

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **FAMILY DIVISION**
3
4

CAUSE NO: FAM 44 OF 2005

5 **BETWEEN:**

6 **SD**

Petitioner

8 **AND:**

9 **GD**

10 **Respondent**
11
12

13 **Appearances:**

Mr. Alistair Walters of Campbells for the Petitioner
Mr. David Holland of Samson & McGrath for the
Respondent

17 **Before:**

Hon. Mr. Justice Richard Williams

19 **Heard:**

7 March 2016

21 **Ex Tempore Judgment:**

7 March 2016

23 **Draft Transcript circulated:**

8 March 2016

25 **Perfected Ex Tempore**

26 **Judgment provided:**

10 March 2016



29 **HEADNOTE**

31 *Application to vary ancillary relief order - Periodical payments for children - Education and*
32 *medical expenses for children - Court's duty when approving consent order.*
33
34

35 **EX TEMPORE JUDGMENT**
36

37 1. This is an Ex Tempore Judgment. Although a consent order has been reached by
38 the parties at Court today, it may be helpful for there to be a summary of
39 background that the Court has considered when determining that it is appropriate

1 for the said order to be approved. A copy of the transcript of this Judgment will be
2 made available to them after it has been perfected.

3

4 2. I have before me two summonses. The first is the Summons of SD, the Petitioner
5 wife, dated 24 December 2014. In her Summons she seeks:

6

(i) an order for the Respondent to pay outstanding sums due under paragraph
2 of the Consent Order dated 21 October 2005 within seven days, failing
which leave to be granted to her to issue a writ of sequestration against the
Respondent pursuant to the Grand Court Rules ("GCR") O. 46, r.5;

10

(ii) an order for the Respondent to pay sums outstanding pursuant to
11 paragraph 3 of the said Consent Order within seven days, failing which
12 leave be granted to her to issue a writ of sequestration; and

13

(iii) an order that the Respondent comply with paragraph 2 of the said Consent
14 Order by reinstating the payments by standing orders within seven days of
15 the order.

16

17 3. The second Summons is one filed by GD, the Respondent husband, which he filed
18 on 4 March 2015. In that Summons he seeks:

19

(i) a reduction in the amount of child maintenance and a change in the
20 method of payment for C ordered under paragraph 2 of the said Consent
21 Order;

1 (ii) a variation of paragraph 3 of the said Order so that there be a requirement
2 for the Petitioner to liaise, and for the parties to agree, in advance of
3 incurring all non-urgent medical, dental and optical expenses in relation
4 to the children and to provide him with copies of all receipts/invoices in
5 respect of any pre-agreed expenses on a monthly basis; and

6 (iii) an order that any orders for child maintenance and medical, dental and
7 optical expenses last until the respective child reaches the age of 18 or, if
8 attending full-time tertiary education, until the age of 21.
9

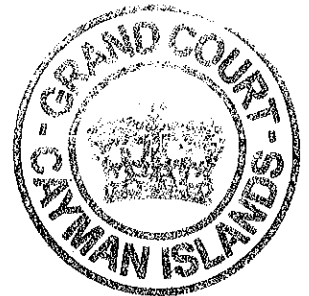
10 4. I hope that the parties will not be offended if from now on I refer to them, for
11 convenience, as SD and GD.
12

13 **BACKGROUND**

14 **THE PARTIES**

15 5. The parties were married in the Cayman Islands on 21 May 1994. There are two
16 children of the marriage; C who is aged 18 and L aged 14. Although there is a
17 joint custody order in place, it is evident that the mother, pursuant to a care and
18 control order, has since the divorce been the main physical carer of the children.¹
19 C is has been in full-time education at colleges in the United States since August
20 2014, having started at her present college in New York in the Fall of 2015. L is
21 attending a private high school on Grand Cayman.
22
23

¹ Joint custody, care control Order made by Chief Justice Smellie and 21 October 2005.



1 **THE PROCEEDINGS**

2 6. On 2 March 2005 SD filed her Petition for the dissolution of the marriage. On 12
3 April 2005 an order was made proving the Petition.

4

5 7. The issues surrounding ancillary relief were resolved in a Consent Order
6 approved by Chief Justice Smellie on 21 October 2005. For the purpose of this
7 hearing I need not set out the full terms of that Order. However, I highlight that:

8 (i) Paragraph 2 of the said Order provided that GD shall pay maintenance to
9 SD in respect of the two children of the marriage in the sum of CI\$3,500
10 per month to be paid monthly on the last working day of each month by
11 standing order until (C) and (L) each respectively reach the age of
12 eighteen years or until each respectively have completed their further
13 education and any other professional or other training at University or
14 similar institution. The paragraph also provided that there should be no
15 future request by SD for an increase in the amount of maintenance per
16 month of CI\$3,500; and

17 (ii) Paragraph 3 of the said Order provided that SD and GD should equally
18 bear the cost of the educational, medical, dental and optical expenses of
19 the children of the marriage until they respectively reach the age of
20 eighteen years or until they respectively have completed their further
21 education and any other professional or other training at University or
22 similar institution.

23



1 8. The Decree of Dissolution of Marriage was certified by the Chief Justice on 21
2 October 2005.

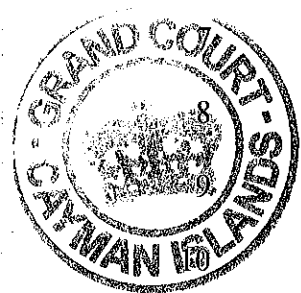
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4 9. Regrettably, there have been a number of applications made to Court concerning
5 child arrangement orders and child finance orders. On 24 June 2011 GD filed a
6 Summons seeking various orders. Relevant to the issues before me at paragraph 2
GD sought an order requiring SD to keep him informed about the children's
health, doctors' appointments and general well-being, to obtain his prior consent
for medical procedures and to provide him with copies of the reports and results.
He also sought an order varying paragraph 2 of the October 2005 Consent Order,
11 reducing maintenance from CI\$3,500 to CI\$2,500. GD then filed an Amended
12 Summons dated 11 July 2011 in which he sought an order that the variation
13 application be adjourned for a hearing in September 2011. That application for a
14 variation of the consent financial orders does not appear to have been considered
15 by the Court, as the parties thereafter concentrated on the ongoing dispute about
16 child arrangement orders. The child arrangement orders issues at the time,
17 primarily dealing with contact, were dealt with in a comprehensive fashion in the
18 orders of Hall J. dated 2 October 2013 and 16 October 2013.

19

20 10. The present Summonses came before McMillan J. on 11 March 2015. He made an
21 order adjourning the Summonses and directed that both be listed to be heard on
22 the same date. The Summonses were listed to be heard today.

23

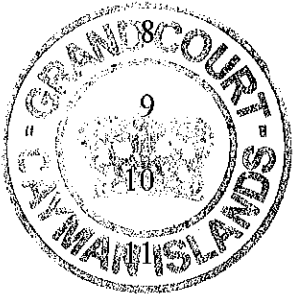


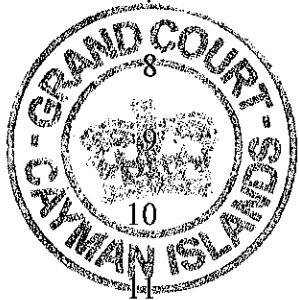
1 11. I have reviewed the relevant affidavits before me, namely those sworn by SD on 2
2 March 2015, 29 February 2016 and 4 March 2016 and those by GD sworn on 9
3 March 2015 and 2 March 2016.
4

5 **SD'S CASE SET OUT IN HER AFFIDAVITS**

6 12. In her affidavit sworn on 2 March 2015 SD claimed that the arrears of CI\$10,500
7 had accrued for child maintenance monthly payments of CI\$1,750 for C as they
8 had not been paid since September 2014. She also claimed that GD had failed to
9 make his contributory payments totalling \$9,415.30 towards the educational,
10 medical, dental and optical expenses of the children. It was further alleged that, in
11 breach of the 2005 order, he unilaterally cancelled the standing order in April
12 2014, and instead he made regular payments for the child maintenance for L into
13 her bank account via internal transfer. It was contended that the non-payment was
14 drawn to GD's then attorneys by letter on 9 December 2014.
15

16 13. GD's current attorneys replied by letter on 12 December 2014 stating that their
17 client was "*more than prepared to meet his obligations towards his children*" and
18 that he had "*repeatedly raised certain issues regarding the manner in which your*
19 *client seeks payment of the children's medical expenses.*" Concern was expressed
20 in the letter that the medical expenses being incurred appeared unusually high and
21 that GD wished to see a detailed breakdown of the medical expenses incurred.
22 Concern was also expressed that SD would delay requesting payment of any
23 expenses with the result that large immediate payments were being claimed. In





1 the letter GD requested that detail should be given in advance of all non-urgent
2 medical treatment and that a claim for medical expenses should be made each
3 month supported by documentation. In the letter GD's attorneys stated that child
4 maintenance payments had for L had been paid up until November 2014 and that
5 the only arrears were CI\$5,250 in relation to the payments for C in September,
6 October and November 2014. It appears that GD was of the view that as C had
7 started College she no longer resided with SD and therefore he did not need to
8 make payments. He said that the total expenses relating to C's upkeep (excluding
9 tuition) were US\$7,355.78 per quarter and that GD's share was US\$3,677.89
10 (US\$1,225.96/month or CI\$1,029.80). It was therefore submitted in the letter that
11 GD need not make payment directly to SD as he had been making maintenance
12 payments of CI\$1,029.80 per month and, as a consequence, he had been placing
13 CI\$720.20 in a separate account for additional expenses which may arise. It was
14 submitted that the CI\$1,750/month order should cease, although there could be
15 discussion about a reduced payment being made.

16
17 14. SD's attorneys replied by letter on 19 December 2014 in which it was stated that
18 she had contacted GD in advance concerning medical treatment, highlighting
19 difficulties in obtaining funds from him to pay invoices in advance. It was
20 suggested that moving forward she would advise GD in advance of all non-urgent
21 medical treatments via email, provide him with relevant invoices on the last
22 business day of each month and that GD should then make payment of his share
23 within seven days of receipt. Payment of medical expenses totalling US\$8,059



1 was sought pursuant to paragraph 3 of the 2005 Consent Order. In the letter the
2 attorneys highlighted that it had been inappropriate for GD to unilaterally vary
3 paragraph 2 of the October 2005 order by him not making child maintenance
4 payments and his cancelling the standing order. It was stated that a payment of
5 arrears assessed at CI\$5,250 should be paid. It was suggested that SD still had to
6 incur expenses for C which included pocket money, clothing, extra school-related
7 items, and airfares for C to visit Cayman. The letter also highlighted that the
8 children were covered on SD's health insurance for which no contribution was or
9 had been sought from SD.

10
11 15. In her affidavit sworn on 29 February 2016 SD claims that the arrears of child
12 maintenance for C ordered under paragraph 2 of the 2005 Consent Order had
13 increased to US\$11,680 (CI\$9,577.60). SD claims that SD was US\$3,517 in arrears
14 for the medical expenses for both children pursuant to paragraph 3 of the said
15 Order. It is contended that although GD stated that he had set up a new standing
16 order for payments, any payments that were being made were made inconsistently
17 and not on the last working day of each month.

18
19 16. SD commented that McMillan J. had directed at the hearing on 11 March 2015
20 that GD was required to bring all arrears up-to-date for his Summons was to be
21 heard. There is no reference to that direction in the sealed Court Order from that
22 day or in the Judge's Minute of Order. SD also claims that paragraph 5 of
23 Henderson J.'s Order dated 20 July 2011 required there to be a material change of

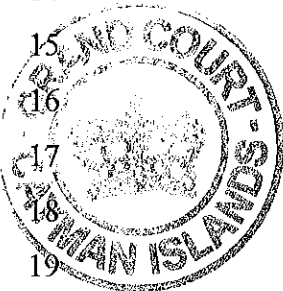
1 circumstances before any application to vary the October 2005 Consent Order
2 could be made. However, on close consideration of Henderson J's Order that
3 direction only related to paragraph 1 to 4 of his order which dealt with child
4 arrangement and not financial matters. Henderson J.'s direction is not applicable
5 to the present Summonses.

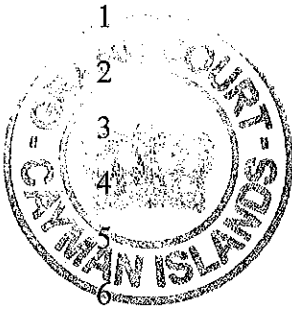
6
7 17. At paragraph 13 in her affidavit SD outlines the payments to C's college which
8 she views as being a part of the educational costs totalling US\$7,355.78. At
9 paragraph 14 SD lists the nature of additional expenses for C which are quantified
10 in an exhibited spreadsheet.

11
12 18. SD suggests at paragraph 19 in her affidavit that a way forward would be:

13 (i) for the parties *"to equally bear the cost of the educational*
14 *cost of the children, which would include all education related*
15 *expenses as itemised on the relevant educational institution's*
16 *invoice, until each child respectively reach the age of eighteen*
17 *years or until they respectively have completed their further*
18 *education and any other professional or other training at*
19 *university or similar institution. For the avoidance of doubt this*
20 *would include all costs and those associated with the children's*
21 *education;"*

22 (ii) for GD to pay SD *"CI\$2,750 per month per child which*
23 *would include expenses such as medical, counselling, dental and*
24 *optical expenses; all other extra-mural activities; educational*
25 *necessities (uniforms, school supplies, costumes etc.); school trips*
26 *(including overseas trips); health insurance; summer camps;*
27 *travel to/from the relevant educational institution, university or*

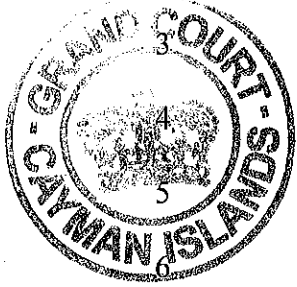




1 *similar institutions; clothing; other daily essentials and spending*
2 *monies. This would also include child support as set out in*
3 *paragraphs 2 and 3 of the Order except educational costs;" and*
4 (iii) for the above educational expenses to be "*made directly to*
5 *the relevant educational institution, within the terms of payment*
6 *required by that institution"* and for the payments outlined in
7 paragraph (ii) to be paid by standing order on the last working day
8 of each month. It was also suggested that "*the scholarship funds*
9 *will be set off against the total educational costs prior to the*
10 *parties paying their equal share of such costs."*
11

12 **GD's CASE SET OUT IN HIS AFFIDAVITS**

13 19. In his affidavit sworn on 9 March 2015 GD stated that he had not unilaterally
14 decided to cancel the standing order, because his previous bank account had been
15 closed and he had problems setting it up with his new bank. He contended that,
16 although he may not have made the child payments for C directly to SD, he had
17 been making payments "*in a different form*" from September 2014 as a
18 consequence of the changing circumstances for C due to her attendance at college.
19 SD was of the view that C was no longer residing with her mother and so he was
20 paying his share of the vast majority of C's living expenses, tuition and general
21 education costs. GD contends that his payments also went towards his
22 contribution for C's housing, meal plans and health insurance costs. GD reiterated
23 the detail, contained in the 12 December 2015 letter from his attorneys to SD and
24 as set out in paragraph 13 above, about C's expenses. SD reiterated that his
25 monthly contribution to C's expenses should be CI\$1,029.80. GD stated that
26 pursuant to SD's request he had made those payments directly to the college. He



1 indicated that he had been contributing CI\$1,029.80/month and paying the
2 balance of approximately CI\$700 into a separate bank account for C's benefit and
3 it could be used to cover additional expenses that may arise in relation to her
4 upkeep. GD contended in the affidavit that it would be unreasonable to expect
5 him to make monthly child maintenance payments of CI\$1,750 directly to SD and
6 at the same time make the additional contribution towards C's educational and
7 living expenses at college.

8
9 20. In the affidavit GD expressed concern about the nature of and level of the
10 children's medical expenses, a number of which he says he had not been
11 consulted about prior to the treatment being given and costs incurred. GD stated
12 that he had settled all of the outstanding medical expenses claimed by SD, save
13 for counselling sessions, and had made a payment totalling US\$8,000.

14
15 21. In his affidavit sworn on 2 March 2016, GD reiterated his refusal to pay fees for
16 counselling as he was not satisfied that it was required. He also commented that
17 the "*billing memos*" submitted by SD to him included expenses that he felt were
18 covered by the general monthly maintenance figure, for example monthly transfer
19 transit transportation tickets to New York, flights from New York to the Cayman
20 Islands. GD stated that the US\$3,517 claimed by SD for miscellaneous/education
21 expenses were already covered in general monthly maintenance and should not be
22 duplicated. He highlighted his view that medical expenses were still not pre-

1 agreed and that he received sporadic invoices for unexplained/illegitimate
2 expenses.

3
4 22. In the affidavit GD stated that SD was misrepresenting what McMillan J. had said
5 about the hearing of his Summons and the clearing of any arrears. GD indicated
6 that he had taken on board some of McMillan J.'s comments and made some
7 payments. As a consequence he felt he had brought the arrears up-to-date by
8 paying the sum of US\$4,998 to SD. This amount was made up of the US\$833 he
9 had been placing each month in a separate bank account for C's benefit from
10 September 2014 to February 2015."² GD said that he made similar payments for
11 March and April 2015 until she ended her attendance at her previous college.

12
13 23. GD stated that from May 2015, save for in November and December 2015, he
14 made child maintenance payments of CI\$1,750 for C in line with paragraph 2 of
15 the October 2005 Consent Order. GD said that in the summer of 2015 he paid
16 US\$8,716 towards C's educational costs for the first semester at her present
17 college.

18
19 24. GD said in his affidavit that the first time SD has given him any detail about the
20 scholarship C had been awarded by a local business entity was in SD's affidavit
21 of February 2016. In the affidavit GD stated that he had learnt that C had received
22 a full scholarship from a third party, a fact which he said C and her mother had at

² US\$833 was the difference between CI\$1,750 per month and what he was paying to C's College (excluding tuition fees) for upkeep (2134-1301 = 833).

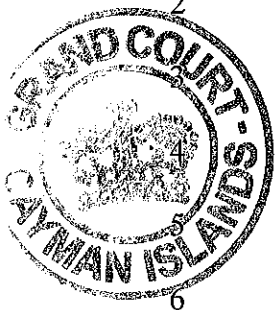


1 the time failed to bring to his attention. When asked, he said that C informed him
2 that she had received a scholarship, which all parties agree is in the region of
3 US\$40,000 per annum. As a consequence, GD did not make payments for
4 November and December 2015. During today's hearing it became clear from
5 emails exhibited to SD's affidavit sworn on 4 March 2016 that in July 2015 he
6 was aware that there had been a scholarship granted. For the purpose of today's
7 hearing I need not make any finding about the date and nature of disclosure given.

8
9 25. GD said in his affidavit that on 26 February 2016 he received a billing memo from
10 SD which provided some detail about the scholarship amount and how she had,
11 without consulting him, utilised some of the amounts owed to him to offset other
12 expenses which she said C had incurred.

13
14 26. In his affidavits GD denied that there were arrears of maintenance of US\$11,680
15 and medical expenses of US\$3,517 as alleged at paragraph 3 in SD's latest
16 affidavit. He contended that he has made all maintenance payments save for
17 November and December 2015.

18
19 27. GD contends that, although he has been promoted from Associate to salaried
20 Partner at his firm, he had not received a substantial increase in his salary. He
21 stated that his outgoings had increased as he now has two children aged three and
22 five, as well as a substantial mortgage due to him having to obtain a new home to
23 accommodate his growing family. SD confirmed that she had been promoted to



1 Equity Partner in her firm and GD claimed that she has a substantially higher
2 income than him and that she is married to a partner in the same firm. GD
expressed his view that C is off island for eight to nine months of the year and
that L spends every other weekend at his home, as well as half of the long
holidays.

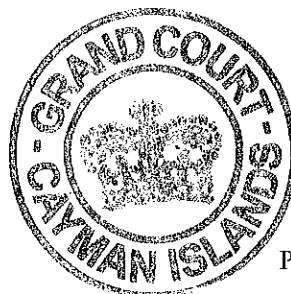
7 CONCLUSION

8 28. There has been a change of circumstances. It is quite clear that it requires a
9 variation, especially in relation to C, to at the very least the mechanics of the
10 financial orders made around ten years ago, back in 2005. The parties, ably
11 assisted by Counsel, have spent a considerable amount of time outside of Court
12 this morning in productive negotiations and, to their credit, have reached a
13 comprehensive consent order. They have taken me carefully through the terms of
14 the draft order and I have suggested very minor amendments to the wording.
15 When I considered the provisions of the consent order, I had regard to the
16 background which I have already outlined. I need not make any findings of fact in
17 relation to that background or the areas of factual dispute, but I have set out the
18 background and each party's case in this Ex Tempore Judgment as that summary
19 may assist any court in the future. When I say that, I truly hope that this is the
20 final chapter of this family's lengthy involvement in court proceedings resulting
21 from the parties' divorce. What is clearly needed is better and timely
22 communication and disclosure between the parties, which would hopefully
23 prevent these issues arising again in the future.

1 29. I still have a duty to consider the content of the draft consent order and to satisfy
2 myself that it is an appropriate order before approving it. The Court approving a
3 consent order is not simply a rubber stamping exercise. As the order to be varied
4 was made within divorce proceedings, pursuant to s. 19 Matrimonial Causes Law
5 (2005 Revision) "the Law", I must have regard first of all to the best interests of C
6 and L. I must do so when I also have regard to the responsibilities, needs,
7 financial and other resources, actual and potential earning power and deserts of
8 the parents. Paragraph 23 of the Law grounds my jurisdiction to vary and provides
9 that either party may make application for variation of any order made under s.21
10 of the Law and this includes varying an order made under s.21 (f) for periodical
11 payments for the benefit of a child of the marriage.

12
13 30. The terms of the consent order are as set out in the draft which is appended to this
14 Ex Tempore Judgment. I am satisfied that the proposed consent order meets the
15 changed circumstances of C. I am also satisfied that it reflects the responsibility
16 each parent has to ensure that both C's and L's day-to-day well-being, including
17 health, is maintained. The submitted consent order sets up a sensible mechanism
18 for payments as well as tailoring the types of payment to be made to meet the
19 circumstances that now exist. It is hoped that this consent order, which the parties
20 understandably feel will better enable them to manage their financial
21 arrangements, will give more certainty and reduce the likelihood of dispute and
22 resultant further proceedings.

23



1 31. Accordingly, I approve the consent order. I commend both parties and Counsel
2 for reaching this sensible and comprehensive agreement at Court today.

3
4
5

A handwritten signature in black ink, consisting of a large loop at the top and a long, horizontal stroke extending to the right.

6 **Honourable Mr. Justice Richard Williams**
7 **JUDGE OF THE GRAND COURT**

