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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO: D 60/98

17-11-98

BETWEEN : SYLVIA M. BROWN

PETITIONER

AND : KEVIN D. BROWN

RESPONDENT

BEFORE MURPHY, J.
IN CHAMBERS

17 November, 1998

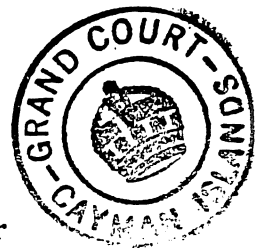
APPEARANCES:

S. Roy for petitioner
E. Nervik for respondent

REASONS FOR DECISION

This is an application by the respondent for the final determination of ancillary questions, in the context of judicial separation proceedings.

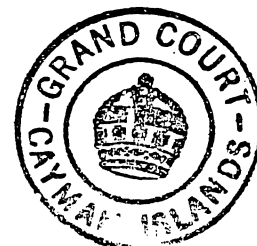
There were in fact cross- summonses outstanding, including one by the petitioner for an increase in interim maintenance. In view of the history of the matter and the numerous adjournments, on 16 October, 1998 I ordered that all ancillary



questions be finally determined before me today in a single hearing. I ordered the parties to be present for cross-examination, and all relevant documentation to be produced. On that occasion, at the request of the petitioner's attorney, I made a very lengthy and detailed order for discovery. The end result of this ongoing process has been that there are before me three affidavits filed by each side.

The wife appeared for cross-examination, but the husband did not. In his third affidavit sworn 5 November 1998 the husband explains his anticipated failure to attend in two ways. Firstly, he claims to fear for his personal safety, and even for his "life", because of his wife's history of physical abuse. There appear to have been some incidents in the past, but I regard this a very thin excuse for the husband's absenting himself from these proceedings. Secondly, he admits that he is "presently in Thailand visiting friends". His third affidavit was sworn at Phuket, Thailand. I note from the wife's evidence that the husband's alleged liaison with Thai women and his visits to Thailand were causes of the marital breakdown.

The wife's attorney based much of his case on the notion that the husband had not made full disclosure pursuant to my order of 16 October, and that that, coupled with his refusal to attend to be cross-examined, should cause me to draw adverse inferences against him. I will return to that submission in due course.

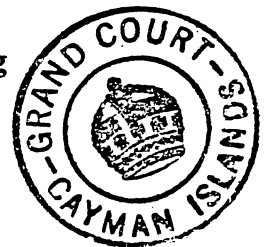


The wife, a Jamaican, met the husband in Jamaica in 1972 after the husband had moved there from Bermuda. He had previously worked in South Africa and England. The couple lived together in Jamaica for about three years before marrying in 1975. Both are 54 years old.

The wife is relatively unsophisticated, having held a menial restaurant job in Jamaica before marriage. She has apparently not worked since. She has no skills, training or education. Her evidence was that her husband discouraged her from working, preferring that she confine herself to household duties.

The couple moved to the Cayman Islands in the early 1980's. The husband, a trust officer, worked with trust companies, and most recently with Barclays Bank. The wife carried on her life as a housewife.

There are no children of the marriage. The couple adopted a child (now beyond the age of majority). There is some conflict in the wife's evidence as to how long the child was cared for at home before being sent to boarding school in England, but it certainly does not appear that the child lived with the couple for appreciable periods, except holidays. I have no doubt though that the wife contributed significantly to the homemaking. There is no dispute that she made no financial contribution. She gave some equivocal evidence about attempting to obtain a work permit, though she had no employment prospect.



Matrimonial difficulties began in the late 1980's. It appears that these were exacerbated in the early 1990's by the husband's alleged involvement with Thai women. The domestic troubles continued thereafter.

The main matrimonial asset revealed in evidence, a South Palms, South Sound townhouse, was sold in 1995 after some pressure brought to bear by the husband on the wife. The net proceeds of that sale, some C.I. \$83,884, is the central focus of this application.

The parties later agreed that the contents of the townhouse would go to the wife. These are probably worth about \$10,000 at best, but the evidence is unsatisfactory here. This furniture was shipped to Jamaica; storage and shipping charges were paid from the townhouse sale proceeds.

The wife maintains that as the marriage was disintegrating, the husband promised to buy her a house in Jamaica. This has not happened. Since the sale of the townhouse, the wife has lived in very unsuitable and unsatisfactory rental accommodation. She presently resides in a small apartment in the area off Eastern Avenue known as "the Swamp". It seems likely that the wife will one day return to Jamaica.

I accept that at the moment the wife has no source of income. Her estranged husband had in the past made small contributions, and on 28 May,

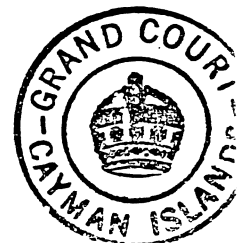


1998 Graham J. made an interim maintenance order in her favour of \$1200 per month. The maintenance payments have been in arrears for two months.

Up until relatively recently, the husband's income position had been strikingly different from that of the wife. In his affidavit sworn 18 August, 1998 he deposed that his salary at Barclays Private Banking was CI \$78,509. per annum. One of the main difficulties I face in this case is dealing with the fact that during the currency of the dispute over maintenance, the husband appears to have lost his job at Barclays. The factual picture here is very hazy; the evidence is highly unsatisfactory. There is nothing from the former employer to shed light on this development. The husband has not appeared before me to be examined.

In his affidavit evidence he seems to blame the wife for harassing him at or near his workplace in mid - 1998 to such an extent that he was forced to leave his employment. I regard this as somewhat far - fetched, absent a fuller explanation from the husband; I would have been especially interested in his cross - examination on this point.

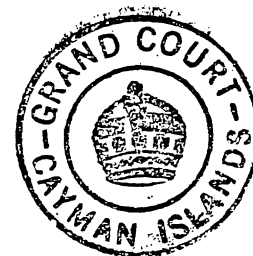
In any case, I am left with his affidavit evidence that he now lives in England (the wife maintains he is really planning to live in Thailand) in modest circumstances on a small Barclays pension of \$ US 1,000 per month. He maintains he has no other source of income and no assets apart from his "share" of the proceeds of the townhouse sale (currently in a bank deposit) and a couple



of relatively small accounts at banks in the Cayman Islands. There was another bank account but it is agreed that the wife withdrew the total balance of approximately US \$7,136 in late 1996.

I pause to reiterate that the only tangible matrimonial assets clearly in evidence are the bank deposit containing the net proceeds of the townhouse sale (amounting to some CI \$83,884. - after deduction (in the wife's favour, the husband maintains) of the charges relating to the furniture storage and shipment), and some small accounts in the husband's name. The husband maintains that the wife has the furniture and contents, and also the US \$7,136 bank balance referred to above.

Very late in the day, in the wife's third affidavit, there was a suggestion for the first time that there may be another matrimonial asset, a cottage in Norfolk, England. The wife's evidence was that she had "signed some papers" in connection with this in the late 1980's. The husband's attorney maintains it is actually the husband's parents' home. I pause to observe that there were numerous inconsistencies in the wife's evidence on cross - examination and I found myself very hesitant to accept portions of her evidence. I found her evidence as to this alleged matrimonial asset so unsatisfactory that I decline to consider it in this application.

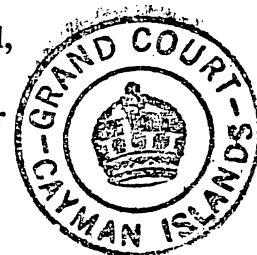


The real area of concern for the wife and her attorney was the husband's apparent transformation virtually overnight in or about August 1998 from a

well - paid bank officer in the Cayman Islands to an impecunious adventurer journeying from England to Thailand. The wife's attorney invited me to draw adverse inferences and to reject the affidavit evidence of his recent dire straits. I was invited to do so because of the husband's failure to attend to be cross - examined, and because of what was regarded as his failure to comply with my discovery order.

There were respects in which there was not strict compliance with my order. The husband did not set out a history of his employment income and bank accounts back to 1995 (presumably requested so that the wife's advisers could scrutinize any suspicious transfers). There were only thin details (and no documentation) provided as to the circumstances of his leaving Barclays. Some of this information might have been obtained by the wife through other means irrespective of my order, but this was not done. For the most part, the husband did address my discovery order by denying any substantial income or assets and by denying that he had retained documentation in his possession.

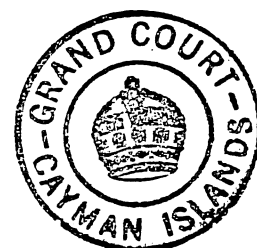
This may well be suspicious and uncharacteristic of a person with his employment background. The fact remains that on my review of all the evidence, the recent picture of the husband's circumstances painted in his third affidavit is simply not contradicted. This wife may be relatively unsophisticated, but I would have expected at least some hard evidence from her to challenge her estranged husband's account. There was none. The wife has suspicions that the husband has secreted assets. But without at least some evidential basis for these



suspicious I am unable to make an order for periodic payments and/or property division that would take account of any additional income or property the wife thinks might be available to the husband.

I intend to approach the matter of the ancillary questions on the following bases. I believe that in the circumstances of this case I must, as far as possible, aim at providing these parties with a “clean break” one from the other. I must focus on property division as the means of affording relief to the wife. I fear that in view of the unlikelihood of the husband ever submitting to this Court’s jurisdiction in future, a maintenance award involving periodic payments may be of cold comfort to the wife.

I do not, however, wish to downplay the wife’s suspicions about the husband’s asset and income positions. I have my own suspicions in this regard based largely upon his prior employment history, earning capacity, financial sophistication, apparent ability to find funds to travel to Asia when he cannot comply with an outstanding maintenance order, and his apparent unwillingness to appear before this Court. As indicated, though, I do not think it right to make drastic property adjustments based on the speculations and suspicions I heard from the wife’s attorney in argument, without at least some minimal evidential basis therefor. However I can include a safeguard in my order. I propose to do so by making a nominal maintenance award to “keep the door open” in case a time comes when the wife can substantiate her suspicions. As I think it is in the interests of all concerned to do so, I intend now to divide the few

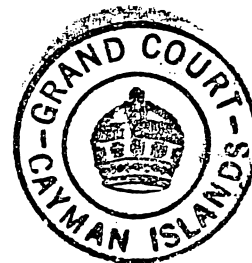


assets as remain. In special circumstances (and new evidence in future showing that the husband's evidence before me was false in a material respect as to assets or income would surely qualify) the wife could apply to have my order varied generally: Matrimonial Causes Law (1997 Revision), s. 24; Range v. Range [1988 - 89] C.I.L.R. 437 (C.A.).

As indicated, I regard it as imprudent to attempt a property division on the basis of mere speculation and suspicions. The husband's evidence may well be truthful; his account of his income and assets remains unchallenged at the moment. I decline the wife attorney's request to assume the worst on the husband's part, to penalise him with a draconian order in favour of the wife, and to leave it to him to appear to show cause why his affidavit evidence should be believed on its face, with a view to a variation in his favour.

I prefer to base my order on the assets I know to exist. I take into account all of the following:

- 1) the net balance from the sale of the townhouse;
- 2) the small bank accounts in the husband's name;
- 3) the furniture and contents that have gone to the wife, the expenses related thereto, and the circumstances surrounding these transactions;
- 4) the bank balance already received by the wife;
- 5) the circumstances surrounding the sale of the matrimonial home;
- 6) the arrears of maintenance;

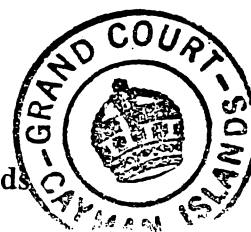


- 7) the respective contributions to the marriage;
- 8) the wife's living conditions and needs;
- 9) the fact it is probably unrealistic to ascribe much real earning capacity to this 54 - year old woman;
- 10) the age, past employment history, remaining earning capacity, and needs of the husband;
- 11) the future prospects of the parties;
- 12) the circumstances of the marital breakdown, and in particular the recent behaviour of the parties; and
- 13) the desirability of a "clean break", without unrealistic reliance upon what may prove to be a meaningless maintenance award.

Having considered all those factors I order that:

- 1) the net proceeds of the sale of the townhouse, as currently on deposit at CIBC, be paid 60 % to the wife and 40 % to the husband;
- 2) the husband retain the balances of the other bank accounts disclosed in his affidavit evidence;
- 3) there be a nominal maintenance order of \$10 per year in favour of the wife, and the outstanding interim order be vacated;
- 4) there be no costs of any of the outstanding applications relating to ancillary questions.

I also order the wife to repay to the Government of the Cayman Islands the sum of C.I. \$1500 pursuant to the provisions of Rule 12 (6) (a) of the Legal Aid Rules, 1997.



I direct the attorneys to exchange the draft order for approval as to form and content.

If there are any outstanding matters, I may be spoken to prior to my signing the formal order.

17 November, 1998


J.D. Murphy
Judge of the Grand Court

