required under s.10(1)(b) of the Matrimonial Causes Law (2005
7 Revision) (“the Law”). I made clear at paragraph 88 of the judgment that the wife
8 had been the successful party and that the general principle was that costs follow
9 the event. At paragraph 89 I then went on to state that if costs could not be agreed
10 I must afford, particularly the husband, an opportunity to make written
11 submissions as to costs.

12
13 3. On 18 August 2015 Ms. Allard, Counsel for the wife, filed written submissions
14 seeking an order in her client’s favour for the costs of the proceedings. The
15 husband filed his written submissions on 31 August 2015 submitting that no order
16 as to costs should be made.

17
18 **The Law and Principles to be Applied**

19 4. The Grand Court has a wide discretion concerning the making of costs orders in
20 matrimonial proceedings. GCR Order 62.4(1) provides that the rule “*shall have*
21 *effect unless otherwise provided by any law.*”



1 5. In the Court of Appeal decision of **Rory Michael McTaggart v Mary Elizabeth**
2 **McTaggart** CICA 14 of 2010, handed down on 12 February 2015, helpful
3 guidance was given by the President, Sir John Chadwick, in relation to the proper
4 approach to costs in matrimonial proceedings.

5
6 6. At paragraph 5 of the judgment the President set out paragraphs 106-107 of the
7 Court of Appeal's earlier judgment on the appeal of the ancillary relief decision
8 which had been handed down on 29 November 2011, where he stated:

9 *"106. Put shortly, the position, here, is that costs in matrimonial*
10 *proceedings – as in other proceedings – are governed by the*
11 *Grand Court Rules; and, in particular by GCR Order 62, rule 4,*
12 *which requires (at sub-rule (3)) that:*

13 *'If the court in the exercise of its discretion sees fit*
14 *to make any order as to the costs of any*
15 *proceedings, the court shall order the costs to*
16 *follow the event, except where it appears to the*
17 *court that in the circumstances of the case some*
18 *other order should be made as to the whole or any*
19 *part of the costs.*

20
21 7. At paragraph 23 of his ruling the President clearly stated that:

22 *".... Unless and until there is a change to the relevant rule in this*
23 *jurisdiction, in awarding costs in ancillary relief proceedings*
24 *courts here should give effect to the provisions of GCR 62.4 – that,*
25 *generally, a successful party to any proceeding should recover*
26 *from the opposing party the reasonable costs incurred by him in*
27 *conducting that proceeding and in an economical, expeditious and*
28 *proper manner"*

1 **Wife's Submissions on Costs**

2 8. The wife rightly submits that she has been successful in proving the Petition and
3 asks that the costs associated with the proving of the petition at a contested
4 hearing should be borne by the husband. The wife reminds the Court that the
5 starting point is that costs follow the event. The wife states that she offered to
6 amend the petition so that the wording was not so controversial, but the proposed
7 amendment was not acceptable to the husband.

8

9 **Husband's Submissions on Costs**

10 9. The husband, in his submissions in relation to costs and accompanying email
11 attachments, seeks in some detail to further argue some of the factual issues raised
12 in the Petition and repeat his unfounded criticism of the conduct of the wife's
13 attorney.

14

15 10. He contends that he was willing to negotiate an amendment to the petition as long
16 as the terms did not prejudice other proceedings, particularly child proceedings.
17 He contends that, as the wife was not willing to amend the petition in the form
18 that he wished it to be in, it is her fault that there has been a contested hearing.

19

20 **Conclusion**

21 11. There is nothing in the submissions as to costs before me or from the
22 circumstances of the case that would lead me to depart from the normal course,
23 namely that costs follow the event. If the parties could not reach an agreement
24 about the form of an amended petition, then the wife was left with no option but

to pursue the Petition. Following a careful consideration of all of the evidence I stated that the wife had satisfied me:

“that any right-thinking person would come to the conclusion that the husband has behaved in such a way that she cannot be reasonably expected to live with him, especially when having regard to the impact of his conduct on her.”

I then went on to find that I was satisfied that the marriage had irretrievably broken down. The wife’s Petition as pleaded was proved and therefore she is clearly the successful party. If the Petition had not been proved, then the husband would have been the successful party and likely have been able to obtain an order for legal costs if any had actually been incurred by him.

12. Having regard to GCR Order 62 r.4 and the principles set out herein, I order the husband to pay the wife’s costs incurred in preparation for and for the hearing of the contested petition, including on the issue of costs. These costs are to be taxed if not agreed.


Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT

