



1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2
3 CAUSE NO: D27 OF 2009

4
5 10-08-09

6 ISABELLE SUZANNE PAYNE

7 Petitioner

8
9 AND

10 LOUIS ANDREW PAYNE

11 Respondent

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17 **Coram:** The Hon. Mr. Justice Foster (Actg)

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19 **Appearances:** Ms. Sheridan Brooks of Brooks & Brooks for the Petitioner
20 Ms. Francesca Dowse of Samson & McGrath for the Respondent

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22 **Heard:** 29th and 30th July 2009

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26 **RULING**

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31 1. This Ruling concerns final ancillaries on divorce; matters concerning children,
32 maintenance and division of assets between the parties. The priority in all matters
33 such as this is for the Court to determine in all respects what, in its judgment, is in
34 the best interests of the children of the marriage. The Matrimonial Causes Law
35 (“the Law”) makes it quite clear that this priority is not confined to questions of
36 custody, care and control and access but is also the predominant consideration in

1 determining financial issues on divorce, such as maintenance and division of
2 assets between the parties – see Section 19 of the Law. It is well established that
3 the Court has very wide discretionary powers – arguably even wider in this
4 country than the Courts have in England – in seeking to achieve a fair outcome
5 “giving first consideration to the welfare of the children” (see Miller v
6 Miller/McFarlane v McFarlane [2006] 3 All ER 1 per Lord Nicholls and also
7 Ebanks v Ebanks [1992-93] CILR per Smellie J at 297).

8
9 2. In the present case I heard evidence from both parties. They agree that the 2
10 children of the marriage, Max aged 8 and Coralie aged 4, should remain in the
11 care and control of the Petitioner (“the Wife”). The Respondent (“the Husband”)
12 expressly accepted that the Wife always has done and should continue to make
13 and implement all the day-to-day decisions concerning the children’s welfare. In
14 my assessment that is in the best interest of the children’s welfare in the
15 circumstances of this case and I therefore order that the Wife should have care
16 and control of the children.

17
18 3. As far as access is concerned, in principle the Wife agrees that the children should
19 see the Husband and should have as close a relationship as practicable with him.
20 Max has been seeing the Husband since the parties separated in February 2009 on
21 a fairly regular basis, on including overnight on several occasions when the

1 Husband's male flat- mate has been away. Access by the Husband to Coralie has,
2 however, been more problematic. Coralie is only 4 years old and has generally
3 been refusing to go or only reluctantly going on access visits with the Husband
4 and gets upset and distressed when the Husband tries to make her accompany or
5 stay with him. I accept that this is no doing of the Wife and that she is genuinely
6 doing her best to encourage Coralie to go and remain with the Husband on access
7 visits. She has gone to the extent of taking Coralie to a local psychologist, Dr.
8 Elma Augustine, for advice as to the cause of and how best to deal with the access
9 problem, being understandably concerned about its effect on Coralie. Dr.
10 Augustine, in a letter dated 24th June 2009, made some helpful comments and
11 suggestions, emphasizing that Coralie should not be forced to go with the
12 Husband and that it was counter-productive and damaging to Coralie to adopt a
13 harsh or forceful tone or exhibit impatience in trying to get her to go or stay with
14 the Husband. What is clearly needed is gentle reassurance and positive
15 encouragement and, it seems to me, also the passage of time, to allow Coralie to
16 adapt as far as possible to her parent's separation and to feel comfortable about
17 leaving the Wife to go and remain with the Husband in her new circumstances. It
18 appears that Coralie has become apprehensive and possibly fearful of the
19 Husband because of his insistent approach when she declines to go or stay with
20 him and also because he may, most regrettably, have made negative statements
21 about the Wife in Coralie's presence. No doubt Coralie senses the hostility

1 between her parents. It is self evident that children are entitled to and must be
2 allowed by both parents to love each of their parents unconditionally. It is clearly
3 not in a child's best interests that whatever the parents may personally feel about
4 each other is discussed with or made evident to, still less pressed upon, the child.
5 Divorce or separation is traumatic enough for a child without being subjected to
6 his or her parent's personal animosity towards the other parent.

7 4. Notwithstanding the present problems about access to Coralie, I am satisfied that
8 it is the best interest of both children to have as close a relationship with the
9 Husband as is practicable and to see him on a regular basis provided that does not
10 cause them anxiety, upset or distress. I accept that he loves them and that, despite
11 the difficulties, they both ultimately love him. There does not seem to be any
12 significant problem about Max seeing and visiting the Husband and in my opinion
13 that should continue, including residential access from time to time when the
14 Husband's flat-mate is away. The present arrangements as set out at paragraph
15 5(u) of the Wife's affidavit sworn on 22nd July 2009 generally seem to be working
16 and should, in my judgment, continue subject to any reasonable changes agreed
17 between the parties. It seems to me both appropriate and desirable, if they are
18 both genuinely concerned for the best interests of their children, as they claim, for
19 the parties to agree between themselves appropriate access arrangements in
20 relation to Max having regard to his best interests and his commitments and
21 wishes, as well as each of the parties' own convenience. They appear to have

1 been doing so recently and I consider it is in the best interests of Max that they
2 should continue to do so.

3
4 5. As far as Coralie is concerned, as I have said, I accept that the Wife is genuinely
5 endeavouring to encourage her too to go on access visits with the Husband but if
6 the Husband wishes to re-establish and maintain a close and loving relationship
7 with his daughter he must change his approach and not endeavour to force the
8 situation or try to insist on any “right” to access. He has no such “right”; if it can
9 be said, in lay terms, that anyone has a “right” in respect of access it is his
10 daughter, not him. I was also concerned at the Wife’s evidence, which I accept,
11 that she feels intimidated by and apprehensive of the Husband. There have been
12 incidents in the past of verbal and even physical abuse of the Wife by the
13 Husband and on one occasion she reported physical abuse to the Police. The
14 Husband admitted, both in his Acknowledgment of Service and in evidence that
15 this was the case. It should be obvious to the Husband that such conduct is not
16 only wholly unacceptable as far as the Wife is concerned but is extremely
17 damaging for the children and very clearly not in the interests of their welfare. It
18 is greatly to her credit that the Wife, notwithstanding her understandable
19 apprehension about the Husband’s conduct towards her, continues to encourage
20 the children to have a positive image of the Husband and to maintain a
21 relationship with him through access. If the Husband wishes to encourage the

1 children to maintain a close and affectionate relationship with him he very clearly
2 must desist from any form of abuse towards or adverse comment about the Wife
3 and actively encourage the children to have a positive image of the Wife, just as
4 she encourages them to have a positive image of him.

5
6 6. In my judgment both parties, but the Husband in particular, must adopt the
7 approach advised by and the recommendations of Dr. Augustine in her letter of
8 24th June 2009. It also seems to me that, given Coralie's young age, it may take
9 some time for her to feel comfortable about access visits with the Husband and, in
10 the interests of the longer term, the Husband must accept this and not exhibit
11 impatience about any unwillingness on the part of Coralie to go or stay with him.
12 This is, of course, on the assumption that the Wife will continue to use her best
13 endeavours to appropriately encourage Coralie to go and remain with the
14 Husband, which I believe she will. In these circumstances, I do not propose to
15 make any formal order for specific access by the Husband to Coralie at this stage
16 and I hope that with renewed co-operation and the right approach by her parents,
17 it may not be necessary to do so. The parties will both need to actively need to
18 work at encouraging Coralie to resume a relationship and to go on access visit
19 with the Husband and to seek to achieve that in a manner that is clearly best for
20 Coralie. I will therefore order that the Husband may have access to Coralie, but
21 only as may be agreed from time to time between the parties having regard to

1 Coralie's best interests and the need not to upset or distress her by trying to
2 compel her to go on such access. If, as I hope will not be the case, the parties are
3 not able to agree about access arrangements then they will have to revert to the
4 Court. In my opinion it would clearly be in both children's best interests that the
5 parties reach consensus about access without the need for further involvement of
6 the Court if they can do so.

7
8 7. The main contentious issue as far as the practical arrangements for the children
9 are concerned is whether the Wife should have sole custody of the children as she
10 contends or the parties should have joint custody as the Husband contends. The
11 Husband feels that as the children's father he should be consulted about and have
12 a say in important decisions concerning his children's welfare and their lives
13 generally. He believes this would be in the best interests of the children if they
14 are to have a close and meaningful relationship with him, as their father. He fears
15 that if the Wife were to have sole custody he would be excluded from such a role
16 in their lives and have no real clear entitlement to be involved. The Wife on the
17 other hand considers that joint custody would be recipe for dispute between the
18 parties. She contends that the Husband has not been really interested in the
19 children in the past, never having been a "hands-on" father, and is only now
20 expressing such interest in order to spite or make life difficult for her. She claims
21 that the Husband has previously threatened to take the children from her, although

1 he denies that, and that there have been periods in the past when he has deserted
2 the family and failed to maintain the children at all financially, leaving everything
3 to her. She feels the Husband would be unco-operative and try to make things as
4 difficult as possible for her and that it would be much less fraught and more
5 satisfactory for the children if she had sole custody. She said that she would
6 anyway keep the Husband informed and discuss the children with him even if she
7 had sole custody of them. She just did not want him to have the legal right to be
8 difficult.

9
10 8. Counsel for the Wife also submitted that the Husband's present immigration
11 status in Cayman is very uncertain and that it is quite likely that, when his current
12 temporary work permit expires in a few weeks time, he will have to leave and
13 return to England. She argued that it would be inconvenient and impracticable for
14 the parties to have joint custody if the Husband was overseas since it would be
15 difficult or time-consuming for the Wife to have to contact him each time a
16 decision required to be made, possibly urgently, about the children. The Husband
17 disputed that it is probable that he will require to leave Cayman but stated that, if
18 he did, he would do all he could to be able to return to Cayman again in order to
19 be close to his children. Although it does seem to me on the evidence that there is
20 indeed a possibility that the Husband will need to leave Cayman in the near
21 future, I do not consider that to be a reason of itself not to award joint custody.

1 The mere fact that one parent is living out of the jurisdiction is not in my opinion
2 necessarily a reason not to award joint custody if it is otherwise in the best
3 interests of the children to do so. In this age of easy and quick communications
4 there is no reason why contact between the parties and decisions concerning their
5 children cannot be made within a reasonable time and promptly if necessary. If
6 the Husband wishes to have joint custody for the reasons which he says he does, it
7 would hardly be in his or his children's interests for him not to keep in regular
8 contact with his family and to make it as easy and simple as possible for the Wife
9 to contact him concerning the children and to be entirely co-operative and helpful
10 in making important decisions about their welfare. Any failure on his part to do
11 so would clearly be a basis for reconsidering whether joint custody was
12 appropriate.

13
14 9. Both parties are Roman Catholics. The husband confirmed that they have agreed
15 that the children should be brought up as Catholics and he stated on oath that he
16 has no intention of questioning that or suggesting otherwise in the future. He also
17 confirmed in evidence his agreement that the children should continue to be
18 educated at Cayman Prep and High School, where the Wife is a senior teacher, for
19 as long as they remain resident in Grand Cayman. Accordingly, there is no issue
20 between the parties concerning the religion in which the children are to continue
21 to be brought up or concerning their primary and secondary education. However,

1 there will no doubt be other significant decisions to be made relating to the
2 childrens' welfare from time to time in the future.

3
4 10. As I have said, I do have some concerns in light of the evidence about the way in
5 which the Husband has behaved or what he has said in the presence of the
6 children on occasion and his apparent lack of financial commitment with regard to
7 the children at times in the past. Nonetheless, on balance it does seem to me to be
8 in the best interests of the children, if it is right that they should have, and be
9 encouraged to have, a close relationship with the Husband, which the Wife clearly
10 accepts, that the Husband should not only be kept regularly informed about them,
11 and their activities but that he should be able to participate in important decisions
12 concerning their welfare. I therefore consider that it is in the children's overall
13 best interests that the parties should have joint custody of the children and I will
14 so order. Nonetheless, I reiterate and make it quite clear that I consider that the
15 Court is entitled to expect that the parties will genuinely co-operate in relation to
16 their children's welfare and will not in any way allow any personal attitudes or
17 issues of whatever nature between themselves to affect their consideration of what
18 is in their children's best interests and it is on this basis that the order for joint
19 custody is made. If there is any indication that either party is motivated by
20 hostility, acrimony or spite towards the other in anything said or done in the
21 presence of the children or is not co-operating in relation to any matter concerning

1 the children and their welfare, the order for joint custody will be open to re-
2 reconsideration and possible variation or discharge. The order for joint custody is
3 also conditional upon the Husband providing to the Wife's attorneys within 14
4 days of this Ruling a duly signed, notarized and effective written authorization to
5 enable her to take whatever action she may consider appropriate in her sole
6 discretion with regard to the children or either of them in case of a medical or
7 other emergency, provided that in the case of such emergency the Wife shall
8 notify the Husband as soon as reasonably practicable of the nature and
9 circumstances of such emergency and of the action she has taken in respect of the
10 children or the child concerned.

11
12 11. I shall also order that neither party may remove the children or either of them
13 from the Cayman Islands without the clear express consent of the other party or,
14 failing such consent, an order of this Court, save in the case of genuine medical or
15 other emergency. In such a case also the party having control of the children or
16 child concerned at the time shall notify the other party as soon as practicable of
17 the nature and the circumstances of such emergency removal from the Cayman
18 Islands and of the precise whereabouts of the children or the child concerned.

19
20 12. The other main dispute between the parties concerns maintenance of the children
21 by the Husband and the division of assets between the parties. Since these are

1 somewhat inter-related in this case I have found it easiest to deal with them
2 together.

3
4 13. The Wife is 39 years old and has been a school teacher all her working life. After
5 university she started teaching in 1995 at Benenden School in Kent, England. She
6 first met the Husband, who is also almost 39 years old, in December 1997 but,
7 according to her, their relationship did not become serious until 1999. Also in
8 1999, but entirely unrelated to her having met the Husband, the Wife after
9 discussion with her mother, Mrs. Collette Moran, decided to buy an apartment of
10 her own in West London (“the London Flat”). Mrs. Moran agreed to assist the
11 Wife with the purchase of the London Flat to the extent of GBP 35,000, the
12 balance of the purchase price being borrowed by the Wife from a bank and
13 secured by a mortgage. There is a dispute between the parties as to the nature of
14 Mrs. Moran’s contribution of GBP 35,000. The Wife contends that it was a loan
15 which is repayable by her to Mrs. Moran, whereas the Husband maintains that it
16 was a gift from Mrs. Moran to her daughter. I heard evidence from both parties
17 concerning this issue and also from Mrs. Moran, who is visiting Cayman. The
18 Wife and Mrs. Moran were both adamant that the GBP 35,000 was a loan from
19 Mrs. Moran to the Wife and is to be repaid. Mrs. Moran produced a handwritten
20 document dated 15th November 1999 signed by the Wife and countersigned by
21 herself on the face of which the Wife certified and accepted “the loan” of GBP

1 35,000 from her mother for the purpose of purchasing the London Flat and for the
2 purchase of “any subsequent Flat or house”, as long as this loan is reimbursed to
3 Collette Moran within fifteen years from today”. According to the document, the
4 loan is subject to interest of 6%. The document concludes by the Wife formally
5 promising to reimburse the loan of GBP 35,000 plus interest within fifteen years
6 to her mother, Collette Moran. Although the Husband said in evidence that he
7 had never seen this document before and maintained that he had never been told
8 that the GBP 35,000 was repayable, I accept the evidence of the Wife and Mrs.
9 Moran that the loan agreement is a genuine document and that the GBP 35,000
10 was indeed a loan and not a gift. Mrs. Moran went on, however, to say that she
11 needed to have the loan repaid now because of her financial needs, particularly
12 since the death of her husband 2 years ago. The Wife produced a letter dated 30th
13 January 2009 to her from Mrs. Moran complaining that she was finding life in
14 London very expensive and hard on her own and asking for repayment of the
15 whole loan right away or at least by instalments each month. Mrs. Moran is 79
16 years old and lives on her own in London. However, in cross-examination her
17 claim for urgent need of repayment of the loan became less convincing. It
18 became clear that she lives in a 4 bedroom terrace house with no mortgage in a
19 relatively expensive area of London. She has a pension of about GBP 600 per
20 month. She also owns another a flat in the same area of London which is rented
21 out for some GBP 900 per month, although there are management fees of GBP

1 4,000 per annum (i.e. GBP 333 per month approximately). Perhaps more
2 significantly she admitted that she has a sum of approximately GBP 300,000 in a
3 bank account. Of course need is relative but, although Mrs. Moran was not
4 willing to admit the suggestion put to her in cross-examination that she is now
5 only seeking immediate repayment of the GBP 35,000 loan as a matter of
6 principle, it did rather seem to me that she may be doing so to assist her daughter
7 in light of the parties' current financial disputes. Although it seemed to me that
8 Mrs. Moran is an independent minded and strong character and that she may well
9 insist on eventual repayment of the GBP 35,000, which she described as "my
10 money", I find it less likely that she would genuinely in fact insist on repayment
11 at this particular time when her daughter is clearly in financial difficulty and
12 under considerable stress with the consequent adverse effect on Mrs. Moran's
13 grandchildren. In any event, as I have already noted, the loan agreement itself
14 provides that the loan does require to be reimbursed within 15 years from 15th
15 November 1999, namely by 15th November 2014, in just over 5 years time. In the
16 circumstances therefore, I accept that the GBP 35,000 is a loan repayable by the
17 Wife to her mother but not strictly for approximately another 5 years. It was
18 submitted on behalf of the Husband that, even if the GBP 35,000 was a loan, it
19 was a "soft loan", since, it was argued, it was most unlikely that Mrs. Moran
20 would ever sue her daughter for repayment (Mrs. Moran did say in evidence that
21 she would not insist on payment of the interest), and that it should therefore

1 effectively be ignored for these purposes. However, having heard the witnesses, I
2 do not agree with that approach. There is no doubt in mind that the Wife will feel
3 morally obliged to repay this money to her mother and she had clearly
4 acknowledged the obligation to repay in the loan document dated 15th November
5 1999 on which her mother clearly relies. I do think it probable that Mrs. Moran
6 will put pressure on her daughter to repay the money and I do not think the Wife
7 will take the view that because it is a “soft loan” she will ignore her mother’s
8 insistence and disregard her obligation to re-pay the GBP 35,000.

9
10 14. In 2000 the Wife moved from Benenden School to work at another boarding
11 school in Winchester, England. She was employed there as a resident house
12 mistress. Several months after that, on 18th August 2000, the parties were married
13 and the Husband moved to live with Wife in the accommodation which the school
14 provided her. In January 2001 their eldest child, Max, was born. The Wife
15 subsequently successfully applied for a teaching job at the Cayman Prep and High
16 School, and in August 2002 she moved to Cayman and the Husband followed. In
17 about October 2002 the Husband obtained a job with local marketing company in
18 Cayman.

19
20 15. In about May 2004 the Wife became pregnant with the parties’ second child,
21 Coralie. In light of this, and because her father was seriously ill, the parties

1 returned to England in July 2004. After about 3 months, in October 2004, the
2 Husband obtained a job with a telecommunications company near London. The
3 parties lived with the Wife's mother, Mrs. Moran. They did not live and have
4 never lived together in the London Flat, the title to which was always in the
5 Wife's name and she remained solely responsible for paying the mortgage.

6
7 16. In January 2005 Coralie was born. According to the Husband the stress of living
8 with a new baby and the Wife's terminally ill father at Mrs. Moran's house
9 eventually became unbearable to him and in March 2005 he left the Wife and
10 children to reside elsewhere. In April 2005 the Wife returned to Cayman with the
11 children, to work again at Cayman Prep and High School, who had approached
12 her to return. In June 2005 the Wife entered into a pre-construction purchase
13 agreement for a 2 bedroom apartment at Stone Haven, George Town ("the
14 Cayman Apartment"). She had in the meantime sold the London Flat and she
15 used the sale proceeds in part to pay \$50,000 towards the purchase price of the
16 Cayman Apartment. The balance of the purchase price was secured by a loan of
17 \$140,000 from First Caribbean Bank. Both the title to the Cayman Apartment
18 and loan are and always have been in the Wife's sole name and she has always
19 considered the Cayman Apartment to be her own sole property just as the London
20 Flat was. In August 2005 the Husband left his employment in England and joined
21 the Wife in Cayman. Approximately 3 months later in December 2005 he

1 commenced work with the Cayman Islands Government as a manager of
2 corporate communications. At around the same time construction of the Cayman
3 Apartment was completed and the parties and the 2 children all moved to live
4 there.

5
6 17. About 16 months later, in April 2007 the husband left the Wife and children for
7 about 1½ months. At that time the Wife consulted a lawyer concerning her
8 position in light of the state of the marriage. However the Husband subsequently
9 returned to the Cayman Apartment and the parties resumed living together.

10
11 18. In about June 2008 the Husband resigned from his employment with the
12 Government in order to start a business of his own. There was conflicting
13 evidence about this but on balance I believe the Wife when she said she was
14 strongly opposed to the Husband giving up his secure income with the
15 Government. She refused to allow the Cayman Apartment to be used as security
16 for a loan to finance the Husband's proposed new business. The new business
17 was not successful and by late 2008 it had completely collapsed and the Husband
18 was not earning anything. The parties' relationship finally finished and the
19 Husband left the Cayman Apartment for good in February 2009. In late May
20 2009 the Husband commenced his current employment with another marketing
21 firm on a temporary work permit which expires in mid August. Although he said

1 in evidence that his employers have told him they wish to keep him on they
2 appear to have done nothing about a further work permit and accordingly his
3 immigration status thereafter is currently not at all clear.
4

5 19. The Wife's current earnings as a teacher are approximately CI\$4,500 per month.
6 While employed with the Government from December 2005 to about May or June
7 2008 the Husband's earnings increased but averaged approximately CI\$6,000 per
8 month. Since May 2009, in his current temporary employment his earnings have
9 been approximately CI\$4,000 per month. The parties' respective contributions to
10 the matrimonial "pool" are strongly disputed. The Wife's position is that not only
11 did she alone pay for the Cayman Apartment with the proceeds of sale of the
12 London Flat, she has always paid the mortgage on the Cayman Apartment herself
13 and continues to do so. She also said that she has paid the children's school fees
14 (she obtains a 50% discount on the fees at Cayman Prep & High School by virtue
15 of being employed there) and most of the household bills as well. She also paid a
16 \$5,000 down payment on the Ford Explorer car which she uses but which is
17 registered in the name of the Husband. She accepts that the Husband paid the
18 strata corporation fees in respect of the Cayman Apartment and the monthly loan
19 payments in respect of the Ford Explorer. She said that on average the Husband
20 paid her in addition about \$600 per month by way of contribution to the general
21 household expenses and she produced her bank statements to vouch that. The

1 Husband contended that he basically paid all of his earnings towards household
2 expenses. He accepted that the Wife paid for and pays the mortgage on the
3 Cayman Apartment but contended that he not only paid the strata fees but also
4 for holidays, meals out and other general domestic expenses, including from time
5 to time, groceries and utilities bills. He did accept that he paid significant sums
6 towards his credit card debt, although he contended that this had been incurred in
7 respect of household and general family expenses. No credit card statements or
8 other evidence to substantiate that was produced.

9
10 20. The Wife emphasized that in the 9 or 10 months from March to December 2005
11 after the Husband left her and the children while they were living in England and
12 until he obtained employment with the Government in Cayman he provided her
13 with no financial assistance whatsoever. She also stated that in the brief period of
14 separation in April/May 2007 the Husband also provided her with no financial
15 support. Consequently during those periods totally almost a year she had to meet
16 all expenses in relation to the children and the household herself. She also argued
17 that the Husband had acted in a financially irresponsible way and taken
18 unnecessary risk with the family finances in leaving his well paid job with the
19 Government in June 2008 to set up a speculative business of his own, contrary to
20 her wishes.

21

1 21. The Husband argued that when he left his employment with the Government he
2 had good reason to anticipate that his new business venture would be successful.
3 On leaving the Government he received a capital payment of approximately
4 \$17,000, out of which he invested \$12,500 in the new business venture. He also
5 took out a personal loan with HSBC in England for GBP 11,500 which, together
6 with related interest and credit charges, required him to pay the sum of GBP
7 269.75 monthly for almost 5 years to a total cost of GBP 16,185. He contended
8 that he had taken out this loan to cover the anticipated deficit in total household
9 income as a result of his leaving his employment with the Government until the
10 new business got going. The Husband appears to have received little financial
11 benefit from his abortive business, having apparently taken a salary of \$4,000 per
12 month for only a month or two before the business got into financial difficulty and
13 eventually collapsed. In effect, for slightly less than a further year from July 2008
14 until commencing his present employment in late May 2009 the Husband made
15 very limited contribution to general household expenditure. Since he commenced
16 his present temporary employment in late May 2009 he has made 2 payments of
17 \$800 each to the Wife. He acknowledged that he should now make another such
18 payment if he is to pay her \$800 per month, as he proposes. Although in her
19 affidavit the Wife also suggest \$800 per month, in her evidence she said she felt
20 the Husband could and should contribute a bit more than that to the maintenance
21 of his children and could afford to do so.

1 22. After late 2008 as a result of the lack of financial contribution by the Husband the
2 Wife was experiencing increasing difficulty in meeting the domestic financial
3 obligations and in February 2009 she had to borrow \$600 from a friend in order to
4 buy food, pay for petrol and the telephone bill. Eventually, in about June 2009,
5 approximately 4 months after the Husband had left, she took out a further loan
6 from First Caribbean Bank of CI\$23,000 secured over the Cayman Apartment, in
7 order to be able to pay for school fees, the children's extra curricula activities and
8 utility bills and food. Some \$7,205 of the burrowing was also used to pay her
9 outstanding legal fees in respect of these proceedings and CI\$2,000 was used in
10 respect of her personal Abbey National account in the U.K. which had apparently
11 become overdrawn. The effect of the \$23,000 loan was to increase the monthly
12 mortgage instalments paid by the Wife to the bank to a total of \$1,591.91.
13 Counsel for the Husband was critical of the fact that the Wife had secured this
14 further burrowing over the Cayman Apartment knowing, as it was contended she
15 should not have done, that the Cayman Apartment was the subject of dispute in
16 these proceedings. In my view that was an unfair and unreasonable criticism and
17 I do not accept it. The Wife was left with no option but to borrow money as a
18 result of the Husband's failure to provide financial support and she had no
19 security available to her to provide to the bank other than the Cayman Apartment.
20 Apart from the element consisting of the Wife's legal fees, the Husband himself
21 accepted in evidence that this borrowing was a necessary matrimonial expense

1 and liability. He made no suggestion as to how such funding could have been
2 raised by the Wife other than by using the Cayman Apartment as security.

3
4 23. The parties also own 2 vehicles, the Ford Explorer to which I have already
5 referred, in respect of which the wife paid a \$5,000 down payment, the balance of
6 the price being funded by way of a loan from CNB. The loan instalments paid by
7 the Husband were \$516 per month over 2 years. The value of that vehicle is now
8 estimated at approximately \$5,000. It is registered in the name of the Husband,
9 although it is used by the Wife, being a more appropriate vehicle for transporting
10 the children. The second vehicle is a Honda Orthea which was purchased by the
11 wife herself in 2005 from the proceeds of sale of the London Flat. The vehicle is
12 registered in the name of the Wife but is currently being used by the Husband.
13 The Husband also owes some shares in the UK with a present value of
14 approximately \$1,200. He is currently repaying GBP 269.75 per month in respect
15 of HSBC loan. The re-payments have some 3 years and 9 months to run.

16
17 24. As I have said, I heard extensive evidence from both parties, who have both
18 sworn substantial affidavits with exhibits attached, all of which I have reviewed.
19 The principal asset in dispute is the Cayman Apartment. This was purchased by
20 the Wife in June 2005 for CI\$193,000 and has always been in her sole name. The
21 property was valued in March 2009 for CI\$253,000 on an open market basis and

1 CI\$215,000 on a “estimated restricted realization price” basis. The Wife gave
2 evidence of and produced some documentation concerning sewage related
3 problems at Stone Haven where the Cayman Apartment is located and she
4 mentioned sewage problems in the Cayman Apartment itself. This has not been
5 referred to or apparently taken into account in the valuation. The Wife also
6 referred to difficulties which other owners at Stone Haven are experiencing in
7 selling their apartments in the current market. Although that evidence was not
8 spoken to I consider that I can properly take judicial knowledge of the notoriously
9 poor state of the real estate market and the general reduction in sale prices
10 obtained when sales can be achieved. In light of all of this I consider that a fair
11 and reasonable value of the Cayman Apartment for these purposes is CI\$200,000
12 and I propose to proceed on that assessment. The outstanding balance of the
13 original mortgage as at 7th July 2009 was CI\$127,516.52. As far as the further
14 secured borrowing of CI\$23,000 is concerned, I shall, for this purpose discount
15 this loan by \$7,205 in respect of the amount used towards the Wife’s own legal
16 costs. Accordingly I consider that the equity in the Cayman Apartment should be
17 reduced by a further CI\$15,795 in respect of this borrowing for this purpose
18 leaving a balance of equity of CI\$56,688.48.

19
20 25. This leaves the question of the GBP 35,000 (approximately CI\$46,610) loan to
21 the Wife from her mother, Mrs. Moran and the HSBC loan, the balance of which

1 as at 2nd July was GBP 13,487.50 (approximately CI\$18,343) I have already
2 expressed my views in relation to the loan from Mrs. Moran which in fairness I
3 consider should be taken as a matrimonial liability for these purposes. It was a
4 liability the Wife incurred in respect of her original purchase of the London Flat,
5 the sale proceeds of which she used for her subsequent purchase of the Cayman
6 Apartment in which she and the Husband, together with the 2 children, were
7 accommodated, with a short break in 2007, for approximately 3 years and where
8 she and the children continue to live. I therefore consider that if the Cayman
9 Apartment is to be treated as matrimonial property, as the Husband contends, it is
10 appropriate to treat the loan as a matrimonial debt, which for these purposes I
11 shall deduct from the equity in the Cayman Apartment. As far as the HSBC loan
12 is concerned, the Husband's evidence was that he had arranged that loan with the
13 Wife's consent (and she is signatory on the loan documentation) to meet the
14 anticipated deficit in the family income at the result of his leaving his
15 employment with the Government in order to start up his proposed new business.
16 The Husband was strongly criticized by counsel for the Wife for having left his
17 secure employment and good salary with the Government, contrary to the wishes
18 of the Wife and it was argued that if he had not done so insisted on doing so it
19 would not have been necessary to take out the HSBC loan. In the absence of
20 detailed evidence and analysis it is difficult to determine whether or not the
21 Husband's decision to establish the new business was obviously financially

1 irresponsible or not. The Husband attributed the failure of the business to the
2 unexpected departure of his Caymanian partner and argued that, but for that, the
3 business would have been successful and would have ultimately increased the
4 overall family income, although it seems to me questionable whether it would
5 have produced an income to him equal to the \$6,000 per month he earned before
6 in the foreseeable future. As I have said, I accept the Wife's evidence that she
7 was very unhappy about and opposed to the Husband's decision to leave his
8 employment with the Government and it seems reasonable to infer that she only
9 joined the Husband as a party to the HSBC loan because she recognized that there
10 would be a significant decrease in the family income as a result of the Husband's
11 actions and that such a loan was necessary. On balance I consider it appropriate
12 to treat the HSBC loan as a matrimonial liability but I also consider that in all the
13 circumstances the Wife should only be required to contribute to 1/3 of the current
14 outstanding amount, which I shall round to CI\$6,000.

15
16 26. The Wife argued that the Husband should have no interest in the Cayman
17 Apartment. She pointed out that she had paid for the property herself partly out of
18 the proceeds of sale of the London Flat, which was her sole property acquired by
19 her prior to the marriage and never a matrimonial home, and partly by the bank
20 loan which she has always paid herself. She emphasized that the Husband
21 contributed nothing to the cost of the Cayman Apartment which was solely her

1 property and that he should therefore not be allowed any interest in it on divorce.
2 It was also argued for the Wife that the Husband had failed to provide any
3 financial assistance at all in the period from March to December 2005 and again
4 for the period of separation in 2007 and again from mid 2008 to May 2009 and
5 that he had shown an irresponsible disregard for his family's financial position in
6 leaving his employment with the Government in 2008. It was proposed that, in
7 light of the doubt about the Husband's continued current employment after mid
8 August this year, and the uncertainty of his position thereafter, the fairest solution
9 would be to compensate the Wife for his previous failures to pay maintenance and
10 the likelihood of his future failure to pay maintenance by awarding all of the
11 equity in the Cayman Apartment to her.

12
13 27. The Husband argued that although he did not contribute directly to the cost of
14 purchase of the Cayman Apartment he did pay the monthly strata fees and
15 contributed financially in other ways to the overall family costs and that it was the
16 matrimonial home and a matrimonial asset. It was submitted on his behalf that if
17 the circumstances had been the other way around and the Husband had been the
18 sole owner of the former matrimonial home and had paid the mortgage himself,
19 even if the wife had not contributed anything financially but had devoted her time
20 to looking after the children, she would almost certainly have been found entitled
21 to share in the equity of the former matrimonial home. It was also contended on

1 behalf of the Husband that it would be clearly unfair in the circumstances for the
2 Husband to “walk away” from a marriage of approximately 9 years with nothing.
3 It was submitted that in accordance with the general approach established by the
4 Court of Appeal in Wight v Wight (Court of Appeal 30th November 2007) the
5 assets of the marriage, and principally the Cayman Apartment, should be divided
6 equally between the parties. It was suggested that there was no good reason for
7 departing from equality in this case as, although the Wife had provided the
8 matrimonial home, the Husband had contributed financially, effectively all of his
9 earnings in other ways and it would be inconsistent and not in accordance with
10 principle to award him less than 50% of the assets.

11
12 28. I have not found it easy to reach a concluded view on the fairest approach in this
13 case. In light of the evidence, both documentary and oral, I am satisfied that it is
14 the Wife who has always been principally responsible for the welfare of the
15 children including maintaining the financial stability of the family as far as she
16 could, quite apart from the fact it was her who provided the Cayman Apartment
17 with her own personal resources. Insofar as there was a conflict in the parties’
18 evidence, I generally preferred the evidence of the Wife. I found her to be frank
19 and open and generally convincing and clearly with the interest of her 2 children
20 foremost in her mind. She is clearly struggling to make ends meet. Although, in
21 fairness, the Husband did himself frankly acknowledge many of the complaints

1 about his conduct pleaded in the petition, I was less convinced about his genuine
2 commitment to the family finances. I was not wholly persuaded that all of his
3 earnings had been spent entirely on family and domestic expenses as he
4 contended, and of course there were periods when he either had no earnings or
5 was not in fact contributing the earnings which he had. I was also troubled by the
6 substantial credit card debt which he claimed to be paying off and by his rather
7 broad assertions that he had spent all his earnings on the family, given that his
8 earnings while employed by the Government were approximately \$6,000 per
9 month which would have made the total family income about \$10,500 per month,
10 which does not seem to me to accord with the probability of the situation. There
11 is no doubt that he left the Wife and children in serious financial difficulty on
12 several occasions and that, but for the determination of the Wife, such difficulties
13 could have been considerably greater, to the obvious detriment of the welfare of
14 the children in particular.

15
16 29. As I said at the beginning of this Ruling I must have regard first of all to the best
17 interests of the children and thereafter to the “responsibilities, needs, financial and
18 other resources, actual and potential earning power and the deserts of the parties”
19 (Section 19 of the Law). The Husband himself unreservedly agreed that it would
20 not be in the best interests of the children for the Cayman Apartment, which has
21 been their home for some 3½ years, to be sold, and I agree. He and his counsel

1 were, however, unable to propose any other practical way in which the Wife
2 could afford or would be able to pay any significant sum to the Husband even it
3 were to be awarded. They suggested that she could borrow further to enable her
4 to do so but in my opinion that is a wholly unrealistic and impractical suggestion.
5 It is also inappropriate. I do not consider that it would be in the best interests of
6 the children for their mother, the Wife, to incur any significant further debt than
7 she already has. There would be no option but to try to secure any further
8 borrowing over the Cayman Apartment if the bank would agree and that would, of
9 course further increase the monthly payments which she requires to make to the
10 bank, which already total CI\$1,591.91, and reduce further the very limited equity
11 in the property available to her. Her prospects of being able to finance the
12 purchase of larger accommodation for the children, who really now require
13 separate bedrooms (the Cayman Apartment has only 2 bedrooms) in the near
14 future, which in my opinion are already slim, would be virtually non-existent. It
15 was also submitted that the Wife could rely on financial assistance from her
16 mother, Mrs. Moran to enable her to pay a capital sum to the Husband. I was
17 referred in this regard to F(JL) v F(RD) 1994-95 CILR Notes 16. In that case the
18 judge (Schofield J.) expressed the view that where an impecunious husband was
19 “likely” to obtain financial support from his father the court was entitled to bear in
20 mind the father’s “probable” support of his son in determining an appropriate
21 final ancillary order. However, the judge also made it clear that the court could

1 not make an order which forced the father in that case to support his son. In the
2 present case I am by no means convinced that the Wife is likely to obtain further
3 financial support from her mother or that such support is probable. I have already
4 expressed my views on Mrs. Moran's attitude in relation to the loan of GBP
5 35,000 made to her daughter in 1999. It does not seem to me that this is a case in
6 which I would be entitled to assume likely or probable further financial support of
7 the Wife from her mother and I do not accept the argument that I should.

8
9 30. In my opinion it is clear from the comments of the Court of Appeal in Wight v
10 Wight (ibid) that while equality in the division of assets on divorce is a general
11 guide, there is no presumption of equality (see Zacca P. at page 7) and that
12 equality may be departed from if there is a good reason for doing so. One of the
13 reasons for doing so may be if one party is considered to have made a special
14 contribution to the welfare of the family but I do not understand that to be the
15 only good reason for departing from the general approach. It is also my
16 understanding that the equal division approach is more appropriate in cases where
17 there has been a long marriage. I do not consider that the present marriage of
18 some 8½ years (during which the parties were separated for at least 6 months)
19 constitutes a long marriage in that sense. However, ultimately this Court clearly
20 has a very broad discretion to be exercised in light of the factors set out in Section
21 19 of the Law, having regard, pursuant to that Section, first of all to the best

1 interests of the children of the marriage. In my judgment, in the present case, it is
2 particularly important for the welfare of the children that the Mother should be
3 left, not only with the Cayman Apartment itself but such limited equity as there
4 may be therein to enable her to properly accommodate the children, who are most
5 likely to remain under her care and control and ultimately her responsibility for
6 many years to come. It is probable that they will always ultimately depend upon
7 the Wife as their mother for their care and support including their accommodation
8 and she will bear by far the greater burden in respect of them. The Husband is a
9 relatively young and, now, single man without the restrictions and limitations
10 which the Wife has and will continue to have at least until the children are adults
11 and have completed any tertiary education. Although the Husband's current
12 earnings in his temporary employment are slightly less than the Wife's it is, in my
13 view, reasonable to assume that the Husband's potential earning power is
14 probably significantly greater than the Wife's and his own financial needs are
15 clearly less. His earnings when employed by the Government averaged
16 approximately \$6,000 per month as against the Wife's then earnings of
17 approximately \$4,300 per month. Of course, I accept that the Husband has and
18 will have financial needs of his own but nonetheless I do consider the Wife's
19 needs and responsibilities as carer of the children, are, not only directly but
20 indirectly, and will remain significantly greater than his, notwithstanding any
21 maintenance which he may pay in respect of the children.

1 31. However, the reality in this case is that, even if any award to the Husband was
2 appropriate, there is in fact very little, if anything, to divide between the parties as
3 far as the Cayman Apartment is concerned. I have explained above why I
4 consider it fair and appropriate to deduct the amount of the loan by the Wife's
5 mother, Mrs. Moran of approximately CI\$47,610 from the equity in the Cayman
6 Apartment, which leaves a balance of some CI\$9,078. That is, of course, based
7 upon the current value which I have ascribed to the property, which may or may
8 not turn out to be achievable on a sale, so, it seems to me, that the situation is
9 actually verging on one of no or even possibly negative equity. Taking into
10 account all the circumstances which I have mentioned, including the fact that the
11 parties only lived together in the Cayman Apartment for just over 3 years, and
12 having regard to the factors set out in Section 19 of the Law, in my judgment it
13 would indeed be appropriate and clearly in the best interests of the children for the
14 Wife to retain her whole interest, both legal and beneficial, in the Cayman
15 Apartment. I do not accept that it is appropriate in this particular case that the
16 Husband should be entitled to any share of such limited equity as there is in the
17 property. With regard to the other issues, I direct that the Husband shall keep the
18 shares which he already owns, the Wife shall keep the Ford Explorer car, the title
19 of which shall be transferred to her, and the Husband shall keep the Honda, the
20 title to which shall be transferred to him. Each party shall retain their own
21 pension plan. The Wife shall pay the sum of \$6,000 to the Husband in respect of

1 her contribution to the current balance of the HSBC loan as mentioned above but
2 subject to my directions mentioned below in that respect.

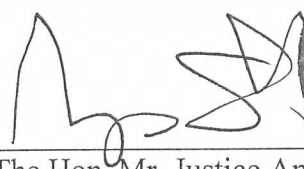

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4 32. As far as maintenance of the children is concerned, I consider it fair and
5 appropriate that the Husband and the Wife should share equally in payment of
6 education fees and costs and medical, dental and optical costs in respect of the
7 two children, including the costs of any health insurance. The Husband shall
8 contribute to the other day-to-day costs of accommodation, feeding, clothing and
9 general costs of maintaining the children by payment of maintenance of \$500 per
10 month in respect of each child (being a total of CI\$1,000 per month). Such
11 monthly payments shall be backdated to 1st August 2009 (less any payment
12 already made in respect of August) and thereafter shall be payable in full on the
13 first day of each month. While the children remain in full time education such
14 maintenance shall be payable in respect of each child until that child reaches the
15 age of 21 or ceases full time education, whichever occurs sooner. The lump sum
16 of CI\$6,000 payable by the Wife to the Husband in respect of the HSBC loan, to
17 which I have referred, shall be paid on 15th February 2010 but the amount payable
18 shall be reduced by the amount of any sum payable by the Husband in respect of
19 maintenance, education and health related costs in respect of the children which
20 has not been paid and which remains outstanding as at 1st February 2010. So that
21 any such sum outstanding shall be set off against the sum of CI\$6,000. The sum

1 payable by the Wife may as a result be reduced to zero if the arrears of such
2 payments due by the Husband exceed CI\$6,000. The Husband shall continue to
3 be responsible for the monthly payments in respect of the HSBC loan and the
4 Wife shall have no further liability in respect thereof save as above.

5
6 33. Lastly, I should deal with costs. At the time of the Wife's further borrowing of
7 CI\$23,000, mentioned above, she had already incurred legal costs totaling \$7,205
8 which she paid off with the proceeds of the loan. I have not taken such costs into
9 account in estimating the equity in the Cayman Apartment for these purposes. It
10 was argued on behalf of the Husband that I should not do so since, it was
11 contended, there is no reason why the Husband should pay or contribute to those
12 costs. Clearly both parties will incur legal costs in connection with this matter
13 and on balance in my opinion it would be fairest for each party to bear their own
14 legal costs. I will therefore make no order as to costs.

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Dated 10th August 2009



The Hon. Mr. Justice Angus Foster
Judge of the Grand Court (Acting)