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IN CHAMBERS  
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: D65/2006

BETWEEN:

LISA CATHERINE O'KEEFFE

Petitioner

AND:

MARK O'KEEFFE

Respondent

AND:

SARAH HARVEY

Co-Respondent

BEFORE: The Honorable Madam Justice Levers

APPEARANCE:

Mr. Ben Tonner of Samson & McGrath for the petitioner

Mr. O'Keeffe in person

HEARD: 7<sup>th</sup> & 8<sup>th</sup> June 2007

JUDGMENT



Levers, J.

This is an application by the Petitioner for the final determination of all ancillary matters; custody, care and control of the two children of the marriage; the settlement and determination of the interests in the matrimonial home; a timeshare in Florida; and finally the determination of the interests in the two vehicles owned by the family.

1 Background

2

3 The parties Lisa Catherine O’Keeffe and Mark Patrick O’Keeffe were  
4 married on the 21<sup>st</sup> day of February 1997 in Boggy Sands, Grand  
5 Cayman. There are two children of the marriage and they have been  
6 ordinarily residents for the past 14 years in the Cayman Islands. It is  
7 alleged that that the marriage broke down because of the adultery of  
8 the Respondent. The children of the marriage are Alex O’Keeffe and  
9 Amber O’Keeffe born on the 25<sup>th</sup> January 1996 and the 9<sup>th</sup> October  
10 2001 respectively.

11

12 As of the 7<sup>th</sup> and 8<sup>th</sup> June 2007, the parties had lived separate and  
13 apart from 7<sup>th</sup> January 2006. Mr. O’Keeffe, the Respondent,  
14 continued paying the mortgage and the strata for the matrimonial  
15 home and one of the school fees in accordance with an interim order  
16 made by this Honourable Court.

17

18 This is the final hearing. The question of custody, care and control  
19 has happily been agreed by the parties. The parties wish for joint  
20 custody with care and control to the Petitioner/mother. The question

1 of the vehicles owned by the family has also been settled. The Court  
2 is therefore left with the question of the matrimonial home, the  
3 timeshare, and the quantum of maintenance payable for the children.  
4 In order to determine this, the parties have given evidence on oath,  
5 been cross examined, and filed affidavit evidence from their  
6 respective partners. I have before me a Social Enquiry Report dated  
7 22<sup>nd</sup> May 2007 which was ordered by the Court.

8

9 Before I go into the matter in detail I should mention that Mr. O'Keeffe  
10 on Thursday, 7<sup>th</sup> June 2007 asked for an adjournment on the basis  
11 that the social enquiry report was prejudicial and that as a result, he  
12 wished to be represented by a lawyer. This matter had come before  
13 me on several occasions previously when it had to be adjourned for  
14 one reason or another and on most of those occasions I had invited  
15 Mr. O'Keeffe to hire a lawyer if he felt he could not cope with it. He  
16 assured me that he could cope with it and that he would be filing  
17 evidence himself. Mr. O'Keeffe had in fact applied for legal aid and it  
18 was refused at the inception of this matter. His circumstances have  
19 not changed and the Court held that it was too late for him to now ask  
20 for an attorney having represented himself very adequately in the

1 past. He apparently wished to have a lawyer simply to highlight what  
2 he called the prejudicial matters in the Social Enquiry Report and that  
3 was not a sufficient reason for overturning the refusal of legal aid.  
4 The matter therefore proceeded with Mr. O'Keeffe representing  
5 himself and Mr. Tonner representing Mrs. O'Keeffe.

6

7 Both parties seek a final resolution in this matter. Initially, the  
8 Petitioner wished for the equal division of the net proceeds of sale  
9 after the sale of the matrimonial property and the timeshare in  
10 Florida. However, it is now Mr. Tonner's submission that the  
11 Petitioner does not wish to sell the matrimonial home. She has got  
12 permanent residence and the conditions attached to that residency  
13 are that she works in the food and beverage industry and owns a  
14 home equivalent in value to that which she owns now. She therefore  
15 does not wish for the matrimonial home to be sold until the children  
16 reach the age of sixteen and asks for maintenance for the children in  
17 a sum to be determined by the Court.

18

19 This is indeed a sad case. It is no secret that upon the breakdown of  
20 family relationships arrangements regarding the maintenance of

1 children among other things are often causes for grave hostility and  
2 resentment among the parties involved. There is no better example  
3 of this resentment and hostility than this case at hand. The  
4 Respondent Mr. O'Keeffe wishes a no communication order to be  
5 made by this Court and it is apparent that the parties are extremely  
6 bitter and hostile to each other. As the Court reminded both parties  
7 on several occasions, it is imperative that this hostility ceases for the  
8 benefit of the children. The evidence pertaining to the children as  
9 highlighted by the social enquiry report is that one child in particular is  
10 extremely vulnerable and has been emotionally disturbed by the  
11 breakup of the marriage and the present disharmony in the family.  
12 This Court however can only express an opinion as to the desirability  
13 of harmony and communication. Any order it makes must be guided  
14 by the well known principle that the welfare of the children are of  
15 paramount importance in dealing with all areas pertaining to children  
16 (i.e. custody, care and control and making financial provisions for  
17 their needs).

18

19

20

1 The Law

2  
3 The law pertaining to the division of the matrimonial assets is  
4 governed by Section 19 of the Matrimonial Causes Law of the  
5 Cayman Islands which reads as follows:

6 "In dealing with all ancillary matters arising  
7 under this Law, the Court shall have regard  
8 first of all to the best interests of any children  
9 of a marriage and thereafter to the  
10 responsibilities, needs, financial and other  
11 resources, actual and potential earning power  
12 and the deserts of the parties."  
13

14 It must be read in conjunction with Section 22 of the Law, which  
15 provides as follows:

16  
17 At the time of pronouncing a decree under this Law, the  
18 Court shall, as appropriate, make orders for-

- 19
- 20 (a) the custody, care and control of the children of  
21 the marriage;
  - 22 (b) the disposition of matrimonial property,  
23 including the matrimonial home;
  - 24 (c) varying any settlement of the property of the  
25 spouses made in consideration of the marriage,  
26 whether such settlement was made before or  
27 upon the treaty of the said marriage;
  - 28 (d) varying any other settlement of matrimonial  
29 property;
  - 30 (e) making financial provision from the property of  
31 either spouse for the children of the marriage  
32 and for the other spouse;

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

4 (g) (e) costs.  
5

6 The law in the Cayman Islands is remarkable not only for the extent  
7 of the powers which it gives to the Court over the income and assets  
8 of divorcing spouses, and also for the fact that the discretion is  
9 “almost unfettered”. The law emphasizes certain matters - the  
10 welfare of children, the desirability of self sufficiency and a “clean  
11 break” in appropriate cases. It has been said that the judicial  
12 objective is now, “to do that which is fair, just and reasonable  
13 between the parties” (White v White [1998] 2 F.L.R. 310 at 317, per  
14 Thorpe L.J., CA.)

15

16 The question therefore is what is fair? It is my view that in exercising  
17 my financial powers to make an order I must have regard to all the  
18 circumstances of the case. First consideration being given to the  
19 minor child of the family who have not attained the age of 18. Self  
20 evidently this means there is a need to attached greater weight to the  
21 welfare of the children and orders for trifling amounts for child support  
22 can no longer be justified. The practical and major consideration in

1 this case is for the court to stretch what is available to cover the  
2 family's changing needs for housing, education and recreation for the  
3 children of this family. As stated previously the court regards the  
4 welfare of the children of paramount consideration even if it means  
5 that the just claims of the child's parents or others affected have to be  
6 overridden. However, whilst the welfare of the children must be the  
7 first consideration, it is incumbent for the Court to try to make a  
8 financial settlement which is just as between husband and wife.

9

10 What is fair in all the circumstances? There are several matters that  
11 must be considered in order for the court to take all circumstances  
12 into account and make a fair order:

13

14 (1) The income earning capacity and other financial  
15 resources which each of the parties to the marriage has  
16 or is likely to have in the foreseeable future;

17 (2) The financial needs, obligations and responsibilities  
18 which each of the parties to the marriage has or is likely  
19 to have in the foreseeable future;

1 (3) The age of the parties, the duration of the marriage and  
2 any physical or mental disability of either of the parties  
3 to the marriage; and

4 (4) The deserts of the parties meaning the conduct of the  
5 parties if that conduct is such that it would in the opinion  
6 of the court be inequitable to disregard it.

7

8 The evidence before this court is that the father of the marriage in  
9 giving evidence stated that he may go away to Canada if this court  
10 makes an order that he cannot live with. Unfortunately there is no  
11 secured periodical payment order that this Court can consider and  
12 effectively enforce if the father leaves the island and does not  
13 maintain the children. I will therefore have to make a fair order as to  
14 financial provisions for the children and a property adjustment order.  
15 The former being primarily concerned with income and the latter with  
16 capital.

17

18 Parents whether married or unmarried have duties and obligations in  
19 respect of the maintenance of their children. It is the duty of a parent,

1 guardian, or any person with custody of a child to maintain the child.

2 In particular, that duty gives a child the right to:

3

4 (a) education and counseling

5 (b) immunization

6 (c) balanced diet

7 (d) clothing

8 (e) shelter

9 (f) medical attention

10

11 In this case the children at present have no coverage for medical

12 attention and the question of shelter and housing is in issue. In

13 making a maintenance order or varying or revoking an order, the

14 court must exercise caution in its attempt to do justice between the

15 parties.

16

17 Maintenance Order

18

19 The maintenance orders are basically to do with the children's needs

20 and the income of the parties. The father is a manager at a bar

21 earning some \$4355.16 per month. He has been working at this bar

1 for some time and is covered by health insurance in his work.  
2 Recently he had surgery but he has returned to work. At present he  
3 pays the mortgage for the matrimonial home of \$1385 and the strata  
4 fee of \$375 making a total of \$1760. In addition, he pays one of the  
5 children's school fees. He has a partner whom he says he wishes to  
6 be with for the rest of his life. He was living with his partner but no  
7 longer does so. His monthly expenses as outlined are \$4779.80  
8 leaving a deficit of \$424.64. The question for the Court is does the  
9 Court accept the estimation of the income earned and the living  
10 expenses? I bear in mind when considering these matters, evidence  
11 of Mr. O'Keeffe's spending, his lifestyle and the fact that his income is  
12 based mainly on gratuities. Mr. Tonner submits that:

13

- 14 (1) The estimate of his utilities are over estimated;
- 15 (2) Mr. O'Keeffe is able to eat complementary meals at his  
16 place of residence. Therefore the \$200 claimed for  
17 groceries may be too high;
- 18 (3) He spends every night with Ms. Sarah Harvey;

- 1 (4) When he told the Court that he needed the maintenance  
2 suspended as he was having surgery and would be  
3 unable to go to work, he made a miraculous recovery and  
4 was not, in fact, unable to work for as long as he  
5 predicted; (That this goes to his credibility)
- 6 (5) He has made no efforts to get medical coverage for the  
7 children, but that he himself is medically covered;
- 8 (6) The Court gave him information which would enable him  
9 to get cheap coverage through the government insurance  
10 which he has not even bothered to enquire into;
- 11 (7) He has taken several trips abroad since the breakup of  
12 the marriage;
- 13 (8) During the marriage when Mrs. O'Keeffe was not working,  
14 Mr. O'Keeffe paid all the bills and still was able to buy a  
15 timeshare in Orlando for the sum of C1\$21600. That he  
16 paid a deposit of \$8000 from his savings in 2005 and then  
17 paid installments to complete the payments for the  
18 purchase of the condo. That he took the whole family on

1 holiday at the time when he went to purchase the  
2 timeshare;

3 (9) This Thursday, 14<sup>th</sup> June, he leaves for Las Vegas on  
4 vacation and is utilizing his one week's salary in order to  
5 do so with Sarah Harvey, Sue Stevens, and Dave Green.

6 The children of the family last went on vacation in 2005;

7 (10) He purchased a car for \$9000 cash and also purchased a  
8 car for \$5000 in 2004 from his savings. \$2000 of which  
9 came from savings and the balance from a loan. One of  
10 the cars was purchased in the same year as the  
11 timeshare.

12  
13 Mr. Tonner submits that for these reasons Mr. O'Keeffe is not to  
14 be believed when he says that his income is only \$4000 odd  
15 dollars and that he has exaggerated his outgoings. In other words  
16 Mr. Tonner submits that his life style is not that of a man who lives  
17 on an overdraft. Mr. O'Keeffe has not shown this Court an  
18 overdraft facility by which he lives. Nor does he explain how he

1 pays \$650 US per annum for a timeshare, an added expenses, or  
2 how he pays the expenses for which he apparently has no income.

3  
4 Mr. Tonner submits that the amount required for the children to be  
5 adequately maintained is \$2400. He submits that the court must  
6 place reliance on the social enquiry report which leaves no doubt  
7 that the children are suffering emotionally and financially as a  
8 result of this breakup. He refers me to the following paragraphs:

9  
10 (a) "Alex is very concerned with his living  
11 arrangements and stated that he does not  
12 want to leave his house and the  
13 environment in which he lives. He has  
14 stated that he has a lot of friends in the  
15 area and if he has to move, he will no  
16 longer see them because some of them  
17 do not attend the same school".

18  
19 (b) "Alex also shares that he attended  
20 counseling but has stopped because his  
21 father would not help pay for it and his  
22 mother could not continue paying."

23  
24 (c) "Alex shares that he can speak to his  
25 teacher, Mrs. Kennedy and has done so  
26 as she is able to keep things private."  
27

1 (d) "It should also be made aware that it  
2 would be very difficult for Mrs. O'Keeffe to  
3 manage financially on her salary of \$1300  
4 per month with having to provide food and  
5 shelter and educational fees without  
6 some substantial form of maintenance  
7 from Mr. O'Keeffe."  
8

9 The report read as a whole, Mr. Tonner submits, makes it clear  
10 that the children are suffering emotionally and are suffering  
11 because of the uncertainty of the future. They are also burdened  
12 as a result of the mother's financial inability to give them a lifestyle  
13 to which they were accustomed when they were with their father.  
14 This, of course may not be a possibility as is often the case in  
15 divorce matters. Mr. Tonner submits that on an overview of the  
16 entire evidence it is clear that the children should be permitted to  
17 live in the matrimonial home until at least the age of sixteen and  
18 that they should remain in the same school at least for another  
19 year or two. That Mrs. O'Keeffe simply cannot manage on her  
20 meager income.  
21

22 The evidence from Mrs. O'Keeffe is that she has now finally got  
23 permanent residence. However, the restrictions on that residence

1 is that she must own a house that is equivalent to the one that she  
2 is residing in at present if this residence is to continue and that she  
3 can only work in the food and beverage industry. Mr. O'Keeffe's  
4 position is that whilst that may be the case, Mrs. O'Keeffe will  
5 simply have to go back to Ireland if she cannot find a house as a  
6 result of the matrimonial home being sold. As far as the low  
7 income job that she apparently maintains, Mr. O'Keeffe's position is  
8 that she does not have to work at this present job but that she can  
9 get a higher income somewhere else still in the food and beverage  
10 industry. Mrs. O'Keeffe's response to that is that her employer is  
11 exceptionally kind to her when it comes to going for the children in  
12 an emergency or having the children at her employment for a short  
13 period of time and therefore the flexibility that he gives her is  
14 essential for her to look after the children. The uncontradicted  
15 evidence is that Mrs. O'Keeffe is primarily responsible for the  
16 welfare of the children. Mr. O'keeffe is apparently unable to have  
17 the children overnight but does have the children for four days a  
18 week for a few hours after school. Initially he was unsure whether  
19 he could even have them for half of the summer holidays.

1 Certainly, he refuses to have them on a Saturday because he says  
2 that is the only day that he has with his partner, Ms. Harvey.

3

4 Mrs. O'Keeffe however has no problem with having the children  
5 and has on one day a week to pay for child care as there is  
6 nobody else who can look after the children for her on a Friday.  
7 She pays \$200. Her partner, Mr. Wayne Sives is exceptionally  
8 supportive and the children apparently have an excellent  
9 relationship with him.

10

11 Mr. O'Keeffe feels the social enquiry report is prejudiced against  
12 him mainly because it speaks of Ms. Harvey not wanting to interact  
13 with the children. He feels that it doesn't highlight the fact that Ms.  
14 Harvey's relationship with the children has deteriorated because of  
15 Mrs. O'Keeffe's verbal abuse of Ms. Harvey in the presence of the  
16 children. This Court is not minded to take those matters into  
17 account. The relevance of those matters will go as far as custody,  
18 care and control is concerned. What is true, however, is that the  
19 children need stability. Alex especially needs the care and extra

1 lessens given to him at the present school. He needs apparently  
2 to remain in his home if all things could be equal and the children  
3 need to be interacting with their father on a regular basis even if it  
4 means overnighting and sleeping on the floor. This goes to the  
5 question of access which I shall deal with later in this judgment.

6  
7 Matrimonial Assets

8  
9 The matrimonial home is in joint names and Mr. O'Keeffe  
10 proposes that it be sold and after deduction of all expenses and  
11 mortgage payments, the money should be divided equally. He  
12 also feels that the timeshare in Florida should be given to him  
13 because he can maintain it on his income better than Mrs.  
14 O'Keeffe. That it should be kept because it would be helpful for  
15 the children to have somewhere to go on vacation. He submits  
16 that if Mrs. O'Keeffe cannot find a suitable home equivalent to the  
17 present matrimonial home and loses her permanent residence,  
18 she will simply have to go back to Ireland. He makes no proposal

1 as to how he would see the children if they were in Ireland on the  
2 apparently limited income that both parties earn.

3  
4 This Court has to ask itself if the matrimonial home is sold, will  
5 Mrs. O'Keeffe be able to buy a house that is equal to the present  
6 matrimonial home. Will it affect the children? Will it mean that Mrs.  
7 O'Keeffe has to relocate and if she relocates what is the future of  
8 the children as far as interacting with the father is concerned.  
9 Especially in circumstances where the father may marry Ms.  
10 Harvey who apparently now because of the unfortunate incidents  
11 that have occurred may not be too willing to have the children or to  
12 spend substantial sums on bringing the children back to Cayman  
13 to visit.

14  
15 Finally as far as the matrimonial assets are concerned, the court  
16 has to decide whether keeping the timeshare in Florida and  
17 allowing Mr. O'Keeffe to have it in his name alone will be beneficial  
18 for the children and the family as a whole and would it be fair and  
19 equitable to do so as Mrs. O'Keeffe contributed to its purchase.

1     Access

2

3     The last matter as far as the contentious issues are concerned is  
4     the question of access. Mr. O’Keeffe says that his apartment is  
5     not large enough and therefore the children have to sleep on the  
6     floor. He says that this is not a good idea and therefore does not  
7     want the children on a Saturday night or any night of the week to  
8     sleep over. After hearing the evidence he finally agrees that he  
9     would have the children on a Monday evening to overnight and still  
10    have the children for two other days of the week that is Tuesday  
11    and Thursday. They will have to go to Smiles (a care centre) on a  
12    Wednesday and Friday as he is unable to have them. He submits  
13    that his partner, Ms. Harvey does not want to have anything to do  
14    with his children for now and that if he moves to Canada or the  
15    children go to Ireland, he will pay for their airfare to come back.  
16    He says that in the summer he will take the children for Monday,  
17    Tuesday and Thursday (not overnight) and that they would have to  
18    go to a baby sitter on Wednesday and Friday.

19

1 The problem he says is not between him and his son Alex but that  
2 Mrs. O’Keeffe has prejudiced Alex’s mind to such an extent that  
3 Alex at present simply cannot have a relationship with him. This  
4 Court has constantly reminded the parties that it must act for the  
5 welfare of the children. Whilst I appreciate that Mr. O’Keeffe has a  
6 life to lead and must get on with his life, that life must incorporate  
7 the young lives of his children and consider of the welfare of those  
8 two children.

9  
10 Conclusion

11  
12 I have reviewed the social enquiry report very carefully and I am in  
13 no doubt that both parents love their children. I am also in no  
14 doubt that Mrs. O’Keeffe is the primary care giver and that Mr.  
15 O’Keeffe is frustrated with the problems between the children and  
16 Ms. Harvey his partner. He is anxious to dissolve this marriage  
17 and cut all ties with Mrs. O’Keeffe. As I stated earlier I can only  
18 advise the parties that for the welfare of the children this acrimony  
19 is not good.

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The Court having taken all the circumstances into account and carefully having reviewed all the evidence finds that Mr. O’Keeffe is lacking credibility when it comes to his income and outgoings. It also finds that Mr. O’Keeffe has made very little effort to ensure that his children are cared for and that his income is spent on his priorities and not necessarily on the children. In order to ensure that the children are maintained and their emotional stability is enhanced and their lives are not further damaged, the Court makes the following Orders:

- (1) Joint custody of the children of the marriage to both Mr. and Mrs. O’Keeffe with care and control to Mrs. O’Keeffe;
- (2) That Mrs. O’Keeffe be permitted to live with the children in the matrimonial home till the son Alex is 16 years old and thereafter the matrimonial home to be valued and the property sold with the net proceeds to be divided equally between Mr. and Mrs. O’Keeffe;
- (3) That the sum of \$1000 be paid to Mrs. O’Keeffe as maintenance for the children. That is \$500 per month

1 for each child commencing 1<sup>st</sup> July 2007 and every  
2 month thereafter;

3 (4) The sum of \$880 be paid by Mr. O'Keeffe being half  
4 his share of the mortgage and strata fee;

5 (5) That the children be covered medically by insurance  
6 to be taken out by Mr. O'Keeffe for which he will be  
7 solely responsible;

8 (6) That Mr. O'Keeffe and Mrs. O'Keeffe share equally  
9 the after school care that will have to be paid in view  
10 of the aftercare arrangements that has been  
11 necessitated by the parents unavailability;

12 (7) That the timeshare in Florida be valued by an  
13 independent valuator and sold with the net proceeds  
14 to be divided equally between the parties within a  
15 period of six months from the date hereof;

16 (8) That one of the children's school fees be paid by Mr.  
17 O'Keeffe and the other paid by Mrs. O'Keeffe with the  
18 children to remain in the present school at St.  
19 Ignatius Catholic School for at least two years from  
20 the date hereof. The matter to be reviewed should  
21 the parties so desire after two years;

22 (9) That the parties Mr. and Mrs. O'Keeffe share the  
23 costs of Alex's extra school requirements equally;

24 (10) That access be as follows:

- 1 i. Weekly access during school term to be as  
2 presently arranged. That is four days a  
3 week Mr. O'Keeffe is to take the children  
4 after school and the children to overnight  
5 with Mr. O'Keeffe on a Monday as  
6 proposed by him;
- 7 ii. That during the summer time and any other  
8 holiday Mr. O'Keeffe to have the children  
9 Monday, Tuesday and Thursday. On  
10 Wednesdays and Fridays, the children to  
11 be taken to Smiles Day Center as  
12 proposed by Mrs. O'Keeffe; and
- 13 iii. That the parties to share the children on  
14 Christmas Day.

15 (11) That should Mr. O'Keeffe wish to leave the jurisdiction, he  
16 gives Mrs. O'Keeffe three months notice that he is so  
17 doing;

18 (12) Finally that neither party denigrate each other to the  
19 children;

20 (13) Liberty to apply generally; and

21 (14) No order as to costs.

22 Dated this 28<sup>th</sup> day of June 2007

23 

24 Judge of the Grand Court

