

18/1/05 And.



1 IN CHAMBERS  
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

3 CAUSE NO: D66 OF 2003

4 BETWEEN:

5 OLIVIA R. GOURZONG

Petitioner

6  
7 AND:

8 STANLEY R. GOURZONG

Respondent

9  
10  
11 APPEARANCES:

12 Counsel for Petitioner: D. Murray of Associated  
13 Advocates Chambers

14 Counsel for Respondent: Ms. S. Brooks of Brooks &  
15 Brooks

16  
17 Heard: January 6, 2005

18  

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JUDGMENT

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19  
20 Levers J,

21  
22 The parties were married on 4 December 1981. The  
23 marriage lasted for some 21 years. There are two  
24 children of the union. For purposes of this

1 application, however, there is only one relevant  
2 child Rachel Gourzong born on 7 April 1989. Both  
3 parties have petitioned the court for relief as to  
4 custody and maintenance for the said child and as  
5 regards the disposal of matrimonial properties.

6

7 The Petitioner had filed a summons, which was  
8 adjourned, and the Respondent has now filed for  
9 the following specific relief:

10

11 1. That the parties be granted joint custody of  
12 the minor child of the marriage: namely  
13 Racquel Sonelia Gourzong who was born on the  
14 7 April 1989 with the Respondent having day  
15 to day care and control of the said child  
16 and the Petitioner having reasonable access  
17 to her;

18 2. That the Petitioner pay such sum as  
19 maintenance for the said child of the

1 marriage as is deemed appropriate by this  
2 Hon. Court;

3 3. That the matrimonial properties be disposed  
4 of as this Hon. Court shall deem  
5 appropriate;

6 4. Such further and other relief as this Hon.  
7 Court shall deem necessary.

8

9 CUSTODY

10

11 As worded the Respondent's Summons asks for care  
12 and control of the said child. However, when this  
13 matter came up for hearing, the Respondent  
14 conceded that he was at present not in permanent  
15 accommodation but was still fairly anxious to have  
16 care and control of the child.

17

18 It is common ground between the parties that they  
19 should have joint custody of the child of the

1 marriage. In order to assist the court there was  
2 a Social Enquiry Report and the recommendation  
3 therein was that care and control of the child  
4 should vest in the Petitioner. As is well  
5 established when making orders for custody care  
6 and control the paramount consideration is the  
7 welfare of the child and any order made must be in  
8 the best interest of the child.

9  
10 It is the evidence in this matter that the  
11 Petitioner was the primary care giver of the said  
12 child. The child in question has a debilitating  
13 illness and requires perhaps more care than a  
14 usual child of this age. She also has the need  
15 for greater care because of her illness and tardy  
16 mental development. The child has always resided  
17 with the Petitioner. The Respondent makes certain  
18 allegations against the Petitioner. He states:

- 1     1.   That the Petitioner does not spend enough  
2           time with the child;
- 3     2.   That the Petitioner does not appear to give  
4           the child priority in her life;
- 5     3.   The Petitioner continues to visit the same  
6           male friend whom he sought to make a co-  
7           respondent in this matter;
- 8     4.   That the child has informed him that she has  
9           to work while in the male friends company by  
10          cooking and cleaning for this man;
- 11    5.   The Petitioner alleges that the child is  
12          left many a night with the helper and he  
13          states that if he had care and control, he  
14          would spend a lot of quality time with the  
15          child; and
- 16    6.   That the child would love to come and live  
17          with him.

18

1 In view of the Social Enquiry Report and the  
2 evidence submitted in Chambers through the  
3 affidavits, I do not find that the Respondent has  
4 made out these allegations. I do not find any  
5 evidence that the mother is an unfit mother or  
6 that the child has suffered in any way because of  
7 the fact that she lives with the mother.

8

9 It is clear that the Petitioner is the one that  
10 has taken the child abroad for the various medical  
11 examinations and treatment and it is the  
12 Petitioner who has taken a very active interest in  
13 the child's education. Despite the fact that the  
14 Respondent's living circumstances may militate  
15 against him at present, this Court would have  
16 considered his application had it been that the  
17 mother was seen to be unfit in any way.

18 Therefore, in the circumstances it is felt that it  
19 is in the best interest of the child at present to

1 award joint custody with care and control to the  
2 Petitioner with reasonable and generous access to  
3 the Respondent. There is an order currently in  
4 force made by this Court on the 19 September 2003  
5 and in that access has been defined to be on every  
6 Monday, Wednesday and Friday afternoons as well  
7 alternate Saturday's and Sundays. In addition to  
8 that I would award access as follows:

- 9 1. Half Christmas day;
- 10 2. Half of every school holiday;
- 11 3. Father's day;
- 12 4. Father's birthday;
- 13 5. Half of the child's birthday; and
- 14 6. Any other access that is reasonably agreed  
15 between the parties.

16  
17 **MAINTENANCE**

18  
19 The Respondent at present pays \$500 a month as  
20 maintenance plus pays half the school fees. This

1 order is to continue in addition to the Respondent  
2 paying the following:

3

- 4 1. Half Medical;
- 5 2. Half dental;
- 6 3. Half optical; and
- 7 4. Half extra-curricular expenses.

8

9 The maintenance order to continue until the child  
10 is 21 years old and thereafter, depending on the  
11 child's health, the Petitioner to have liberty to  
12 apply for a continuation of this order. The order  
13 is to be reviewed every 2 years with a view to  
14 assessing the adequacy of the maintenance.

15

16 MATIMONAIL ASSETS

17

18 The law pertaining to the division of the  
19 matrimonial assets is governed by Section 19 of

1 the Matrimonial Causes Law of the Cayman Islands

2 which reads as follows:

3

4            " In dealing with all ancillary  
5 matters arising under this Law.  
6 The Court should have regard  
7 first of all to the best interest  
8 of any children of the marriage  
9 and thereafter to the  
10 responsibilities and financial  
11 and other resource, actual and  
12 potential earning power and the  
13 deserts of the parties."  
14

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

17

18            " At the time of pronouncing a  
19 decree under this law the Court  
20 shall as appropriate make order  
21 for:

22            (a) Custody, care and control  
23               of the children of the  
24               marriage;

25            (b) The disposition of  
26               matrimonial property  
27               including the matrimonial  
28               home;

1 (c) Varying any settlement of  
2 the property of the  
3 spouse made in  
4 consideration of the  
5 marriage. Whether such  
6 settlement was made  
7 before or on the treaty  
8 of the said marriage;

9 (d) Varying any other  
10 settlement of the  
11 matrimonial property;

12 (e) Making financial  
13 provision from the  
14 property of either spouse  
15 for the children of the  
16 marriage and for the  
17 other spouse;

18 (f) Providing for periodic  
19 payments to be made by  
20 either spouse for the  
21 benefit of the children  
22 of the marriage and for  
23 the other spouse; and

24 (g) Costs.”  
25

26 Section 22 of the Cayman Law gives a much wider  
27 discretion to the Court to make the appropriate  
28 order than the English law. This therefore places  
29 tremendous burden on the court and the court must

1 at all times endeavor to make an equitable and  
2 fair settlement considering the following factors:

- 3 (1) The length of the marriage;
- 4 (2) The age of the parties;
- 5 (3) The income and earning power of the parties;
- 6 (4) The amount of matrimonial and non  
7 matrimonial property available to the  
8 parties;
- 9 (5) The needs and obligations of the parties as  
10 recognizing that an award need not  
11 necessarily be limited to a parties needs  
12 when there is matrimonial property that  
13 exceeds both parties needs;
- 14 (6) The liquidity of the parties including one  
15 parties ability to pay any lump sum award  
16 without seriously impairing his or her  
17 ability to continue to generate sufficient  
18 income and finally, the desserts of the  
19 parties including the contribution that the  
20 parties have made to the accumulation of the  
21 matrimonial, as well as non-matrimonial  
22 property.  
23

24 In this case the task of this Court is made  
25 slightly less difficult, because the parties have  
26 agreed to what the matrimonial assets are:

27

- 1 1. Block 22 D, parcel 23, 24 and 53
- 2 2. A parcel of land 72(c) End End Block parcel
- 3 58 and 59 owned by the Respondent.
- 4 3. A further property owned by the Petitioner
- 5 in East End.
- 6

7 The parcel of land owned by the Petitioner in  
8 East End was inherited as was one of the parcels  
9 of land owned by the Respondent in East End. It  
10 is agreed between the parties that the 2  
11 inherited parcels of land should not come into  
12 the equation and I believe the principals of law  
13 applicable to this would make this an  
14 appropriate order save and except that if for  
15 some reason the Court felt that the requirements  
16 of the parties needed a wider look at the  
17 matrimonial assets then it would be that these  
18 properties would come into the equation. As it  
19 stands however, the parties are agreed that the  
20 matrimonial home are the only point of  
21 contention.

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The matrimonial home was built on land brought into the marriage by the Respondent. The Petitioner concedes that the Respondent owned this land with a home on it when the marriage took place. The land and the home are in the Respondent's name. Substantial improvements made to the home after marriage makes it now worth \$250,000. The value subscribed to it at the time it was brought into the marriage by the Respondent is \$95,000. The Respondent's case is that he brought this land and home into the marriage and that the Petitioner is not entitled to the land and/or the home save and except for the improved value of the house to which she may be entitled to a percentage. Ms. Brooks on his behalf states that had he wanted her to have an equitable interest in the land, he would have transferred it into joint names. All the

1 authorities, she says in which land and/or home  
2 are brought into the marriage deal with a  
3 situation where the owner of the properties  
4 transferred them into the joint names of the  
5 parties. Mr. Murray on behalf of the Petitioner  
6 submits that various factors militate against  
7 Ms. Brooks' interpretation of the law. He says  
8 that the law is not blinded to the fact that the  
9 length of the marriage, the contribution of the  
10 parties, the needs of the parties sometimes  
11 require the court to look at all assets brought  
12 into the marriage even those owned solely by one  
13 spouse. The case of White v White [2001] 1 All  
14 ER, I believe is instructive in this regard at  
15 page 2, it was held:

16  
17 'A claimant's financial needs,  
18 even when interpreted generously  
19 and called 'reasonable  
20 requirements', were not to be  
21 treated as determinative. There  
22 was no support in the statutory

1 provisions for a conclusion to  
2 the contrary. Nor was there  
3 anything in the statutory  
4 provisions, or the underlying  
5 objective of securing fair  
6 financial arrangements, which led  
7 to the supposition that the  
8 available assets of the  
9 respondent husband became  
10 immaterial once the claimant  
11 wife's financial needs were  
12 satisfied. Although on the facts  
13 of a particular case there might  
14 be a good reason why the wife  
15 should be confined to her needs  
16 and the husband left with the  
17 much larger balance, the mere  
18 absence of financial need could  
19 not, by itself, be a sufficient  
20 reason. If it were,  
21 discrimination would be creeping  
22 in by the back door, bearing in  
23 mind that the claimant was  
24 usually the wife. Hence the  
25 importance of the check against  
26 the yardstick of equal division.  
27 There was much to be said for  
28 returning to the words of the  
29 statute, and confusion might be  
30 avoided if courts stop using the  
31 expression 'reasonable  
32 requirements' in such cases.  
33 That would not deprive the court  
34 of the necessary degree of  
35 flexibility. In assessing  
36 financial needs, the court would  
37 have regard to a person's age,

1 health and accustomed standard of  
2 living.

3 (The latter criteria does not  
4 apply to the Cayman Islands)

5  
6 It might also have also have  
7 regard to the available pool of  
8 resources."  
9

10 White v White goes on:

11  
12 "Thus in deciding what would be a  
13 fair outcome, the court was also  
14 required to have regard to other  
15 factors such as the available  
16 resources and the parties'  
17 contributions."  
18

19 Ms. Brooks argues that anything owned by either  
20 party to the marriage prior to the marriage  
21 should not become a matrimonial asset. The  
22 instructive passage that I have quoted from  
23 *White v White* makes it quite clear that in order  
24 to come to a conclusion and order on the  
25 equitable division of property, the court can  
26 look at various factors including the wife's

1 requirement and the circumstances of each case  
2 and look at resources outside the strict  
3 interpretation of matrimonial assets. Ms.  
4 Brooks argues that for the following reasons,  
5 the court should not take into account the  
6 matrimonial assets without giving Mr. Gourzong,  
7 the Respondent, the credit for the amount of  
8 money he brought into the marriage in the sum of  
9 value of the property and the home (\$95,000).  
10 Further she says he paid all the mortgage on the  
11 property and that Mrs. Gourzong's contribution  
12 should be assessed only on the difference of the  
13 value of \$250,000 less \$95,000 which is the  
14 enhancement value after the marriage and that  
15 Mr. Gourzong should be entitled to keep the  
16 matrimonial home.

17  
18 This Court having already decided that Mrs.  
19 Gourzong should have care and control of an ill

1 child, it is incumbent on the Court to look at  
2 her needs. Furthermore, the Court must consider  
3 that the length of the marriage is fairly long  
4 and, the age of the parties and their  
5 contributions. There is not a great difference  
6 between the income and earning power of the  
7 parties. Her needs and obligations however,  
8 because of her sick child would be fairly  
9 onerous. Mr. Gourzong is maintaining the child,  
10 but the Court must still bear in mind that the  
11 child is her primary responsibility on a daily  
12 basis.

13  
14 I believe, that in view of all the circumstances  
15 of this case, it would be most equitable if I  
16 consider the matrimonial home as an asset and  
17 not only the enhanced value of it. It is  
18 conceded that Mr. Gourzong did not transfer it  
19 into the name of the Petitioner but it is clear

1 from the inception that this property was to be  
2 their matrimonial home. If one was to look at  
3 the settlement as a whole, Mrs. Gourzong, (if I  
4 was to decide that only the enhancement value  
5 was to be given to her) would leave this  
6 marriage with little or no assets save and  
7 except her inherited piece of land. Her needs  
8 must be the same as Mr. Gourzong's needs and she  
9 will need to start life by putting down a  
10 deposit on a home in which she and the child  
11 could live. An added feature in this matter  
12 that needs to be considered is that Mr. Gourzong  
13 and Mrs. Gourzong have a mortgage on the  
14 property and the Bank is about to foreclose on  
15 the property. Mr. Gourzong has agreed and  
16 stands ready, he states, to pay off the mortgage  
17 on the property. Mrs. Gourzong will bear her  
18 own debts, she says.

19

1 I believe that the Court would not do justice to  
2 Mr. Gourzong, if it was to hold that Mrs.  
3 Gourzong would have leave to purchase Mr.  
4 Gourzong's interest in the land and home. It is  
5 perhaps appropriate and fair that the Court  
6 accedes to his request to keep the home, as he  
7 stands ready to pay off the mortgage and save  
8 the matrimonial home. But the question is, is  
9 it right to give the credit for the \$95,000  
10 which he claims was the value of the home when  
11 he brought it into the matrimonial property.

12

13 In view of the principles of law stated above  
14 and in view of the factual situation in this  
15 case, I believe the appropriate Order is as  
16 follows:

17

- 18 1. That Mr. Gourzong has leave to purchase Mrs.  
19 Gourzong's 50% of the net value of the land

1 and the matrimonial home valued at \$250,000.  
2 The amount to calculate the net value to be  
3 deducted from the \$250,000 must be the  
4 amount of the outstanding mortgage alone and  
5 thereafter, the property divided 50:50;

6 2. Mr. Gourzong to get consideration for the  
7 value of the land alone that he brought into  
8 the marriage. That is \$45,500.

9 3. That Mrs. Gourzong be permitted to live in  
10 the matrimonial home for a further 12 months  
11 from the date of this Order until she finds  
12 adequate accommodation for herself and the  
13 child;

14 4. Mr. Gourzong to purchase Mrs. Gourzong's  
15 share within a period of 6 months and that  
16 if he does not exercise that option then she  
17 has the option to purchase his share;

- 1     5.   The parties each to keep their inherited  
2       land;
  
- 3     6.   That the Respondent be allowed to keep the  
4       property he has in East End which is another  
5       parcel, in addition to the inherited parcel  
6       he has;
  
- 7     7.   That the Respondent to keep parcel 23;
  
- 8     8.   That should the Petitioner be unable to find  
9       suitable accommodation within the 12 months  
10      as stated above, she has liberty to apply  
11      for an extension;
  
- 12    9.   That whilst the Petitioner is living in the  
13      matrimonial home she maintains it in a  
14      habitable condition and;
  
- 15    10.  That the Respondent payoff the mortgage  
16      outstanding in order to avoid foreclosure;

1 11. The time share in Florida to be given to the  
2 Respondent;

3 12. Liberty to apply generally; and

4 13. No order as to Costs.

5  
6  
7 Dated this 18th day of January 2005



8  
9 A handwritten signature in black ink, consisting of a stylized initial 'B' followed by a long horizontal stroke that curves upwards at the end.

10 Judge of the Grand Court