

7/12/06

hines

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

CAUSE NO. D11/2006

7 **BETWEEN: DARRELL HINES PETITIONER**

10 **AND: ESTHER HASSETT RESPONDENT**

13 **Appearances:** Ms. Alisa Williamson of Stuarts Walker Hersant for the
14 **Petitioner**
15 Ms. Sheridan Brooks of Brooks & Brooks for the Respondent

17 **Before: Hon. Justice Henderson**

20 **Heard: December 6, 2006**



23 **JUDGMENT**

25 Does this court have jurisdiction to order the parties to a matrimonial proceeding to make
26 disclosure, including financial disclosure, prior to a finding that the petition has been
27 proved? That is the point at issue on this application.



29 The Petitioner, Darrell Hines, has alleged in his amended petition that he has acquired a
30 domicile of choice in the Cayman Islands. The Respondent, Esther Hassett, denies that to
31 be the case. The petition has been set for hearing in February, 2007.

33 I have pronounced an order for directions intended to expedite the hearing of the petition.
34 The Petitioner has asked that I include in my order for directions a requirement that the
35 parties make full disclosure of relevant evidence to each other, including disclosure of all

1 financial matters. I am also asked to set deadlines for applications to cross-examine
2 witnesses and for the service of interrogatories and witness statements. The Respondent
3 resists these directions, arguing that the court has no jurisdiction to give them until after
4 the petition itself has been heard and decided in the Petitioner's favour.

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6 Ms. Brooks, for the Petitioner, cites no authority in support of her proposition other than
7 the provisions of the *Matrimonial Causes Law (2005 Revision)* ("the Law") and the
8 *Matrimonial Causes Rules (2003 Revision)* ("the Rules"). She says that the traditional
9 procedure, which is still the only procedure available in the Cayman Islands, requires a
10 two-stage approach. The Petition must be heard and decided first. If, but only if, there is
11 an order that the petition has been proved, then discovery takes place with respect to all
12 ancillary issues. Once that has been accomplished, there is to be a second, separate
13 hearing in chambers to dispose of the ancillary issues. After they have all been disposed
14 of, the court then grants a decree of dissolution.

15
16 This procedure, although it may at one time have been conventional in the Cayman
17 Islands, is no longer suited to modern conditions and the reasonable expectations of
18 litigants in this court. It can only generate delay, to no purpose. I would not accede to
19 this submission unless the express terms of the Law and the Rules require such a finding.

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21 In the case of a defended petition, an order for directions is made under section 16 of the
22 Rules. The court is directed to "make all such directions as may be appropriate for the
23 expeditious adjudication of the cause, including":

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- (a) an order for security of costs;
- (b) directions as to the manner in which the evidence shall be given; and
- (c) orders for the attendance of witnesses.

The overall goal is the “expeditious adjudication of the cause” and the directions are given to that end. The list of matters upon which directions may be given is not exhaustive, as is indicated by use of the word “including.” Another matter which may be a subject of a directions order, and which tends to be the most troublesome of the issues commonly addressed, is disclosure. The expeditious adjudication of a matrimonial proceeding requires that disclosure, particularly financial disclosure, be addressed at the earliest reasonable opportunity.

The Law provides that the court may not pronounce a decree of dissolution until it is satisfied that all ancillary matters have been provided for: Law, section 12 (5). Section 21 of the Law requires that a court make orders providing for ancillary matters “at the time of pronouncing a decree under this Law ...”. Section 27 (4) of the Law permits the court to adjourn the hearing of a petition, to require further evidence, and to require ancillary matters to be dealt with in chambers. There is no mandatory requirement for ancillaries to be dealt with in chambers, although the practice is a salutary one.

Aside from these provisions, there is nothing in the Law or the Rules bearing on the issue.

1 I am directing that the ancillaries be heard and decided in chambers, in keeping with the
2 usual practice. The chambers application should be set down for a date shortly after the
3 hearing of the petition in open court; if the petition is dismissed, the chambers hearing
4 will, of course, be struck off the list.

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6 I am satisfied there is nothing in the Law or the Rules which prevents me from making an
7 order for directions requiring disclosure now. That will expedite the progress of this
8 action and allow the hearing on ancillary issues to take place shortly after the hearing of
9 the petition itself. No prejudice can be suffered by a spouse who is required to make
10 disclosure of his or her financial affairs to the other party to the marriage, and that is true
11 whether the disclosure must be made before or after the petition is heard.

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13 I direct each of the parties to disclose the following documents within 21 days:

- 14 (a) documents evidencing any interest in real property, including
15 documents pertaining to the mortgagor's or mortgagee's interest;
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- 17 (b) copies of the last three tax returns with respect to income tax
18 paid in any jurisdiction;
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- 20 (c) the latest bank statement from all bank accounts in which the
21 party has a legal or beneficial interest;
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- 23 (d) documents evidencing legal or beneficial ownership of any
24 security;
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- 26 (e) documents evidencing ownership of any other asset having a
27 value in excess of \$1,000;
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- 29 (f) documents evidencing income earned in the last twelve months
30 from any source; and
31
- 32 (g) documents evidencing the current state of any liabilities owed.
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1 I have not ordered either of the parties to obtain appraisals of real property because there
2 is a significant cost attached to that and the cost aspect has not been addressed by counsel
3 in argument.

4
5 I also order that documents having any relevance or possible relevance to the intention or
6 ability of the petitioner to remain in the Cayman Islands indefinitely be disclosed within
7 twenty-one days.

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9 The submission made by Ms. Brooks on behalf of the Respondent, although not
10 successful, addresses a novel procedural issue and is of some importance. Accordingly, I
11 leave each party to bear his or her costs of this application.

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13 Dated this 7th day of December, 2006

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15 *Henderson, J.*

16 Henderson, J.
17 Judge of the Grand Court
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