

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **FAMILY DIVISION**
3

4 **CAUSE NO: FAM 153 of 2018**
5

6 **BETWEEN:** **VBD** **PETITIONER**
7

8 **AND:** **AD** **RESPONDENT**
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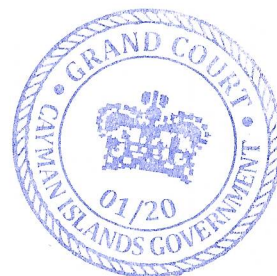
12 **Appearances:** **Ms. Stacy Thompson for the Petitioner**
13 **The Respondent in Person**
14

15 **Before:** **The Hon. Justice Cheryll Richards Q.C.**
16

17 **Hearing:** **15th December 2020**
18

19 **Oral Decision** **15th December 2020**
20

21 **Draft Judgment Circulated:** **24th March 2021**
22
23



24 **HEADNOTE**
25

26 **Family Law – Final Ancillaries, s. 19 and 21 of the Matrimonial Causes Act.**
27

28 **JUDGMENT**
29

1. These are short reasons following the oral decision given at the final ancillary hearing on the 15th December 2020.

2. The Petitioner VBD (“the wife”) and the Respondent AD (“the husband”) were married on the 30th October 2010. The marriage lasted some eight years. On the 31st May 2018 the wife filed a Petition for divorce on the basis of irretrievable breakdown. On the 21st June 2018, the husband acknowledged service of the Petition and indicated thereby an intention not to defend the action. The Petition was ordered proved on the 20th July 2018.

3. The wife is now 29 years old and the husband is 41 years old. There are two children of the marriage, a daughter TD born on the 25th December 2010 aged 10 years old and a son AD born on the 25th March 2015. He is 5 years old. Both attend local schools with the older child at a government school and the younger child is at a private pre-school.

4. The husband is a landscaper by occupation and the wife has worked at different jobs most recently as a dishwasher at a local restaurant in 2019. She has not been consistently employed for more than 6 months at any one time. The parties did not own a home or other property real or personal. They each have small pensions but neither party seeks distribution of these amounts.

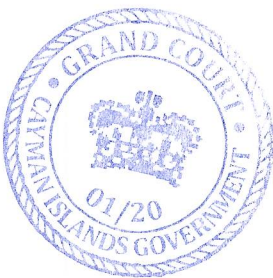
5. The sole issue before the Court is the custody and living arrangements of the children and their maintenance.

6. Prior to December 2020, the matter had been set for hearing on the 20th March 2019. On the day of the hearing, the husband indicated the he was no longer consenting to the wife having custody of the children. He said that he was concerned that the wife had not been sending TD to school. He

1 produced a letter from TD's school dated the same day which confirmed that TD's attendance was
2 poor and well below the required standard. He said that he was seeking custody of the children and
3 would be seeking his own legal representation. The Court sought the assistance of a Welfare Officer
4 of the Department of Children and Family Services to review the circumstances and prepare a report
5 on the issue raised.

6
7 7. The subsequent report indicated that there were a number of concerns with the living arrangements
8 in respect of both households. There was also concern that the wife needed to recognise that her
9 parenting obligations were serious and full time, and that it was an insufficient excuse for her to
10 say that she woke up late and could not get the children ready to catch the school bus on time.

11
12 8. The Welfare Officer stated:



"While the most ideal circumstances would be for the children to remain stable in their environment, it is difficult to overlook the deficits and attitude of ("the wife"). Given the history of the core problem and inconsistent improvements, one would generally lean towards a change in residence for the children. However, it is not believed that this will necessarily provide overall better outcomes. The children are closely bonded to their mother and that household has two additional maternal figures to supplement care. (The husband's) situation too has some deficits. The home is overcrowded and the sleeping arrangements are not the most desirable for the children. Additionally, based on his work hours it suggests that the children's care will have to be supplemented by a Carer as his mother has not elected to do so."

27 9. The recommendations of the Officer included the following:

28
29 (a) A shared residence order. The children to reside with their mother and spend weekends with
30 their father from Friday evenings to Sunday evenings, three weekends per month.

1 (b) The parties could agree to a mid-week evening contact where father can assist with the
2 teaching/learning process for both children to ensure that he can have a positive impact on their
3 education.

4
5 (c) Both parties to attend the Family Resource Centre's Co-parenting Programme.

6
7 (d) The wife to attend the Family Resource Centre's Parenting Ages and Stages Programme to
8 assist her to understand and support the developmental needs of the children.

9
10 (e) The wife to seek the services of the Needs Assessment Unit for financial assistance while
11 unemployed.

12
13 (f) The wife to seek stable employment.

14
15 (g) Parties should share the responsibility of the outstanding school fees as agreed.

16
17 (h) Parties to take steps to have the younger child enrolled in school for the start of the 2019/2020
18 academic school year.

19
20 (i) TD is to attend school every day unless she is ill. It is the responsibility of the parent whose
21 home she wakes up on the school morning to ensure that she is prepared and arrives at school
22 via the bus or alternately, prior arranged transportation.

23
24 10. The Officer noted that over the period that the review took place, there had been considerable
25 improvement in TD's school attendance. Additionally the husband indicated during this hearing
26 that this improvement had continued and that he was satisfied that given the changes, custody could
27 remain with the wife subject to him having visits with the children.



1 11. Both parties reside in different houses in close proximity to each other and as recommended by the
2 Officer, the children visit with the husband each weekend and also mid-week when he assists them
3 with their homework.
4

5 12. There being agreement on this issue, the only remaining area of disagreement was the level of
6 maintenance for the children and the level of arrears.
7

8 13. By Order of the Summary Court dated 20th October 2017, the husband is required to pay \$200.00
9 per fortnight for the children, \$100.00 per child starting on the 27th October 2017.
10

11 14. The wife's position at the hearing was that more money is needed to maintain the children and that
12 the husband earns more than he claims. The wife states that the husband is employed to his
13 mother's construction company and that he lives in her home rent free and thus has very few
14 expenses. In addition the husband's mother has four businesses and the husband works for her
15 other businesses in addition to the construction company.
16

17 15. The husband's position is that he contributes to his mother's household and has very little surplus
18 income.
19
20



21 **THE LAW**
22

23 16. The relevant legal provision is Section 21 of the Matrimonial Causes Act (2005 Revision). This
24 states:

1 At the time of pronouncing a decree under this Law, the Court shall, as appropriate, make orders
2 for

3 (a) the custody, care and control of the children of the marriage;

4 (b) the disposition of matrimonial property, including the matrimonial home;

5 (c) varying any settlement of the property of the spouses made in consideration of the marriage,
6 whether such settlement was made before or upon the treaty of the said marriage.

7 (d) varying any other settlement of matrimonial property;

8 (e) making financial provision from the property of either spouse for the children of the marriage
9 and for the other spouse;

10 (f) providing for periodic payments to be made by either spouse for the benefit of the children of
11 the marriage and for the other spouse; and

12 (g) costs.

13
14 17. By section 22 an order in respect of payments for the benefit of a child of the marriage shall remain
15 in force until the death of such child or until such child attains the age of sixteen years, provided
16 that this may be extended so long as the child is receiving education and under the age of twenty –
17 one years.

18
19 18. Section 19 of the Act provides that in dealing with all ancillary matters arising under this Law, the
20 Court shall have regard first of all to the best interests of any children of a marriage and thereafter
21 to the responsibilities, needs, financial and other resources, actual and potential earning power and
22 the deserts of the parties.
23



19. Counsel for the Petitioner relied on the case of *K. v. K.*¹ in which the Cayman Islands Court of Appeal held that:

“Section 21(f) of the Matrimonial Causes Law obliged the court to make an appropriate” order “for the benefit of the children.” The latter words gave the judge a wide discretion. The order did not have to be solely for the children’s benefit, it would be sufficient if it could reasonably be said of the order that it fulfilled the needs of the children.”

The Court concluded that there was nothing objectionable in the decision of the learned trial Judge to provide the respondent with sufficient resources to enable her to provide for the children at an appropriate level by means of child maintenance payments rather than by way of spousal maintenance payments.



THE EVIDENCE

20. In her Affidavit evidence of 26th November 2018, the wife gave evidence of expenses and income as follows:

	INCOME	CIS
	Salary	1080.00
	Child maintenance	400.00
	EXPENSES	
1.	Telephone	50.00
2.	School fees for son (child of the marriage)	450.00
3.	Groceries	500.00
4.	Transportation	100.00
5.	Personal expenses– hygiene, grooming	100.00
6.	Lunch for TD (child of the marriage)	(\$4.00 daily) 84.00
7.	Clothing for children	150.00
8.	Lunch for Petitioner	70.00

¹ 2017 2 CILR 682

9.	Son's uniform & miscellaneous items (including pull ups for bedtime)	100.00
10.	Toys/entertainment for children	90.00
	TOTAL EXPENSES	CIS\$1,694.00
	SHORTFALL	CIS\$214.00

21. At the time of the hearing she was unemployed and entirely dependent on the maintenance paid by the husband and support from family members.

22. The husband in his Statement of Means filed 19th October 2018 gave his net income as \$1,385.00 per month. He owns a car valued at \$7,000.00 in respect of which there was then an outstanding loan amount of \$3,870.00. His expenses were then stated to be as follows:

Household	Amount \$
Life Insurance payments	50.00
Rent	200.00
Water	20.00
Electricity and cooking gas	70.00
Telephone	40.00
Repairs	47.00
Total	\$427.00
Personal	Amount \$
Food	300.00
Laundry / Cleaning	25.00
Medical	36.00
Clothing	30.00
Hairdressing	30.00
Miscellaneous	67.00
Total	\$488.00
Car Insurance and Supplies	\$158.00
Children – Food, Books, Clothing and Supplies	\$1,382.00
Less \$300 for holidays	



1 23. Both parties gave evidence on oath at the hearing. The wife stated that she had last worked at her
2 job as a dishwasher sometime in 2019. She has not been employed since then and does not receive
3 the assistance of the Needs Assessment Unit. She subsists on the maintenance provided by the
4 husband and odd jobs around the neighborhood such as raking yards and doing hair.

5
6 24. On a weekly basis she earns between \$50.00 and \$75.00. This is not sufficient for her to provide
7 food for the children when they are in her care.



8
9 25. She said that the husband can pay a little bit more because in addition to his regular work, he has a
10 business by which he supplies produce such as yam and cassava at the Farmers Market by the
11 cricket field in George Town. She asks that he pays \$150.00 per child every two weeks instead of
12 \$100.00, a total of \$300.00 bi-weekly for each child, so that she would receive \$600.00 per month
13 instead of \$400.00 per month. She gave the outstanding arrears of maintenance as being \$2,600.00
14 and did not accept the figure put forward by the husband of \$1,700.00.

15
16 26. She said that by way of education, the highest level she achieved was graduation from high school.
17 She has tried to secure other employment. Most recently she was invited for an interview at an
18 establishment but was unable to attend because she did not have suitable clothing, shoes or money
19 to purchase same. She lives with her mother and grandmother. She was hesitant to ask her
20 grandmother to assist because her grandmother has to pay the mortgage on where they live and is
21 in arrears. Her mother is unemployed. The husband had refused to assist her with clothing. She
22 agreed in cross-examination that he had explained that he had deaths in his family and was not able
23 to do so.

24
25 27. Lunch and snacks for the son is \$40.00 per week. For their daughter it is \$45.00 per week. This is
26 paid by both husband and wife. The wife uses the \$200.00 that she receives every two weeks to

1 buy food for the entire household. Her grandmother pays all the utility bills including the electricity
2 and water. Any extra amount which she receives would go towards purchasing more groceries for
3 the household. From time to time, her grandmother and her mother assist her with clothing.
4

5 28. In cross-examination, she agreed that the husband had been there to help her with the children and
6 had provided items on her request when he could.
7

8 29. She said that she had seen cheques from the Farmers Market on 4-5 occasions in the name of the
9 husband which lead her to believe that the produce supply business was his and not his mother's as
10 he asserts. She has also seen receipts in his name and seen him at the market.
11

12 30. The husband gave evidence on oath. He said that he is content for the arrangement with respect to
13 custody and residence of the children to continue as they have been. He was asked directly:
14

15 ***Judge:** We need to know firstly, you are on oath, what is your position in relation*
16 *to the arrangements of the children? Are you content for the arrangements that*
17 *have been ongoing to continue?*
18

19 ***Husband:** Yes, I am okay with that.*
20

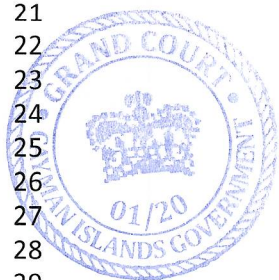
21 ***Judge:** Tell me what arrangements you are okay with.*
22

23 ***Husband:** I am okay with seeing my kids, spending time with them. What's*
24 *happening with me and (the wife) now with the kids, I appreciate and love what's*
25 *happening.*
26

27 ***Judge:** You appreciate and love what's happening.*
28 *So what is happening is that during the week, they reside with (the wife) and on the*
29 *weekend they come to you and midweek you go by them and help them with their*
30 *homework and so on.*
31

32 ***Husband:** It's not really midweek. I would go whenever I get the chance to go*
33 *I'll go. Sometimes it would be 3-4 days out of the week.*
34

35 ***Judge:** Yes, and you go and help them with the homework and so on.*
36



Husband: Yes I will.

Sometimes she will call me and say, you need to come. I will go. If I am not there I would say I am not here now, when I come I will come. Me, and her have that understanding.

Judge: Okay and that's working well?

Husband: It's working well."

31. With respect to an increase in maintenance he gave evidence that if he is earning more, he is willing to pay more because they are his children. He has a third child who is resident in Jamaica who has just turned 16. He has responsibility for maintaining her. He said initially:

"I cannot give more. I don't have it. I have rent to pay."

32. He said that he earns US\$11.00 per hour working as a maintenance worker at a golf course. At the lowest level he earns \$1,300.00 per month and \$1,400.00 at the highest level depending on the season. It is low season after the month of December.

33. He maintained that the produce which he delivers to the Farmers Market is for his mother. He said the he is the only son here on Island to help her and he does not ask her for anything because she has bills and workers to pay. When he is given cheques in his name, he changes them and gives the proceeds to her.

34. At the 15th December 2020 hearing, he gave evidence of monthly expenses as follows:

- Contribution to rental costs - \$400.00
- Contribution to electricity bills - \$75.00
- Contribution to water bills - \$50.00
- Contribution to internet - \$25.00



- Lunch, 6 days per week - \$60.00
- Gas- \$25.00
- Maintenance of child in Jamaica - \$200.00

For a total of \$1,015.00

35. This would leave him a balance of \$385.00 per month from his earnings. From time to time he does additional jobs such as car repairs from which he earns between \$50.00 and \$100.00.

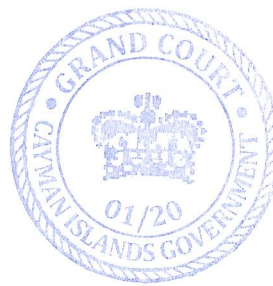
36. He said that on the arrears he could try to cut back on his lunch and pay an additional \$100.00 per month.

37. In cross-examination he said that his mother has two farms and in addition to the Farmers Market, she delivers pumpkin, sweet potato and other produce to local supermarkets.

38. Three persons reside at the home where he lives, his nephew, his mother and himself. A number of other family members visit and stay overnight on occasion. He did not agree with Counsel's suggestion that it would be appropriate to ask occasional residents for contributions to household bills.

39. He said that he does the best that he can, he buys clothing for the children and the wife on a regular basis and pays health insurance out of his pay for the children which is \$356.00 each month.





DISCUSSION AND DECISION

40. It was very clear that the husband cares for his children and shoulders his responsibilities as his means allow. The Welfare Officer noted that he ensures that the children have lunch during the school day and is involved in their progress at school.

41. I bear in mind that the welfare of the children is of paramount consideration. I am also mindful of the needs of the wife and the level of earnings and resources of the husband as well as his financial responsibilities. Any sum proposed by way of increase in maintenance should be one which is reasonable in light of the earnings, expenses and other responsibilities of the husband.

42. I found the husband to be a credible witness with respect to his level of income and accept his evidence that the produce business is his mother's and not his.

43. Having considered all the circumstances, while his earnings are limited, his living arrangements, being with his mother for whom he provides unpaid assistance with deliveries and collections appear to be capable of some flexibility of expenditure. Additionally he periodically does additional odd jobs from which he earns small sums.

44. The children are both older and as the wife gave evidence, more food and supplies are needed. The wife herself is in need of financial support until she is able to obtain stable employment.

45. Consequently, while it appears that the husband cannot afford to make payments at the level sought by the wife, a modest increase of \$25.00 per fortnight appears to be both necessary and affordable.

1 46. Following the hearing and as agreed, the assistance of the Courts Funds Office was sought to detail
2 the payments made from 2017 to date through that Office. The husband produced bank receipts in
3 respect of direct payments which were collated. The maintenance due from October 2017 to
4 December 2020 was \$16,800.00. The payments made through the Office amounted to \$12,300.00.
5 Direct cash payments to the wife between May and November 2020 amounted to \$1,600.00. The
6 arrears owed as at December 2020 are therefore assessed as at \$2,900.00. Copy documents showing
7 these figures and calculations have been provided to the husband and he has indicated his agreement
8 with this figure.
9

10 47. In addition to regular maintenance of \$225.00 per month, the husband is to pay \$37.50 per fortnight
11 or \$75.00 per month until the arrears are paid. The wife asked that the funds continue to be
12 deposited into her account directly. The husband explained that he has continued to do this as the
13 wife receives the funds within a shorter time span. When paid through the Courts Funds Office, it
14 can take up to three weeks for her to receive the funds.

15 48. The following orders are therefore made:-
16

- 17
- 18 (1) The husband is to make payments for the maintenance of the two children of the marriage
19 at the rate of \$225.00 every two weeks until each child of the marriage attains the age of
20 18 years, or, if they are in full time education, until they are 21 years old.
21
- 22 (2) Payments are to be made to the designated bank account of the wife by the 1st day of each
23 month.
24
- 25 (3) The arrears of child maintenance are assessed at \$2,900.00 as at the date of hearing.
26

1 (4) The husband is to make payments towards the arrears at the rate of \$37.50 every two weeks
2 and these payments are to continue until the arrears are paid in full.

3
4 (5) Each party has liberty to apply.

5
6 (6) No order is made as to costs.

7
8 **Dated this the 26th day of March 2021**

9
10 



11
12 **Honourable Justice Cheryll Richard Q.C.**
13 **Judge of the Grand Court**