

IN CHAMBERS

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

CAUSE NO. D 106/94

BETWEEN: LINDSAY CACHO

PETITIONER

AND: ELMIE L. CACHO

RESPONDENT

AND: JOHN OLIVER

CO-RESPONDENT

For the petitioner: Mrs. Linda Chisholm
For the respondent: Mr. Clyde Allen

BEFORE HARRE CJ

JUDGMENT

I will address this matter, as was done at the hearing, by reference to a draft order on the basis of which agreement had been sought unsuccessfully. First I deal with the custody, care and control of the 3 children of the marriage, daughters aged 15 and 11 and a son aged 3. It is agreed that custody, care and control of the children shall be with the respondent wife and that access by the petitioner shall be in accordance with paragraphs 2 and 3 of the draft order. As always, the welfare of the children is the paramount consideration and I see no conflict between an order giving custody, care and control to the respondent and paragraphs 4 and 5 of the order which provide for consultation between the parties and that each shall notify the other of any serious accident or injury to the children while in their respective care. That the respondent felt unable to agree such provisions which are obviously in the best interest of the children is

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a matter of some concern. I make orders in terms of paragraphs 1 to 7 of the draft order. In view of the concern which I have just expressed, there will also be an order that neither party shall remove any child from the jurisdiction without the written agreement of the other or order of the court. That leaves me with some less tractable matters in relation to the financial arrangements between the parties. I have felt unable to make a final order on what I have and the order as a whole, including the elements with which I have already dealt, will be an interim one.

The petitioner's net monthly income after pension and other deductions as shown on his salary slip for March 1996 is \$3,701.18 and the respondent's is \$1,667. That is taken from her salary slip for January 1996. Among the deductions from each salary are substantial sums in favour of the Cayman Islands Civil Service Association Co-operative Credit Union. That of the petitioner is \$800 a month and of the respondent \$593.

In his affidavit dated the 11th March, 1996 the petitioner lists his expenses as \$4,343.33, but that includes the \$800 deducted at source from his salary for the payment to the Credit Union so I deduct that from the total but also add \$250 which, on his instructions, I was told was a premium for an insurance policy taken out as security for a loan on the matrimonial home. So his net expenses are \$3,793.33. That figure includes a house mortgage payment of \$1,420 and house insurance of \$168.33.

The petitioner is at present living rent free in his brother's house. His proposal is that the matrimonial home be transferred to the respondent absolutely, subject to the interest and approval of the lending bank and that upon execution of the transfer instrument the respondent take full responsibility for all the mortgage payments, maintenance and upkeep of the house. On that basis he offers maintenance payments which, after a small recalculation was established as being \$482.25 per month for each child which is described in his proposal as being put towards the upkeep of the children and the former matrimonial home until each child reaches the age of 17 years. So the respondent would have a net income of \$1,667 plus \$1,446.75, a total of \$3,113.75, out of which she would have to meet the house mortgage and insurance payments and all other domestic outgoings other than the school fees for the children, which the petitioner during the course of the hearing offered to pay in full, and half the medical, dental and optical expenses reasonably and properly incurred in respect of the children to the extent that they are not covered by the parties public service health benefits.

In her affidavit dated the 12th April, 1996 the respondent has calculated her monthly expenses as being \$2,402.65. Among these are a car loan payment of \$593 which is in fact the same as the payment to the Credit Union which I have already deducted in order to arrive at her net salary, as is also the case with a pension contribution of \$90. So, staying, as I have done with the petitioner, with the net salary as a starting point, I deduct those two items from the total of monthly expenses to which I have just referred, giving an adjusted

total of \$1,719.65. Some of these payments are temporary in nature, in particular a repayment of \$259 per month in respect of the cost of the funeral expenses of the respondent's father totaling \$2,000 and a credit card payment of \$90 per month against a debt of \$900. Even on the assumption that the petitioner would make a contribution of \$1,446.75 per month, the proposal that the respondent take over the whole of the obligations relating to the matrimonial home is not, on the basis of these figures, viable, even in the unlikely event of the mortgagee agreeing.

The same, unfortunately, must be said about the respondent's counter proposal which would involve the petitioner continuing to live indefinitely in his brother's house. A solution has to be found which would enable him to have his own accommodation. He assesses a rental for this of \$1,200 per month which seems to me reasonable for a person in the senior position which he holds in the public sector and which involves the keeping up of appearances to some extent.

The parties have borrowed up to the hilt in order to maintain their lifestyle while they were living together. Now that they are not, they are going to have to accept a more modest way of living. There is one aspect of that to which I will now refer. Both drive cars which in each case they estimate as being worth \$15,000. The respondent pays \$593 a month on her car loan and the petitioner has personal loans, over and above the payments on the house mortgage which involve monthly repayments totaling \$1,690. An obvious approach to reducing these unaffordable debt obligations is to drive more

modest cars and reduce the debt obligations and running expenses. Another is to seek to amend the mortgage arrangements.

There is a plot of land in Lower Valley, Block 31A, Parcel 43 which is held as collateral for the loan on the matrimonial home. There is no professional valuation before me on this, or indeed on the matrimonial home itself, but the petitioner's evidence in his affidavit dated 19th September 1995 is that it was bought for \$15,000. His estimated value at that time was \$21,000 and that will do for present purposes. His affidavit also states that the outstanding mortgage on the matrimonial home at that time was \$129,000.

It may well be that there is sufficient equity in the matrimonial home now to enable the bank to agree to release the Lower Valley land as collateral, or at least to consent to it being sold and the proceeds used to free a cash balance or reduce the outstanding secured debt, with refinancing of the remainder. The need of the parties above all others is to reduce their excessive monthly debt repayments and I need to know before making a final order whether a proposal on the lines which I have indicated can be negotiated with the mortgagee.

In the meantime I make the following interim order -

1. In terms of paragraphs 1-7 of the draft order.
2. Neither party shall remove any of the children from

the jurisdiction without the written consent of the other or, failing such consent, an order of the Court.

3. The petitioner shall seek forthwith to vary the existing mortgage arrangements on the matrimonial home by the release by the mortgagee of the collateral security on the land known as Lower Valley Block 31A Parcel 43 the condition of the release being that the land be sold and the proceeds of sale be either -

(a) with the consent of the mortgagee paid into Court pending a further order; or

(b) if such consent is not forthcoming, applied towards the reduction of the mortgage debt.

The proceeds of sale may, with the consent of the mortgagee be apportioned between each of the purposes permitted under paragraph (a) and (b).

4. The respondent shall be permitted to continue to live in the matrimonial home with the children of the marriage and the petitioner shall continue to meet the mortgage repayments and insurance premium in respect of it. In addition he shall pay to the respondent \$100 per month in respect of each child of the marriage.

This order as a whole is an interim order based on the present position, which is that the petitioner is living rent free with his brother. I cannot order that that arrangement continue since it is not a matter within the petitioner's control. That part of the order which relates to refinancing seeks to alleviate the cash flow problems of the parties in the event of the petitioner needing to find his own accommodation which, in the longer term, is likely to be necessary.

A passing reference was made during the submissions to refinancing the petitioner's personal loans also. I would like to hear about that in more detail at any resumed hearing.

Liberty to apply generally.



Dated 26th April 1996

G.E. Harre
Chief Justice