

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

4 **CAUSE NO: FAM 105 OF 2015**

5 **BETWEEN:**

6 **DJ**

Petitioner

8 **AND**

9 **SJ**

10 **Respondent**
11
12
13

14 **Appearances:**

Mr. Phillip Ebanks for the Petitioner
Ms. Sonia Bush for the Respondent

16 **Before:**

Hon. Mr. Justice Richard Williams

18 **Heard:**

30 December 2015

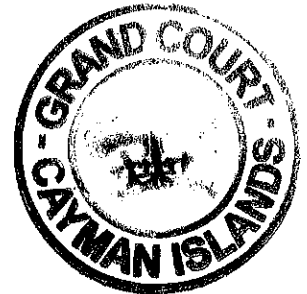
20 **Ex Tempore Judgment:**

30 December 2015

22 **Transcript of Judgment**

23 **Circulated:**

31 December 2015
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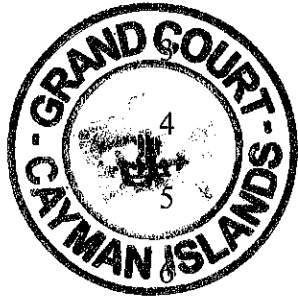
HEADNOTE

29 *Family Law – Maintenance pending suit for spouse – principles to be applied.*
30
31

32 **EX TEMPORE JUDGMENT**
33

34 1. I have before me the Respondent wife's Summons dated 21 December 2015.

35 The Summons seeks an interim periodical payments order for the wife and is
36 supported by her affidavit sworn on 21 December 2015 and her affidavit sworn
37 on 15 October 2015.



1 2. The Summons comes within proceedings for divorce initiated by the husband's
2 Petition for Dissolution of Marriage dated 1 June 2015. The Petition was
3 contested as evidenced by the wife's Acknowledgement and Answer both filed
4 on 19 June 2015. At this morning's hearing the parties have agreed that the
5 husband's Petition may proceed on an uncontested basis. Accordingly, leave is
6 given to the wife to withdraw her Answer and to the husband to withdraw his
7 Reply. I will prove the Petition when the husband files the application and draft
8 order in accordance with the Rules.

9
10 3. The husband is a Cayman national. The wife is a Jamaican national. The parties
11 were married on 21 June 2008 and therefore it has been a relatively short
12 marriage. There are no children of the marriage.

13
14 4. The parties came before this Court on 3 December 2015 for a first appointment
15 hearing. At that hearing the Court was informed that, at that time, the wife
16 opposed the divorce petition. The Court made no order at that hearing hoping
17 that the parties, with the assistance of their attorneys, would be able to resolve
18 the contested petition issues.

19
20 5. At the first appointment hearing there was uncertainty about the wife's ability to
21 be employed in the jurisdiction due to immigration issues. The wife's Residency
22 and Employment Rights Certificate ("RERC") expired on 15 July 2015 and she
23 told the Court that she had been informed by Immigration that, as she was still



1 married, she could not obtain a work permit. The wife was informed by the
2 Caymanian Status and Permanent Residency Board Secretariat by a letter dated
3 1 December 2015 that her RERC was not renewed, as the Board determined that
the marriage was "*unstable*" and "*not intact*". The wife was informed of her
right to appeal to the Immigration Appeals Tribunal within 28 days of
communication of the decision, which she received on 3 December 2015. The
wife has indicated to the Court today that she has not appealed the Board's
8 decision.

9
10 6. On 21 December 2015 the wife filed the Summons before me and requested an
11 urgent hearing for consideration to be given to her application for interim
12 financial support. The urgency is due to the fact that the wife has no income
13 since the end of November 2015 and, as confirmed by the Acting Director of
14 Boards and Work Permits in her letter to the Court dated 24 December 2015, she
15 "*does not currently possess any facility which allows her to be gainfully*
16 *employed in the islands.*"

17
18 7. The Court was informed by the wife's attorney that the husband's attorney was
19 out of the office until 27 December 2015. The husband's attorney says that he
20 informed her that he was not back in the office until 29 December 2015. With
21 this information in mind the Court allocated today's date for the hearing of the
22 Summons. The Court emailed both attorneys with details of the hearing date on
23 21 December at 2:10 PM and, in the email, replicated my suggestion that the

1 husband should file an affidavit containing details of his income/outgoings and
2 that the wife should produce the above-mentioned letter from Immigration
3 confirming whether or not she was able to work at this time.

4
5 8. To the husband's attorney's credit an affidavit with exhibits has been produced.

6 Due to the shortness of time the husband has been unable to swear his affidavit.

7 Upon the husband confirming on oath the veracity of the content of the affidavit
8 and his undertaking to have the affidavit sworn, I am content to treat the
9 affidavit as the bulk of his evidence. I have therefore considered the contents of
10 the affidavits and the submissions of both of the attorneys. I also permitted both
11 parties to give brief oral evidence and the content of the same has formed a part
12 of my deliberations.



13
14 **The Law**

15 9. In any order I may make today I aim to bridge the gap up until the final hearing.

16 This morning the parties were able to have discussions outside of Court and it
17 appears that agreement may be reached in relation to the wider ancillary relief
18 issues. It appears that the only areas requiring clarification before a consent
19 order can be reached are in relation to the equity in the parties' motor vehicles
20 and the value of their pension funds. It appears that the parties are hopeful that
21 once this information is obtained a consent order can be filed. Having regard to
22 the limited issues in this ancillary relief case, if a draft consent order signed by
23 both of the parties is submitted along with a consent order information form, I



1 may be able to approve the order administratively. If the parties exchange details
2 in an efficient manner, there appears to be no good reason why the ancillary
3 relief order could not be proved within three months. With this in mind, any
4 order I make today is intended to be a temporary measure. Both parties should
5 understand that today's order is not a final order and the Court in such
6 circumstances, on the more limited evidence supplied and available at this early
7 stage, only endeavours to put in place a fair holding order.

8
9 10. The parties should not see any order I make today as indicative of the final level
10 of periodical payments or in fact whether any final order for spousal periodical
11 payments is appropriate. The attorneys or the parties should not use any order
12 made today as a yardstick.

13
14 11. As set out in s.19 of the Matrimonial Causes Law (2005 Revision), the Court
15 shall have regard first of all to the best interests of any children of the marriage,
16 and then move on to consider the responsibilities, needs, financial and other
17 resources, actual and potential earning power and deserts of the husband and
18 wife. There are no children of this marriage, so I may concentrate on the parties'
19 financial circumstances.

20
21 12. What I have to do is to take into account the income, outgoings and needs of
22 each party as they appear at this time and make an order that will tide the wife

1 over until the final determination, whilst at the same time striving to minimise
2 any hardship to the husband.

3
4 13. This is not a hearing for the Court to make findings about either party's
5 credibility. In *Campbell v Campbell* (1998) 1 FLR 828, CA the approach
6 commended was not to look in detail at the payer's budget but to see whether the
7 maintenance was a fair proportion of his overall net income. The husband in the
8 schedule attached to his unsworn affidavit said that his income is \$5,221.13
9 from the Port Authority and \$1,000 per month from a Bus Transport Company,
10 giving a total of \$6,221.13. His income from the Port Authority is confirmed by
11 letter from that employer dated 23 December 2015. The Court will not
12 uncritically accept what either party says is their financial position, if there is
13 reason to believe that something has been hidden.

14
15 14. The approach of the Court when considering maintenance pending suit for a
16 spouse is succinctly stated, referring to the case of *T v T (financial provision)*
17 [1990] FCR 169, [1989] Fam Law 438, at paragraph 4A [711] issue 90
18 Butterworth Family Law as follows:

19 *"The primary aim of the court will be to make such an order, if*
20 *possible, which will give a spouse certainly sufficient money to*
21 *discharge the day-to-day outgoings and to feed, clothe and keep a*
22 *roof over the head of that spouse until the final adjustments and*
23 *orders are made in relation to the matrimonial assets and the*
24 *finances after decree nisi. Where there are sufficient assets*
25 *revealed by the parties the usual exercise for the court is to*

1 *balance needs against resources and thus come to a temporary*
2 *figure until the whole question of the division of the matrimonial*
3 *property can be decided."*
4

5 15. Nicholas Mostyn Q.C., then sitting as a Deputy High Court Judge in *TL v ML*
6 [2005] EWHC 2860 (Fam), gave the following often referred to guidelines:

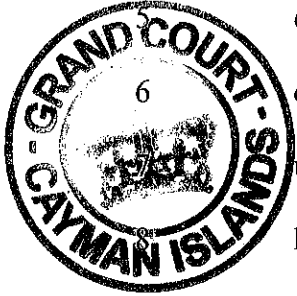
- 7 1. *The sole criterion to be applied is 'reasonableness' in*
8 *accordance with section 22, which is synonymous with*
9 *fairness.*
10 2. *A very important factor in determining fairness is the marital*
11 *standard of living, although that is not to say that the exercise*
12 *on a maintenance pending suit application is merely to*
 replicate that standard.
13 3. *In every maintenance pending suit application, there should be*
14 *a specific budget for that application which excludes capital or*
15 *long-term expenditure which should be considered at a final*
16 *ancillary relief hearing. The budget should be examined*
17 *critically in every case so as to exclude frenzied exaggeration.*
18 4. *Where the affidavit or Form E (in this jurisdiction affidavit as*
19 *we do not ordinarily use Form E's) disclosed by the paying*
20 *party is deficient, the court should not hesitate to make any*
21 *robust assumptions about the ability to pay. The court is not*
22 *confined to the mere say-so of the payer as to the extent of any*
23 *income or resources. In such circumstances, the court should*
24 *err in favour of the payee."*
25

26
27 16. When I consider this matter today, I am guided by and I apply the above legal
28 principles.
29



1 **The Parties' Positions**

2 17. The wife seeks interim maintenance totalling \$1,050. This figure would cover
3 \$750 for her rent and an additional \$300 for food. The wife indicated that for
4 December 2015 she would be willing to receive a prompt payment of \$750 to
6 enable her to pay rent already due and that the larger amount sought could
commence in January 2016. She indicated in the interim she would have to rely
upon the kindness of her friends for food. The figure requested by her would
leave a considerable monthly shortfall for her when considering all of her
reasonable outgoings.



10

11 18. The husband offers \$2,000 over a four-month period, I believe at a rate of \$500
12 per month commencing on his payday towards the end of January 2016. The
13 husband also offers to pay for a flight ticket for the wife so that she can return to
14 Jamaica.

15

16 19. The wife's position is as set out in her affidavit. She has no income for the
17 foreseeable future and this position is highly unlikely to change prior to the final
18 ancillary relief order and the granting of the certificate for dissolution of the
19 marriage. At that stage, if the wife is unable to obtain a work permit, then the
20 likely reasonable outcome would be for her to return to Jamaica where there
21 would be no employment restrictions. The husband may then be required to give
22 some financial assistance to enable her to repatriate. If the wife were able to
23 remain in the Cayman Islands with gainful employment it appears that she



1 would likely be able to find employment with a monthly income of CI\$2,800
2 which would make her self-sufficient and not reliant upon spousal support from
the husband. Having regard to the likely time periods set out in paragraph 9
4 above, it is reasonable for the wife to remain in the Cayman Islands until the
conclusion of these proceedings and for the husband to provide some financial
6 support during that period. The husband has given no financial assistance to his
7 wife from the end of November 2015, a date after which she was no longer able
8 to work.
9

10 20. In her October 2015 affidavit the wife sets out her outgoings. The wife today
11 accepts that some of those outgoings are not ones relevant to an interim
12 maintenance hearing and has today slightly varied some of the figures contained
13 in the affidavit. The wife indicates that she has the following interim outgoings:

14	Rent	\$750
15	CUC	\$150
16	Water	\$ 75
17	Groceries	\$500
18	Telephone usage	\$125
19	iPhone repayment	\$140 <i>(last payment February 2016)</i>
20	Internet/cable	\$ 75
21	Petrol	\$250
22	Car insurance	\$150 <i>(payments to be made only in</i>
23		<i>January, February and March</i>
24		<i>2016 for the whole year)</i>
25	Hair Care	\$ 75



1 The wife's monthly outgoings therefore total \$2,290. Even if one were to reduce
2 or disregard some of the figures such as iPhone repayment, Internet/cable, car
insurance her outgoings to meet the day-to-day needs would exceed the \$1,050
3 that she seeks. In fact, if one was to restrict her rental and food outgoings that
4 figure would amount to \$1,250. I do not accept the husband's contention that the
5 rent is excessive. It is clear to me that she has needs of at least \$1,200 per month
6 and that this would be the bare minimum to meet her interim day-to-day needs.

7
8
9 21. On the evidence before me it does not appear that the wife has any capital upon
10 which she could draw in the interim. There are no balances in her bank accounts.
11 She owes around US\$900 on a credit card for which there are minimum monthly
12 payments of US\$80 and she has a loan with Credit Union with an outstanding
13 amount of \$3,000. The wife has a motor vehicle, no evidence has been given
14 about its value, but it does not appear to be a significant asset.

15
16 22. The husband's position has been set out in his unsworn affidavit and in his oral
17 evidence today. As already mentioned, his disclosed monthly income is
18 \$6,221.13. He stated in oral evidence that the amount may be reduced,
19 especially during the summer holidays. That said, the period of time I am now
20 considering is for the next 3 to 4 months and therefore I am satisfied that his
21 income figure should be taken at \$6,221.13. During the marriage the husband
22 has conceived a child out of wedlock with a woman who co-habits with him at
23 his parents' home. He informs the Court that his partner works as a carer for his

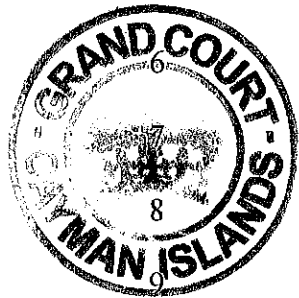
1 grandmother who also resides in the home, but she has been unable to work in
2 recent time as the child is only two months old. It appears from what he is
3 saying that the intention is for her to start work again in the near future, but he
4 does not know what her income will be.

5
6 23. In the schedule attached to his draft affidavit, the husband states that his
7 outgoings are as follows:

8	Land loan	\$ 882.83	<i>(deducted straight from salary)</i>
9	Car loan	\$ 737.37	<i>(deducted straight from salary)</i>
10	Credit Union Debt		
11	Consolidation	\$1,072.08	<i>(deducted straight from salary)</i>
12	Escrow payment	\$1,000.00	<i>(deducted straight from salary)</i>
13	Petrol	\$ 300.00	
14	Monthly phone &		
15	iPhone repayment	\$ 232.07	<i>(last payment February 2016)</i>
16	Medical insurance		
17	for baby	\$ 371.27	
18	Contribution to parents'		
19	property	\$ 625.00	
20	Groceries with baby foods		
21	and needs	\$ 400.00	
22	Dish Network satellite		
23	television	\$ 110.87	
24	Attorney's fees	\$ 500.00	
25	Car licence fee	\$ 19.58	<i>(\$235 per year)</i>
26	Car insurance	\$ 83.00	<i>(\$996 per year)</i>
27	Clothing	\$ 25.00	



28
29 The husband therefore contends that his outgoings in relation to the interim
30 hearing should be regarded as being \$6,358.97. I am not satisfied that the long



1 term expenses on clothing, car insurance, car licence fees, attorney's fees should
2 be taken into account at this hearing. Those total \$627.58. The Dish Network fee
3 of \$110.87 is a luxury expense which can be removed. This would reduce his
4 outgoings to \$5,620.52, leaving a disposable income of \$600.61. Other
5 expenditure such as his cell phone bill and repayment, his contribution to the
household, the level of his petrol bill and even his repayment on the loans
should not be regarded as priority payments over the need to ensure that the
wife's basic day-to-day needs are met. He has an obligation to arrange his
financial affairs to enable his wife's basic day-to-day needs to be met in the
interim

11
12 24. I am acutely conscious that I must endeavour to be fair to both parties when
13 making what I hope will be a short interim order designed to last until the final
14 ancillary relief hearing or approval of a submitted consent order. I accept that
15 the order I make today will cause hardship for the husband, but it is still
16 hardship not at the level being experienced by the wife.

17
18 25. I have an obligation to ensure that the wife has sufficient income to meet her
19 day-to-day needs prior to the contested interim financial provision hearing.
20 What is clear is that I need to make some form of holding order to try to best
21 meet the wife's interim needs, in the light of the wife losing her employment,
22 and her resultant current dire financial circumstances.

1 26. I must do so having regard to the factors set out in s.19, including as best I can
2 on the limited evidence, each party's financial position.

3

4 27. As I sought to make clear before, neither party should hold any figure I order
5 today as a yardstick for future hearings.

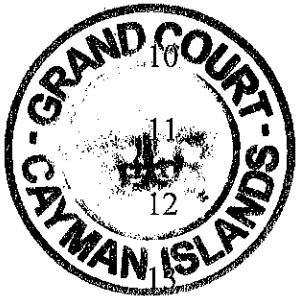
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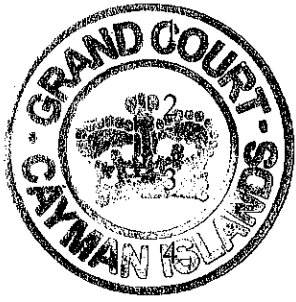
7 **Conclusion and Orders**

8 28. On the limited evidence before me at this hearing, I find that the appropriate
9 interim figure for spousal maintenance is \$1,200. However, I have regard to the
10 husband's financial difficulties this month and have taken notice of the wife's
11 concession and therefore order that only \$750 is to be paid by 4 January 2016
12 and thereafter that \$1,200 is to be paid by or on 28 January 2016, 28 February
13 2016 and 28 March 2016. Those payments can be varied if a consent order is
14 reached by the parties disposing of the ancillary relief proceedings prior to 28
15 March 2016. If it appears that a consent order is not going to be reached then
16 either party may apply to the Court for reconsideration of interim maintenance
17 for the period after 28 March 2016.

18

19 29. I accept that the figures reached are not ideal for either party, but I have in mind
20 that such interim maintenance will enable the wife to maintain a roof over her
21 head by paying rent and provide basic food on the table during this period of
22 forced unemployment. The figures will also enable the husband to meet some of
23 his expenses and I am satisfied that for a short period of time he will be able to





remain in his parents' home without making the current more informal contributions that he says that he is paying to that household. I accept that he will not be able to meet all of his other outgoings.

5 30. I am entitled to make interim spousal orders even though at the final hearing
6 there may be an issue as to whether this is a case in which on-going spousal
7 maintenance is appropriate.

8
9 31. I feel that it is important to also give directions in relation to the final ancillary
10 relief proceedings, especially as the Petition is no longer going to be contested.
11 When I give these directions, to endeavour to keep costs down, I build in
12 sufficient time for the parties to attempt to reach a consent order before filing
13 further evidence. Accordingly, I direct:

- 14 1. Both parties to file and serve any further affidavits (themselves and
15 witnesses) in relation to ancillary relief by or on 29 January 2016;
- 16 2. Requests for Further and Better Particulars to be served by or on 12
17 February 2016;
- 18 3. Replies to Requests for Further and Better Particulars to be filed by 26
19 February 2016;
- 20 4. Both parties have leave to fix the final ancillary relief hearing on the first
21 open date after 11 March 2016 with a one-day estimate;

- 1 5. The Practice Direction in relation to bundles is to be fully complied with;
- 2 6. Both parties are to promptly apply for any subpoenas requiring the
- 3 attendance of persons for cross-examination; and
- 4 7. The matter to come before the Court for a mention hearing on 4 March
- 5 2015 at 9:30 AM.

6

7

8

9

10 
11 **Honourable Mr. Justice Richard Williams**
 JUDGE OF THE GRAND COURT

