

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **FAMILY DIVISION**
3
4

CAUSE NO: FAM 34 OF 2012

5 **BETWEEN:**

6 **AT**

Petitioner

8 **AND**

9 **JT**

10 **Respondent**

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

15 **Before:** **Hon. Mr. Justice Richard Williams**
16

17 **Heard:** **21st August 2013, 29th October 2013, 11th March 2014, 14th May 2014**
18

19 **Due date for final submissions:** **30th August 2014**
20

21 **Additional written comments/submissions:** **20th January 2015**
22

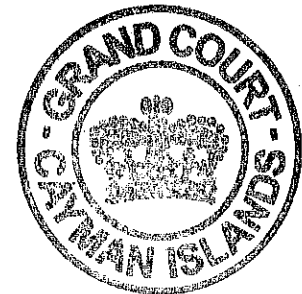
23 **Date of Circulation of Draft Judgment:** **3rd March 2015**
24

25 **Date of Judgment:** **6th March 2015**
26

27 **Written Submissions on costs:** **10th April 2015**
28

29 **Date of circulation of Draft Ruling on Costs:** **8th July 2015**
30

31 **Date of Ruling on Costs:** **10th July 2015**
32
33



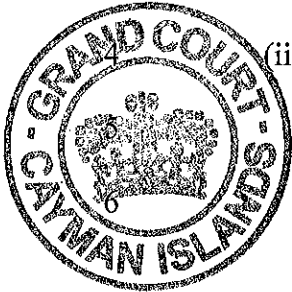
34 **RULING ON COSTS**

35 **The Judgment and Order**

36 1. On 6th March 2015, I delivered a judgment in relation to an application, brought
37 by way of Summons dated 18th September 2012, for financial provision made by
38 the Respondent, JT, against her husband, AT.
39

1 2. In that judgment I referred to the parties, for convenience, as husband and wife
2 and I made the following Order:

3 (i) That the former matrimonial home be retained by the wife;

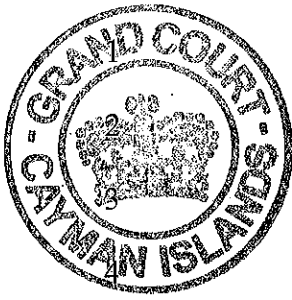


6 (ii) That the George Town property be retained by the husband and that the
7 husband be solely responsible for the Credit Union Loan IN57 which had
8 a balance of CI\$34,165.17;

9 (iii) That the North Side property be marketed for sale forthwith with the
10 intention of it being sold as soon as possible with each party receiving
11 50% of the equity post sale. The parties to agree on the realtor(s) to be
12 used and have joint conduct of the sale;

13 (iv) That the husband make to the wife a lump sum payment equivalent to
14 50% of the total amount in the Jamaican accounts considered to be
15 matrimonial assets, namely CI\$17,085, within 56 days of the delivery of
16 this judgment;

17 (v) That if the wife has retained her 25% shareholding in the radio station
18 then she will be entitled to receive the 25% shareholder loan repayment
19 from the business as and when it is paid. However, if it transpires that
20 she is no longer a shareholder then she should obtain the same from the
21 husband. However, due to the uncertainty as to whether and when the
22 shareholder loan might be repaid, the husband was ordered to make lump
sum payments up to a total of CI\$17,996 to the wife with each payment
being 50% of the shareholder loan repayments when made to him by the



radio station and that must be done within 14 days of receipt of such payments by him. The husband was ordered to provide the wife with a copy of the radio station's certified annual balance sheet which will provide details of any shareholder loan repayments made.

5 (vi) That each party retain property already in their sole name.

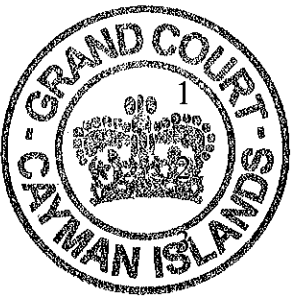
6 (vii) Husband do pay child maintenance \$400 per child per month (total \$800)
7 until aged 18 or until cease full time education (whichever may be the
8 later).

9 (viii) That there shall be a clean break, with no order for spousal maintenance
10 made.

11 3. In my Judgment I stated that *"unless I hear from the parties within seven days of*
12 *the delivery of the perfected judgment that they wish to make further*
13 *submissions on the issue, I intend to make no order for costs."*
14

15 **Nature of Cost Hearing**

16 4. Both parties wished me to deal with the issue of costs by considering their
17 written submissions and without requiring their attendance at Court. On 6th
18 March 2015 Ms. Allard, counsel for the wife, submitted her written submissions
19 seeking an order in her client's favour for the costs of the proceedings. The
20 husband filed his written submissions on 12th March 2015 submitting that no
21 order as to costs should be made. Having regard to the content of the written
22 submissions, the parties were afforded the opportunity to submit further



submissions. Ms. Allard submitted her further written submissions on 10th April 2015 and the husband indicated on the same date that he did not wish to submit any further submissions.

4

5 **Relevant Observations in the Judgment to the Issue of Costs**

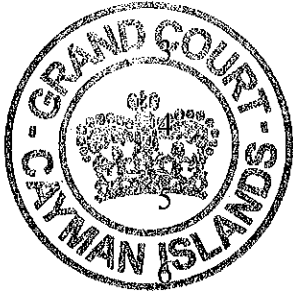
6 5. In my judgment I commented on the delay and piecemeal disclosure. I noted that
7 the parties' evidence, in particular the husband's, had changed during the course
8 of the proceedings. I commented that the parties' failure to provide a clear
9 schedule of agreed and not agreed matrimonial assets in which they also set out
10 the value of every asset, any encumbrances upon that asset and the equity in that
11 asset, had resulted in the Court having to embark on the considerable time
12 consuming exercise of trying to extrapolate this detail itself from the
13 inconsistent and conflicting evidence in the parties' written evidence, oral
14 evidence and written submissions.¹

15

16 6. In the judgment I reminded myself that the hearing started on 21st August 2013,
17 a date which was fixed relying upon the parties' overly conservative time
18 estimate of half a day.² Both parties, by their unrealistic time estimate and the
19 dispute raised during the hearing about valuations of the property contributed to
20 the delay although this was also contributed to by disclosure issues primarily
21 down to the husband and his late filing of affidavit evidence.

¹ Paragraph 4 of the Judgment.

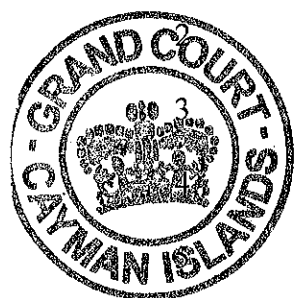
² The order of 5th March 2013 required the parties to confirm whether the hearing should be listed for a half or full day. The Listing Officer was informed on 18th April 2013 that parties required only a half day for the final hearing.



1 7. At paragraph 6 in the judgment I highlighted, that by the first date of the
2 hearing, the normal disclosure process had not taken place and, as a
3 consequence, there might be gaps in the parties' evidence. I noted that despite
4 this, both parties wished the hearing to proceed without further disclosure as
5 they felt it had been sufficient to enable them to conduct their cases. The
6 scheduled half day hearing could not even be concluded by the end of the full
7 day and was adjourned. As no additional delay would be occasioned by it, the
8 Court directed the husband to file and serve an affidavit exhibiting any
9 documents which he intended to rely on which were not contained in the bundle
10 within 14 days. The husband failed to properly comply with the direction as he
11 did not file an affidavit. However, he did serve a bundle within the 14 days. That
12 bundle contained a number of documents which he wished to refer to in his
13 evidence. Although not in affidavit form, I indicated at the outset of the second
14 day of the hearing that I would permit him to refer to any of those documents
15 during his oral evidence. This means that no additional delay was caused by the
16 format of this further disclosure.

17

18 8. Also during the hearing it became clear that the parties no longer agreed the
19 valuation in relation to the George Town property. The parties were informed
20 that the matter would have to be adjourned to enable a joint valuation to be
21 obtained. At the hearing the husband applied to file an affidavit. This was
22 opposed by the wife. I ruled that the affidavit could be filed, recognising that
23 this would not cause delay as the matter already required an adjournment to



1 enable the joint valuation of the George Town property to be obtained. I
afforded the wife an opportunity to file evidence in reply. The hearing was
adjourned part heard with a further direction that the husband filed an affidavit
by 6th December 2013 exhibiting copies of all bank statements for his accounts
in Jamaica.

6

7 9. On 8th April 2014 the husband filed a Summons in which he sought leave to
8 furnish further information with respect to assets disputed during cross-
9 examination. He sought leave to serve an affidavit sworn on 8th April 2014 by or
10 on 11th April 2014. At a hearing held on 14th May 2014, when Ms. Brooks
11 attended, commendably holding the case for Ms. Allard who was on maternity
12 leave, leave was given to the husband to file the affidavit. Further directions
13 were given with a suitable time frame having regard to Ms. Allard's
14 understandable non-availability until later in the year. The husband was ordered
15 to pay the costs occasioned by his application on the indemnity basis and
16 therefore does not form part of my consideration as to what costs order should
17 be made today.

18

19 10. On 13th August 2014, three months after the order granting leave to the husband
20 to file a further affidavit, the wife's attorneys wrote to the Court indicating that
21 she did not seek to file a Request for Further and Better Particulars, on the basis
22 that her written submissions of May 2014 adequately dealt with the content of



the husband's affidavit and the Court was invited to proceed to judgment. This meant that the Court was then in position to prepare its judgment.

4 11. There have been no Calderbank letters brought to the Court's attention. I accept
5 that the parties may not have felt in a position to draft the same partly due to the
6 disclosure issues. The husband did make an open offer on the first day of the
7 hearing on 21st August 2013 that he would be content for the matrimonial home
8 to be transferred to the wife, but by 2nd September 2013 the father's skeleton
9 argument made it clear that his position had changed and that he was advocating
10 that the property should be sold with each party receiving 50% of the equity.

11

12 12. This is not one of those cases where one is considering whether a party has
13 received more or the same as an offer made and whether the other party should
14 therefore pay the costs of the communication of the offer, having been given a
15 reasonable time to consider it.

16

17 **Wife's Submissions on Costs**

18 13. The wife's position is that delay has been caused due to the husband's piecemeal
19 disclosure about his financial circumstances and due to his shifting position on
20 what amounts to matrimonial property. The wife contends that her position from
21 day one was that the assets should be divided equally between the parties and
22 that throughout the husband opposed such an approach.

23

24

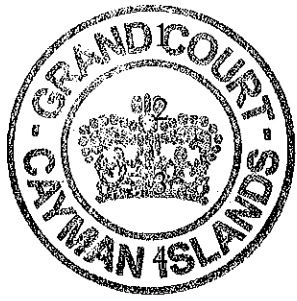
1 **Husband's Submissions on Costs**

2 14. The husband contends that the length of the drawn out proceedings had been
3 contributed to by both parties. He comments that Ms. Allard's non-availability
4 and the wife's delayed decision not to file any request for further better
5 particulars after leave had been given to her in May 2014 had contributed to the
6 delay. The husband contends that both parties have been assisted by the Court to
7 readjust their finances and blame should not be placed on either party. He
8 concludes that neither party should be viewed as being the successful party and
9 that any order for costs against him would be a departure from "*the justice and*
10 *fairness*" in the judgment.

11

12 **The Law and Principles to be Applied**

13 15. The power of the Court to make costs orders under the law is found in section
14 21(g). That should be read in conjunction with GCR Order 62 r.4. Order 62.4(1)
15 provides that the rule "*shall have effect unless otherwise provided by any law.*"
16 Unlike in England and Wales, where the Family Procedure Rules exempt the
17 Family Court from Rule 44.3(2) and (3) of the Civil Procedure Rules 1998 (parts
18 43 and 44) with the consequence that the rule that costs normally follow the
19 event does not apply to family proceedings, there are no such Rules or Laws in
20 the Cayman Islands. In England and Wales it is stated that the starting point in
21 ancillary relief proceedings is the general rule that the court will not make an
22 order requiring one party to pay the costs of another party. As a consequence in
23 England no orders as to costs have become the norm, with each party taking



responsibility for the level of their own fees. That said, the Rules in England do provide that the court may make costs orders at any stage of the proceedings where it considers it appropriate to do so because of the conduct of a party in relation to the proceedings.

5

6 16. GCR Order 62 r. 4(2) states that the general principle is that costs follow the
7 event if they have adhered to the overriding objective by conducting the
8 proceedings in an economic, expeditious and proper manner.

9

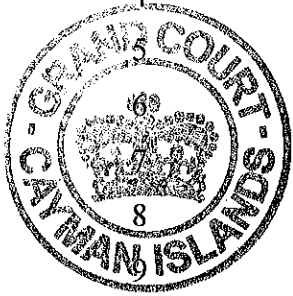
10 17. GCR Order 62 r.4 (5) provides:

11 *"If the Court in the exercise of its discretion sees fit to make any*
12 *order as to the cost of any proceedings, the Court shall order the cost*
13 *to follow the event, except when it appears to the court that in the*
14 *circumstances of the case some other order should be made as to the*
15 *whole or any part of the costs"*

16

17 18. In the Court of Appeal decision of **Rory Michael McTaggart v Mary Elizabeth**
18 **McTaggart** CICA 14 of 2010, handed down on 12th February 2015, guidance
19 was given by the President, Sir John Chadwick, in relation to the proper
20 approach to costs in ancillary relief proceedings. Although **McTaggart** was a
21 "big money case" in which Caldberbank Letters featured, a number of the
22 helpful observations made by the President are applicable to all ancillary relief
23 proceedings.

24



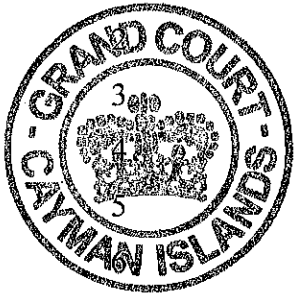
19. At paragraph 5 of the judgment the President set out paragraphs 106-107 of the Court of Appeal's earlier judgment on the appeal of the ancillary relief decision which had been handed down on 29th November 2011, where he stated:

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

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

*The effect of a requirement that 'costs follow the event' – although not, at the time, directly applicable in matrimonial proceedings in England and Wales (see RSC Order 62 rule 3(5)) – was considered at some length by Lady Justice Butler-Sloss in *Gojkovic v Gojkovic* [1991] 3 WLR 621. She concluded that the general principle was that if, after contested proceedings, a party obtains an order which is more beneficial to him or her than an offer made by the other party under the Calderbank procedure, then the other party should pay the costs of the proceedings: conversely, if a party fails to obtain an order which is more beneficial than that which could have been accepted under the Calderbank procedure, then that party must expect to pay the costs of the offeror from the date of the offer.*

*107. The position in England and Wales has moved on since *Gojkovic*. The position, now, is governed by rule 28.3 of the Family Procedure Rules 2010; which, in effect, restates the amendments to rule 2.71 of the Family Procedure Rules 1991 introduced by the Family Proceedings (Amendment) Rules 2006, SI 2006/352. The general rule in ancillary relief proceedings is that the court will not*



1 *make an order requiring one party to pay the costs of another party.*
2 *But there has been no corresponding change in the rules applicable*
3 *in this jurisdiction. The position remains that, if the court in the*
4 *exercise of its discretion sees fit to make any order as to costs in*
5 *ancillary relief proceedings, it shall order costs to follow the event*
6 *(save where there are some special circumstances)."*

7

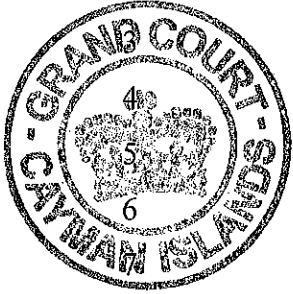
8 20. At paragraph 23 of his ruling the President clearly stated that:

9 *"... Unless and until there is a change to the relevant rule in this*
10 *jurisdiction, in awarding costs in ancillary relief proceedings courts*
11 *here should give effect to the provisions of GCR 62.4 – that,*
12 *generally, a successful party to any proceeding should recover from*
13 *the opposing party and the reasonable costs incurred by him in*
14 *conducting that proceeding and in an economical, expeditious and*
15 *proper manner – and, in applying the principle that "costs follow the*
16 *event", should follow the guidance in **Gojkovic**."*

17

18 21. At paragraphs 13 and 19 of his judgment the President stated that the guidance
19 as to the way in which ""the costs follow the event" should be applied was given
20 by Lady Justice Butler-Sloss in **Gojkovic** [1992] Fam 40, at pages 56-60. He
21 then set out what she had stated at paragraphs 56 and 57 of his judgment,
22 namely:

23 *"However, in the Family Division there still remains the necessity for*
24 *some starting point. That starting point, in my judgment, is that costs*
25 *prima facie follow the event (see per Cumming-Bruce L.J. in **Singer***
26 *(Formerly **Sharegin**) v. **Sharegin** [1984] F.L.R. 114, 119) but may be*
27 *displaced much more easily than, and in circumstances which would*
28 *not apply, in other Divisions of the High Court... In applications for*



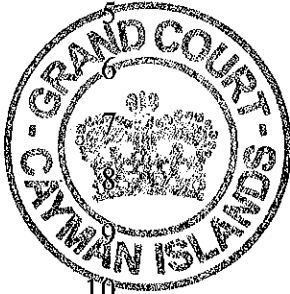
1 *financial relief the applicant (usually the wife) has to make the*
2 *application in order to obtain an order. If the financial dispute can be*
3 *resolved it is usual, and normally in the interests of both parties, that*
4 *the applicant should obtain an order by consent; and if money is*
5 *available and in the absence of special circumstances, such an*
6 *agreement would usually include the applicant's costs of the*
7 *application. If the application is contested and the applicant*
8 *succeeds, in practice in the Divorce Registries around the country*
9 *where most ancillary relief applications are tried, if there is money*
10 *available and no special factors, the applicant spouse is prima facie*
11 *entitled to, and likely to obtain, an order for costs against the*
12 *respondent. . ."*

13 *In the vast majority of cases, where one party is or both parties are*
14 *legally aided, and where the assets are insubstantial or at least*
15 *inadequate for the needs of the family, the question of who pays the*
16 *costs may be academic.*

17
18 *57. There is, however, a minority of cases, of which the present*
19 *appeal is an example, where the assets are substantial and an order*
20 *for costs can (if appropriate) be made. In such cases the parties are*
21 *likely to negotiate, and such negotiation, which may lead to a*
22 *settlement, is much encouraged by the courts."*

23 *58. Later decisions referring to the effect of a Calderbank offer have*
24 *accepted, in my view, the basic assumption as expressed by Cairns*
25 *L.J.³ that if an applicant spouse failed to exceed the sum offered,*
26 *prima facie she/he would pay the costs after the date of*
27 *communication of the offer. . . ."*

³ In *Calderbank v Calderbank* [1976] Fam. 93.



1 22. Before moving on I add that, Henderson J's observations in G v G [2010] 1
2 CILR 365 at 373 helpfully summarises the guidance given by Lady Justice
3 Butler-Sloss:

4 *"I accept that the approach to Calderbank letters in matrimonial
litigation described at length in Gojkovic is applicable in the Cayman
Islands. It is appropriate, however, to emphasise some of the
important points which emerge from that judgment:*

10 *(a) the presumption that costs follow the event can be displaced much
more easily in matrimonial cases than in other civil cases –the
discretion of the court regarding costs is 'far wider' than in other
types of civil proceedings;*

12 *(b) ordinarily, it will be appropriate to award costs only where the
assets are 'substantial';*

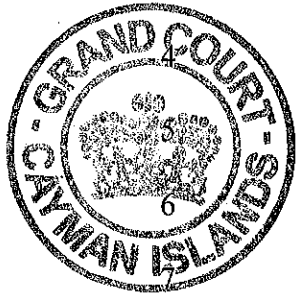
14 *(c) the behaviour of a party, including in particular a failure to
disclose material documents, can be a significant factor in a costs
application; and*

16 *(d) A party receiving an offer of settlement is entitled to 'a
reasonable time to consider it' –last minute offers to which no
response is received will not necessarily result in an award of
indemnity costs."*

22 Conclusion

23 23. In this case there have been no Calderbank offers brought to the Court's
24 attention. On the first day of the hearing the husband made an open offer
25 transferring the former matrimonial home to the wife and then retracted it at the
26 later stage of the hearing.⁴ It is clear that the wife received a larger share of the
27 assets than the husband had contended and the Court disagreed with the husband

⁴ Paragraph 59 Judgment.



1 when finding a number of assets to be matrimonial assets. The total child
2 maintenance order of CI\$800/month (\$400/child) made by this Court was
3 substantially lower than the amount of CI\$1500 (\$750/child sought by the
wife).⁵ The wife was unsuccessful in her application to be awarded a greater
than 50% share in the former matrimonial home to compensate her for payments
not made by the husband towards the mortgage.⁶ In addition the Court felt it
appropriate to consider the figure of the Credit Union Loan when arriving at the
equity figure.

8
9
10 24. Although it is evident that the wife succeeded in a number of her submissions, I
11 am not satisfied that she was successful to the point that the global order made
12 (including child maintenance) bettered the content of statements she made prior
13 to and during the hearing about the orders she was seeking. Although I accept
14 that the husband was more dilatory in his disclosure than was the wife, both
15 parties played a role in the overall delay in these proceedings concluding. The
16 husband was penalised with an indemnity costs order on 14 May 2015 and I am
17 satisfied that is sufficient when considering costs today.

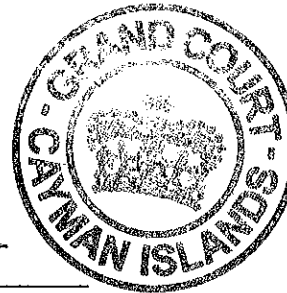
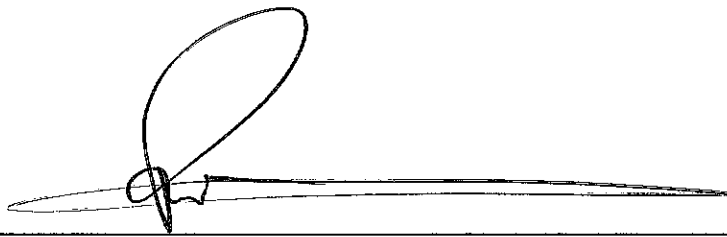
18
19 25. Having regard to GCR Order 62 r.4(5) and the principles in relation to costs set
20 out in paragraphs 18-22 herein, I make no order as to costs.

21
⁵ Paragraphs 42-44 Judgment.

⁶ Paragraph 56 Judgment.

1 26. The parties should submit for my approval an order containing orders contained
2 in my judgment of 6th March 2015 and in this judgment. At that time, the Court
3 will be in a position to grant the Decree of Dissolution of Marriage which was
4 applied for by the wife on 5th May 2015.

5
6
7
8
9



10 **HONOURABLE MR. JUSTICE RICHARD WILLIAMS**
11 **JUDGE OF THE GRAND COURT**