

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN IN GEORGE TOWN**
3 **CAUSE NO. FAM 116 OF 2016**
4
5

6 **AB**

Petitioner

7
8 **AND**

9
10 **SB**

Respondent

11
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13
14 **Appearances:** The Petitioner in person/Mrs Brooks-Hurst QC amicus¹
15 Miss Stacy Thompson for the Respondent
16

17 **Before:** Gunn J (Actg)

18
19 **Heard:** 23rd and 24th January 2018 and 16th February 2018
20

21 **Petitioner's written**
22 **submissions filed:** 24th January 2018 and 2nd March 2018
23

24 **Respondent's written**
25 **submissions filed:** 2nd March 2018
26

27 **Circulation of**
28 **Draft Judgment:** 26th March 2018
29

30 **Date of Judgment:** 16th May 2018
31

32 **Date of Revised**
33 **Judgment:** 22nd May 2018
34
35

36 **This Judgment was delivered in private, but the Judge hereby gives leave for it to be**
37 **published.**
38

39 *The Judgment in this matter is being distributed on a strict understanding that in any report no*
40 *person other than the attorneys (and any other person identified by name in the Judgment itself)*
41 *may be identified by name or location and in particular the anonymity of the children and the*
42 *adult members of their family must be strictly preserved.*
43



¹ Mrs Brooks-Hurst QC appeared on 24th January and 16th February and remains amicus curiae for the delivery of the judgment.

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HEADNOTE

Financial Provision – Ancillary relief – conduct – bigamy
Financial Provision – Ancillary relief – special contribution
Financial Provision – ancillary relief – spousal maintenance – clean break
Financial Provision – variation of maintenance pending suit

AMENDED JUDGMENT²

1. The court is dealing with -

- (i) The Respondent's summons for enforcement of the order made March 2017 for maintenance pending suit ("MPS");
- (ii) The Petitioners application for a downward variation of the MPS; and
- (iii) the remaining issues of ancillary relief within divorce proceedings.

THE BACKGROUND/PROCEEDINGS

2. The parties, to whom for convenience (and without intending any discourtesy or disrespect) I shall refer to respectively as "the husband" and "the wife", were married on 15th September 1985. Six children were born of this marriage; the youngest, twin daughters age 15, are the only minor children and reside with their mother. The parties resided in the FMH until December 2011, at which time the husband left the matrimonial home and the parties ceased living as husband and wife.



² See paragraphs 79 and 86.

1 4. On 9th March 2017, by a consent order, the wife withdrew her answer to the
2 husband's petition, and both the husband's petition and the wife's cross-
3 petition were proved. The matters pleaded are therefore deemed facts (see
4 **Mercer v Harmans [2003] CILR 510**), namely that –
5

6 (i) The husband and the wife quarrelled frequently. On at least one
7 occasion the police were called;

8 (ii) The wife stopped working 25 years ago and has refused to
9 return to work since, despite being physically able to do so;

10 (iii) The husband has repaid funds unlawfully taken by the wife from
11 her employers.
12

13 5. On that same date Williams J ordered the husband to pay split child
14 maintenance and spousal maintenance of CI\$1,937 per month (\$968.50 on the
15 1st and 15th of every month commencing 15th March 2017), to maintain the
16 mortgage payments for the FMH and pay the utilities bills up to a total of
17 CI\$310.00 per month.
18

19 6. On 10th May 2017 the husband filed a summons seeking a downward variation
20 of the MPS.
21

22 7. On 5th June 2017 the wife filed a summons for arrears and Attachment of
23 Earning's Order
24

25 8. On 25th July 2017 Carter J (Actg.) adjudged the arrears owing to be
26 CI\$6,565.50. The husband was ordered to pay the arrears in instalments of
27 \$1,000 per month until the arrears are liquidated. Carter J (Actg.) also
28 affirmed the split child/spousal maintenance order made by Williams J. The
29 husband's summons for variation was adjourned to allow him to produce
30 details of his retirement options.
31



1 9. The matter was set down for hearing for final ancillary relief on 29th November
2 2018. Due to the late service of the notice of the hearing on the husband, the
3 hearing was adjourned. The matter was set down for hearing on 23rd and 24th
4 January 2018. The husband's application for downward variation of the MPS
5 and arrears as ordered by Carter J (Actg.) was adjourned to 14th December
6 2017.

7
8 10. On 14th December 2017 the matter returned to court for the hearing of the
9 husband's application for downwards variation of MPS and the wife's
10 application for arrears and AEO, which was filed in the interim. I heard the
11 applications and found that the wife had failed to prove that the husband was
12 employed for the purposes of an AEO. I made no finding on the matter of
13 arrears, adjourning that matter together with the husband's application to
14 vary the MPS and arrears to be heard at the final ancillary relief hearing. The
15 adjournment was ordered so that the husband could obtain further evidence
16 from his former employers and pension plan provider as well as up-to-date
17 bank statements. It was also ordered that the husband was prohibited from
18 selling any motor vehicles until further order of the court.

19
20 11. The final hearing commenced on 23rd January 2018², but was adjourned on
21 the second day for the wife to obtain valuations on the properties (having
22 applied for legal aid for the purpose that same day). The matter returned to
23 court on 16th February 2018, at which time I was provide evidence of the
24 valuations obtained by both parties. I was advised that the husband was not
25 calling any evidence, and relies solely on his affidavits previously filed.

26
27 12. Counsel provided final submissions in writing on 2nd March 2018.

28
29 13. The husband is 62 years old and the wife 57 years old. Both are Caymanian.

² Mrs Brooks-Hurst QC appeared in the afternoon of 24th January 2018 to act as amicus curiae for the husband

1 **THE LAW AND PRINCIPLES TO BE APPLIED**
2

3 14. The law pertaining to the making of periodical payment orders and to the
4 division of matrimonial assets is governed by section 19 of the Matrimonial
5 Causes Law (2005 Revision) ("the Law") , which provides:
6

7 *"in dealing with all ancillary matters arising under this law the court*
8 *should have regard first of all to the best interests of any children of*
9 *the marriage and thereafter to the responsibilities and financial and*
10 *other resources, actual and potential earning power and deserts of*
11 *the parties."*
12

13 15. Section 19 must be read in conjunction with section 21 of the Law. The
14 relevant parts which apply to my consideration are as follows;
15

16 *"at the time of pronouncing a decree under this law, the court shall,*
17 *as appropriate, make order for;*

18 *(a) The custody, care and control of the children of the marriage;*

19 *(b) The distribution of matrimonial property, including the*
20 *matrimonial home;*

21 *(c) ...*

22 *(d) ...*

23 *(e) Making financial provisions from the property of either spouse*
24 *for the children of the marriage and to the other spouse.*

25 *(f) Providing for periodical payments to be made by either spouse*
26 *for the benefit of the children of the marriage and the other*
27 *spouse: and*

28 *(g) costs."*
29
30



1 16. Section 22(1) of the Law provides for the making of child maintenance orders
2 until the child reaches the age of 21 if the child is receiving education.
3

4 17. Sections 19 and 21 of the Law give the court a wide discretion when it comes
5 to financial provision and any awards made to the parties. In deciding whether
6 to exercise its power under section 21, and in which manner, the court shall
7 consider what is fair in all the circumstances of the case. In addition to those
8 matters set out in section 19 of the Law, the courts in the Cayman Islands have
9 also been guided by the relevant factors raised in section 25 (2) of the English
10 Act³ which include:

- 11 (i) the income earning capacity, property and other financial
12 resources which each of the parties has or is likely to have in the
13 foreseeable future;
- 14 (ii) the financial needs, obligations and responsibilities which each of
15 the parties to the marriage has or is likely to have in the
16 foreseeable future;
- 17 (iii) the standard of living enjoyed by the family before the breakdown
18 of the marriage;
- 19 (iv) the age of each party to the marriage and the duration of the
20 marriage;
- 21 (v) any physical or mental disability of either of the parties to the
22 marriage;
- 23 (vi) the deserts of the parties, including contributions made by each of
24 the parties to the welfare of the family (to include contributions
25 made by each of the parties to the accumulation of matrimonial
26 assets as well as non-matrimonial property) and any contribution
27 made by looking after the home caring family;
28



³ Matrimonial Causes Act 1973

1 (vii) the value to either of the parties to the marriage of any benefit (for
2 example a pension) which, by reason of the dissolution of the
3 marriage, the party will lose the chance of acquiring; and
4 (viii) the conduct of each of the parties if that conduct is such that it
5 would in the opinion of the court be inequitable to disregard.
6

7 18. The Court of Appeal in **McTaggart v McTaggart [2011 2 CILR 366]** set out
8 the approach to be taken to the case law emanating from England and Wales:
9

10 *"40. We were referred by the parties, both in the skeleton arguments*
11 *lodged on their behalf and in oral submissions made in the course of*
12 *the hearing, to a plethora of judicial decisions in England and Wales*
13 *and to a few decisions in this jurisdiction. Observations made by*
14 *experienced judges are, of course, of assistance to an understanding*
15 *of the application of section 19 factors; but it must be kept in mind*
16 *that most cases in this field are decided on their own facts and that*
17 *there is a risk that extensive citation may confuse rather than*
18 *illustrate. It is not necessary, I think, to look further than the decision*
19 *of the House of Lords in Miller – and in particular the speeches of Lord*
20 *Nichols and Baroness Hale – in order to identify the principles.*
21 *Leaving aside in this context, the best interests of the children, which*
22 *(as I said) are paramount, there are three strands: need,*
23 *compensation and sharing [2006] 2 AC 618 at paragraphs [10]–[16]*
24 *per Lord Nichols and paragraphs [138]–[143] per Baroness Hale. The*
25 *ultimate objective, as Baroness Hale explained at paragraph [144], is*
26 *to give each party an equal start on the road to independent living.*
27 *She said this:*
28
29
30



1 *'[144] thus far, in common with my neighbour and*
2 *learned friend Lord Nicholls of Birkenhead, I have*
3 *identified three principles which might guide the court*
4 *in making an award: need, generously interpreted,*
5 *compensation and sharing. I agree that there cannot*
6 *be a hard and fast rule, but whether one starts with*
7 *equal sharing and departs when need or compensation*
8 *supplied a reason to do so, or whether one starts with*
9 *need and compensation and shares the balance, such*
10 *will depend on how far future income is to be shared as*
11 *well as current assets. In general, it can be assumed*
12 *that the marital partnership does not stay alive for the*
13 *purpose of sharing future resources unless this is*
14 *justified by need or compensation. The ultimate*
15 *objective is to give each party an equal start on the*
16 *road to independent living.*"



1 19. Chadwick P in **McTaggart** made it clear that having regard to the
2 considerations of need, compensation and sharing, if appropriate provisions
3 could be made by order under section 21 (b) and/or 21 (e) of the law, the court
4 should not make a spousal periodic payment order without good reason:
5

6 *"43. It seems to me reasonably clear (and I would so hold) that, if*
7 *satisfied that an order under section 21 (b) of the law (all the*
8 *combination of orders under section 21 (b) and (b) would make*
9 *appropriate provisions for the relevant party in respect of the three*
10 *strands (need, compensation, and sharing), the court should not,*
11 *without good reason, make an order for periodic payments under*
12 *section 21 (f). To make an order for periodic payments – in*
13 *circumstances where such an order is unnecessary because*
14 *appropriate provisions can be made by the disposition matrimonial*
15 *property either (under section 21 (b) or by a capital adjustment from*
16 *the separate property of the other party (under section 21 (e)) –*
17 *would be inconsistent with the principles of clean break ... The*
18 *ultimate objective is to give each party an equal start on the road to*
19 *independent living."*
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1 20. Given that there are still 2 minor children for which arrangements need to be
2 made I also have in mind William J's decision in **E(R) v D(C) [2016(1) CILR**
3 **55]** –
4

5 *"28. ...the position in the Cayman Islands is that the court should have*
6 *regard first to the best interests of any children of the marriage when*
7 *considering all of the other s.19 factors. The best interests of a*
8 *relevant child are the first thing to which the court should direct itself.*
9 *In the absence of the word "paramount," which appears in other*
10 *pieces of legislation, I'm not satisfied that section 19 of the law makes*
11 *the interests of the children paramount. The effect of the requirement*
12 *in section 19 is that the best interests of any children of the marriage*
13 *are to be regarded as a consideration of first importance which must*
14 *be borne in mind throughout when the court goes on to consider the*
15 *responsibilities, needs, financial and other resources, actual and*
16 *potential earning power and the deserts of the parties... A general*
17 *principle is that a home for minor children is normally a main*
18 *requirement and this is consistent with their best interests as a first*
19 *consideration."*
20

21 21. I have carefully considered the authorities cited above. One of the core issues
22 raised by the husband in this matter is that there should be clean break, with
23 the husband receiving an increased share of the matrimonial assets because –
24 (a) he has made a special contribution to the marriage; and
25 (b) he has been financially supporting the wife by various means
26 since the breakdown of their marriage seven years ago.
27



1 The wife argues that -

- 2 (a) the husband entered into a bigamous marriage in 2011 which is
3 so egregious that she should receive a greater proportion of the
4 matrimonial assets; and
5 (b) due to her inability to work, an order for monthly spousal
6 maintenance in the amount of CI\$1,000 per month is
7 appropriate.
8

9 *SPECIAL CONTRIBUTION*
10

- 11 22. With regards to the husband's submission that he made a special contribution
12 deserving of the lion's share of the matrimonial assets, the Court of Appeal in
13 **Gordon v Watler CICA (Civil) 13/2014** cited with approval the decision of
14 the Court of Appeal of England and Wales in **Charman v Charman (No.4) [**
15 **2007] 1 FLR 1246; [2007] EWCA Civ 503-**
16

17 *"16....In the judgment of the court, delivered by Sir Mark Potter,*
18 *President of the Family Division, it was explained (at paragraphs*
19 *[78]-[80] that special contributions cases were really limited to*
20 *circumstances in which the wealth was so large that there could be*
21 *no question but that equal division would more than provide for the*
22 *elements of need and compensation. In such a case it might be*
23 *appropriate to depart from the principle of equal sharing which*
24 *would govern normally the approach to the sharing element of the*
25 *three strands in circumstances where equity required some*
26 *recognition to be given the special contribution made by one party or*
27 *the other. The court referred to the decision of Lord Justice Thorpe in*
28 *Lambert V Lambert [2002] EWCA Civil 1685,2003, 1 Fam LR 139 at*
29 *para. [52]; in which it had been pointed out that there may be cases*
30 *where the product alone justifies the conclusion of a special*
31 *contribution, but that, absent some exceptional and individual quality*



1 *in the generator of the fortune, the case of a special contribution must*
2 *be hard to establish. The president, Sir Mark Potter, went on to say*
3 *this (at paragraph [80] of his judgement in Charman):*

4
5 *"[80] in such cases, therefore, the court will no doubt have*
6 *regard to the amount of the wealth, and in some cases,*
7 *including the present, its amount will be so extraordinary*
8 *as to make it easy for the party who generated it to claim*
9 *an exceptional and individual quality which deserves*
10 *special treatment. Often, however, he or she will need*
11 *independently to establish such quality, whether by genius*
12 *in business or in some other field. Sometimes, by contrast,*
13 *it will be immediately obvious that the substantial wealth*
14 *generated during the marriage is a windfall. The proceeds,*
15 *for example of an anticipated sale of land development or*
16 *an embattled take-over of the party's ailing company*
17 *which is not the product of a special contribution."*

18 *The president went on (at paragraph [81]) to refer to the*
19 *observations of Baroness Hale in Miller (at paragraph [146]), in*
20 *which she had indicated that it was only if there is such a disparity in*
21 *their respective contributions to the welfare of the family that it*
22 *would be inequitable to disregard that this should be taken into*
23 *account in determining their shares."*



- 1 23. I am satisfied on the evidence before me that each party contributed
2 financially to the household during their first 15 years of marriage, whether
3 by paying the mortgage or bills. Their support of one another came in other
4 forms too: I am satisfied that the wife was financially supporting the husband
5 during his training to become a pilot, and the husband paid off a significant
6 compensation order made following the wife's conviction for theft from her
7 employer 30 years ago. The wife assisted in running the husband's trucking
8 business. Once, the husband took up employment as a pilot his contribution
9 to the household was more significant than that of the wife. The wife worked
10 on and off for a further 10 years and was involved in raising the children. I
11 have not been provided with evidence to be able to quantify that difference in
12 their direct financial contributions. However, the husband's role as the
13 primary/sole breadwinner and the various roles of the wife are reasonable
14 acts to further the welfare of the family as a whole. The husband's contribution
15 does not constitute a special contribution.
16
- 17 24. It has not been disputed that the husband has been the sole provider for the
18 family since at least 2011 and has continued to provide financial support for
19 them even after he left the matrimonial home. Whether that support was
20 sufficient to maintain the family and the FMH has been strongly contested.
21
- 22 25. In April 2017 the husband estimated his salary to be \$9,000 (Husband's
23 affidavit dated 3rd April 2017, paragraph 24).
24
25
26



1 26. It is not uncommon for one party to a marriage to be working while the other
2 is at home, for any number of reasons, including voluntary unemployment.
3 The husband now seeks to assert that the wife should not unfairly benefit from
4 his contribution while she was unemployed. There is no evidence before me
5 to suggest that the situation which developed was anything other than which
6 was intended by the parties at the time the marital assets were acquired, i.e.
7 the parties accepted, either expressly or by inference, that the husband should
8 be the sole breadwinner for the family. The husband cannot now seek to
9 reinterpret events in order to claim a special contribution.

10
11 27. I find that the husband's larger financial contribution in this instance does not
12 fall within the ambit of "special contribution" – there is nothing exceptional
13 nor an individual quality to his contribution that would cause an equal division
14 of the assets to be inequitable.

15
16
17 *CONDUCT CASES*

18
19 28. The conduct of a party is only relevant in exceptional circumstances in which
20 it would be inequitable to disregard it (see **Miller v Miller; McFarlane v**
21 **McFarlane [2006] UKHL 24; [2006] 1 FLR 1186**).

22
23 29. The Court of Appeal of England and Wales in **Whiston v Whiston [1995] 2**
24 **FLR 268** held that the crime of bigamy strikes at the heart of the institution of
25 marriage and, therefore, the court can legitimately have regard to the nature
26 of the crime in its factual context of the case when determining what is
27 equitable.



1 30. The wife has produced a marriage license from Dade County Court records,
2 recording a marriage on 19th January 2011 between a person from the Cayman
3 Islands of the same name and date of birth as the husband, and purportedly
4 resident in Miami, Florida. The wife gave evidence that the husband was in
5 Miami that weekend and that she found the relevant documentation and
6 challenged the husband about the marriage. To her knowledge, the marriage
7 was annulled in March 2011. Her evidence was that the DPP commenced
8 criminal proceedings indicting the husband for bigamy, but that the
9 prosecution was discontinued at the wife's request, as a result of his pleas to
10 her to discontinue. The husband has not produced any evidence to contradict
11 or cast doubt on the veracity of the wife's claim. On the evidence before me, I
12 find that it is more likely than not that the husband participated in a marriage
13 ceremony in Miami while still married to the wife and prior to him leaving the
14 matrimonial home.

15
16 31. I find that the husband's conduct was so egregious that it would be inequitable
17 to disregard it; however, I am mindful that the wife has not asserted that the
18 husband's behaviour caused the breakdown of the marriage. This is relevant
19 to determining what distribution is equitable in those circumstances.
20
21

22 *FUTURE INCOME POTENTIAL/FUTURE DEBT*
23

24 32. A medical examination in December 2017 disclosed that the husband has
25 hypertension and type II diabetes. Both are being treated with medication. I
26 accept that these conditions may have prevented him from having his pilot's
27 license renewed, although the timing of his resignation is highly suspicious. I
28 will address that in detail later.
29
30



1 33. The husband argues that given his change in employment status he is no
2 longer able to financially support the wife. The husband advised me during
3 the proceedings that he is seeking new employment to supplement his pension
4 income, although he does not believe that his income will be at the same level.
5 The husband has failed to set out his liabilities, other than the general
6 existence of loans with CICSA and Bank of Butterfield and his liability to pay
7 for a hospital bill relating to one of his sons. He did not produce any bills to
8 corroborate the existence of the medical bill.
9

10 34. During the proceedings in January, the husband offered to pay child
11 maintenance in the amount of \$1,278 p.m. and continue to pay the mortgage
12 on the FMH until the twins' 18th birthday⁴. By this offer the husband was
13 acknowledging that he would be able to satisfy an order made in those terms.
14 Given the husband's failure to disclose the details of his income and
15 expenditure, this offer is material in assessing the husband's true means.
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⁴ In addition, on the twins' 18th birthday the FMH would be signed over to them without incumbrances; Block 48C Parcel 137 ("Breakers lot" – with apartment) would be signed over forthwith to son, S, without incumbrance "for him to do as he pleases", the wife would receive Block 59A Parcel 48 ("Midlands East lot") without incumbrances forthwith; while the husband would retain Block 55A Parcel 33 ("Frank Sound lot", Block 56C Parcel 70 (lot adjacent to FMH) and Block 27C Parcel 243 ("North Sound Estates lot")

1 35. The wife gave evidence of her and the children's needs to be as follows

2

3 CUC \$180 p.m.

4 Water \$78 p.m.

5 Groceries \$600 p.m.

6 Telephone \$150 p.m.

7 Gas \$150 p.m.

8 Petrol \$150 p.m.

9 Car insurance \$26 p.m.⁵

10 Medication \$400 p.m.

11 Cable/Internet⁶ \$100 p.m.

12 School lunches \$200 p.m.⁷

13 Personal care/clothing for daughters \$300 p.m.

14 School uniform/supplied⁸ \$71 p.m.⁹

15 Wife's personal expenses¹⁰ \$1,000 p.m.

16

17 Total amount **\$3,405.00** per month. The wife accepted that her utility bills
18 will reduce somewhat now that her son and his wife have moved out of the
19 property.

20

21



⁵ \$312 p.a.

⁶ Although the wife is currently able to obtain this service for free if the box is reconnected.

⁷ \$10 p.d. per child

⁸ In addition to purchases made by husband

⁹ \$850 p.a.

¹⁰ e.g. medical expenses, vehicle maintenance and licensing, personal care and outings with the minor children

1 36. On the evidence before me I am satisfied that the wife was in and out of
2 employment until 15 years ago. Thereafter she made 2 attempts to open a
3 shop in 2010 and again in 2011 but these traded for only a short time. She has
4 not had an income since then. In 2008 the wife was convicted of theft and
5 employing another without a work permit. I accept that the wife has had some
6 medical issues over the years that restricted her ability to work. I am not
7 persuaded that the wife has made all reasonable efforts to secure the
8 necessary treatment that would allow her to resume working. Although the
9 wife cites lack of funding, she admitted in evidence that she did not follow up
10 an application she made with the Needs Assessment Unit for funding for her
11 surgery. This fact lends support to the husband's assertion that the wife has
12 allowed her medical condition to continue so that she can justify demanding
13 spousal maintenance. Importantly, the wife stated in evidence that she thinks
14 she could perform a desk-based job, although she has not spoken to, nor
15 produced evidence of, any attempts to secure employment since 2011. I
16 accept that given the wife's convictions for dishonesty she will have some
17 difficulties securing employment, but it is not impossible. I find that she is
18 capable of securing an income of her own. I do think that it is appropriate in
19 these circumstances that the wife should be expected to take positive steps to
20 maintain herself. I am mindful that even if the wife secures employment, it
21 will be a small salary and there will be little time to accumulate any meaningful
22 pension. I am satisfied that the wife will not likely have the means to secure
23 her own accommodation.

24
25 37. I also take into consideration that at present neither party has health
26 insurance and, consequently, neither do the minor children.



1 38. This has been a very unpleasant case, with the parties engaging in a tit-for-tat
2 litigation – seeking to rely on events that occurred almost 20 years ago to
3 shape the outcome of the proceedings today. I find both parties have been less
4 than truthful with the court in an effort to manipulate the outcome of these
5 proceedings. The wife failed to adequately address the high medication
6 expenses she claims. The insurance statements contradicted not only what
7 the wife alleges she has had to pay in the past, but also what she will likely
8 have to pay in future, even without medical insurance. She has provided no
9 details for the medical costs for the daughter who suffers with asthma. The
10 wife only provided vague details as to how she reached the \$1,000 p.m.
11 estimate for her personal expenses. I am satisfied that the wife has grossly
12 exaggerated the medical expenses as well as her “personal” expenses in an
13 attempt to secure a more favourable outcome.
14

15 39. On the other hand, as I will come to next, the husband has withheld details of
16 his assets overseas, most likely to minimise the level of any maintenance
17 order. He has sought to acquire new assets after leaving the FMH and
18 increased the marital debt, while failing to meet his financial obligations to his
19 family, most notably, failing to make meaningful efforts to maintain the FMH
20 to provide a safe, healthy and comfortable environment for the children of the
21 family.
22
23

24 *THE MATRIMONIAL ASSETS AND LIABILITIES*

25

26 40. There are a total of six properties which the parties agree are matrimonial
27 assets. Other than the FMH, all of the properties were purchased during the
28 marriage.
29
30



1 41. The wife has obtained a report from "Bould Consulting" a property consulting
2 company. They inspected the properties to the extent that they could and
3 provided details as to how they determined the "market value" for each
4 property. This report incorporates the existence of dwellings on two of the
5 properties into the assessment.
6

7 42. The husband has produced a letter from a property broker, Steve Parsons of
8 "Property Pals" which, on the face of the document, appears to be a valuation
9 of the raw land only. The different approaches are evident in the disparity
10 between the valuations of the properties that are developed. Given the
11 thoroughness of the Bould report, and the fact that it does take into
12 consideration the development of two of the properties, I find that reliance can
13 be placed on that report, while less weight can be attached to valuations
14 provided by "Property Pals" with respect to the developed properties. I have
15 taken the approximate median values in respect of the raw land.
16
17

18 *The FMH (block 56C parcel 10)*

19 43. This property was purchased by the husband at the age of 17. It was used as
20 the matrimonial home throughout the subsistence of the marriage and
21 presently is the home of the two minor children and the wife. It is apparent
22 from the wife's evidence and the photographs provided that the FMH is in a
23 poor condition. It is in need of significant repairs, both internally and
24 externally. I accept the wife's evidence that the house is not fit for habitation
25 for the minor children. The only evidence of the cost of repair comes from an
26 estimate prepared almost a year ago, quoting CI\$62,908.00. Given the extent
27 of the damage depicted in the pictures, that estimate seems reasonable. In its
28 current condition the property is valued at one hundred and seventy five
29 thousand dollars (CI\$175,000). It has an incumbrance to the value of \$100,000
30 as a result of a CICS A loan obtained by the husband in 2015.
31



1 *Land adjacent to FMH (block 56C parcel 70)*

2 44. This raw land is valued at approximately CI\$31,000¹¹ has an incumbrance the
3 total value as a result of the same CICSА loan obtained by the husband in
4 October 2012.

5

6 *Canal front land in North Sound Estates (block 27C parcel 243)*

7 45. This raw land is valued at approximately CI\$89,000¹² and also has an
8 incumbrance tied to the CICSА loan.

9

10 *Midland East lot (block 59A parcel 46)*

11 46. This raw land is valued at approximately CI\$147,500¹³ and has an
12 incumbrance as a result of a Bank of Butterfield mortgage obtained by the
13 husband in 2013 to purchase his current residence.

14

15 *Frank Sound lot (block 55A parcel 33)*

16 47. This raw land is valued at CI\$125,000¹⁴ and has an incumbrance since January
17 2011 for a CICSА loan.

18

19

20

21

22

23

24

25

26

27



¹¹ Bould CI\$33,000 / Property Pals CI\$29,098

¹² Bould CI\$95,000 / Property Pals CI\$82,755.28

¹³ Bould CI\$145,000 / Property Pals CI\$150,033.70

¹⁴ Bould CI\$85,000 / Property Pals CI\$165,528

1 *Breakers property (block 48C parcel 137)*

2 48. This property includes a single-storey residential structure, believed to be a
3 one bedroomed apartment. The parties agree that the residences currently
4 occupied. The evidence of the husband is that the occupants is residing there
5 free of charge. This is not disputed by the wife, although the parties disagree
6 as to the reason why the occupant is not paying rent. This property is valued
7 at CI\$90,000¹⁵ and is also subject to an incumbrance tied to a CICSA loan.
8 There is no evidence of the current condition of the property or its potential
9 rental value. Given the location and the size of the property, it is reasonable to
10 infer that it is unlikely to attract a rent in excess of CI\$1,000 p.m.
11
12

13 *LIABILITIES*
14

15 49. As at 31st October 2017 the CICSA loan balance was CI\$226,356.67. I have no
16 evidence before me as to whether further payments have been made. It is
17 accepted that the husband has been meeting the payments of this loan from
18 his salary for many years. The loan is a consolidation of loans obtained before
19 and after the parties separated.
20

21 50. The Land Registry documents disclose that since the parties separated in
22 2011, the husband has used matrimonial property to secure an increase in the
23 principle sum of the CICSA loan:

- 24 (i) CI\$100,000 on the FMH in August 2015; and
25 (ii) approximately CI\$26,600 (net¹⁶) on the Frank Sound land
26 (Block 55A Parcel 33).
27



¹⁵ Using Bould valuation only (see above)

¹⁶ 19th June 2012 "Principle Sum is increased by CI\$17,747.59"

18th December 2013 "Principle Sum is increased by CI\$16,878.45"

31st July 2015 "Principle Sum decreased by CI\$7,974.10"

1 51. It is noteworthy that the FMH was free of incumbrances when the charge was
2 registered in 2015. No evidence has been adduced as to how the loan funds
3 were applied, although it is clear that they were not used to purchase
4 matrimonial assets or refurbish the FMH. However, the wife has not disputed
5 that this is a matrimonial debt, inviting me to order the sale of such properties
6 as is necessary to discharge the CICSA loan. Assuming that interest and other
7 fees will have been added and some payments made since the last statement,
8 I will have to estimate the current balance. I find that the matrimonial debt is
9 approximately CI\$223,000.00, while the combined value of the properties is
10 CI\$657,000. The net equity is CI\$434,000.

11

12

13 *NON-MATRIMONIAL PROPERTY & LIABILITIES*

14

15 *Apartment 1, The Corner, Spotts*

16 52. The husband purchased this property in May 2013 as his new residence. The
17 purchase was financed with a mortgage for CI\$215,000 with Bank of
18 Butterfield, using the new property and the Midland East lot (matrimonial
19 property) as collateral. As at 30th November 2017, the balance on the
20 mortgage was CI\$166,124.86. Bould Consulting has valued the property at
21 CI\$265,000. The husband has not provided a valuation for this property.
22 Depending on whether the husband has continued to make payments on the
23 mortgage, and excluding the Midland East lot, the available equity in the
24 husband's new apartment is approximately CI\$100,000.

25

26

27

28

29

30

31



1 *Florida properties*

2 53. The wife has asserted that the husband purchased two pieces of land in Marion
3 County, Florida in August 2016. She has produced land registry documents
4 and a mortgage deed in relation to these properties. The husband has not
5 produced any evidence to the contrary, nor has he denied purchasing these
6 properties. I find on the evidence before me that it is more likely than not that
7 the husband owns these lots together with Donna Marie Ebanks. I am also
8 satisfied that in September 2017 the properties were together valued at
9 US\$121,000 and are unlikely to have decreased in value since then. The
10 principle sum of the mortgage was US\$71,200 with an interest rate of 7% per
11 annum. The mortgage repayment rate is US\$826.69 per month for 10 years.
12 As at 1st April 2018 the mortgage balance would be US\$70,788.64 ¹⁷.
13 Consequently, the equity in these properties is a total of US\$50,211.36. It is
14 reasonable to assume that the husband is legally entitled to at least 50% of the
15 equity.

16
17 54. The husband has failed to disclose this property during the course of these
18 proceedings. I consider this to have been an intentional withholding of
19 information so as to avoid knowledge of the existence of this asset. I consider
20 this to have been a dishonest act. Consequently, I find it is reasonable to infer
21 that it is more likely than not that the mortgage payments have been
22 honoured.

23
24 55. The wife has also asserted that the husband owns a property in Florida with
25 his mother. There is no evidence before me to substantiate this and so I find
26 that he does not own such a property with his mother.
27
28



¹⁷ Calculated using amortisation calculator at Bankrate.com

1 56. Although the husband had initially asserted that the wife is the beneficial
2 owner of property/funds held by SS, the wife's sister, he did not challenge her
3 affidavit evidence denying that this was the case. There is no other evidence
4 suggesting the wife has any hidden assets. I find that she does not own nor is
5 she the beneficiary of any other assets than those identified as marital assets.
6

7 57. Whilst having regard to the best interests of any relevant child and the section
8 19 MCL factors, if upon assessing the value the matrimonial assets, they meet
9 the needs of the children and parties, then the court need not make any order
10 in relation to non-matrimonial assets (per Williams J in **JH v YH 15th January**
11 **2018 - D113 of 2000**, para 33). Given that the husband's purchases were
12 made, at least in part, using the matrimonial assets, and funds were spent on
13 these new assets while the FMH fell further into disrepair, I do find that these
14 new assets should be included in the section 19 considerations, as not only the
15 husband's financial resources but also relevant to the fairness of the division
16 of assets.
17

18 *OTHER ASSETS*

19

20 58. In addition to the six properties to which I have referred, the parties are agreed
21 that the husband purchased and owns five motor vehicles and one boat:
22

- 23 • Chevrolet Corvette
- 24 • Mercedes Benz
- 25 • Chevrolet Avalanche
- 26 • Chevrolet Silverado Dually
- 27 • A Motorcycle
- 28 • A Scarab Boat



1 59. I have not been provided with any valuations of these assets or an independent
2 assessment of their condition. It is accepted that the husband uses the
3 Mercedes Benz.

4
5 60. Although the wife has given evidence that there is a second boat outside the
6 husband's residence, which he denies owning, there is no direct or indirect
7 evidence to satisfy me on balance that he is the owner of this second boat.

8
9 61. Given the letter from the Chambers Pension Plan, I find that the husband only
10 has a modest pension entitlement: only \$12,000 per annum (\$1,000 per
11 month).



1 *THE NEEDS OF THE CHILDREN*

2

3 62. The two remaining minor children are almost 16. They currently live with the
4 wife and have liberal access to the husband and their paternal grandmother.
5 In the consent order dated 9th March 2017, it is recorded that the parties
6 informed the court that they agree a residence order in favour of the wife with
7 flexible contact with husband is appropriate. For reasons not explained in his
8 submissions, the husband now invites me to either make a shared residence
9 order or a “no order” order. Mrs Thompson did not address this issue at all
10 during these proceedings. Section 3(2) of the Children Law (2012 Revision)
11 provides the matters I should have regard to when determining whether to
12 make a section 10 order¹⁸. I note that the current arrangements reflect the
13 March 2017 order. There is no evidence before me that the arrangements are
14 contrary to the children’s wishes, are not meeting their physical and emotional
15 need, or are causing them or likely to cause them harm. The parties do agree
16 that the hostile behaviour each of the parties accuses the other of, is
17 distressing the children. This is another reason why a clean break – drawing a
18 line under this marriage - is in the best interests of this family.

19

20 63. The children are almost 16, at which time they are free to decide where they
21 wish to reside and when they wish to spend time with either of their parents
22 or other family members. It strikes me that the husband’s attempt to revisit
23 the issue of the residence order is another example of the tit-for-tat approach
24 the husband and the wife have been engaging in during these proceedings.



- 18
- (a) The wishes and feelings of the children concerned;
 - (b) Their physical, educational and emotional needs;
 - (c) The likely effect of any change in their circumstances;
 - (d) The age, sex, religious persuasion, background and any characteristics of the children that I consider relevant
 - (e) Any harm they have suffered or are at risk of suffering
 - (f) How capable each parent is of meeting their needs
 - (g) The range of powers available under the Children Law.

1 64. The children's living conditions do cause me grave concern, and it is important
2 to ensure that their financial needs are met which I will address shortly. Given
3 that -
4

5 (a) the current arrangements were agreed in March 2017 and
6 communicated to the court;

7 (b) the agreement accurately reflects their living and care
8 arrangements;

9 (c) no valid basis has been proffered as to why the court should go
10 behind the earlier agreement; and

11 (d) with the orders I will make in relation to the settlement of the
12 financial affairs of the parties, the current order will meet the needs
13 of the children;

14 I find that the Residence Order agreed in March 2017 is appropriate to ensure
15 the continued welfare of the children.
16

17 65. The wife seeks maintenance for their youngest son, who is now 19. The wife's
18 evidence is that, although the son is currently in employment, he wishes to
19 pursue tertiary education for which he requires financial support. He does not
20 currently have an offer from his chosen educational institution and will have
21 to reapply for the 2018/19 year. Given that the son is over the age of 16 and
22 no longer in education, the court cannot make an order for periodic payment
23 for him either under the MCL or the CL (see section 22(1) of the MCL and
24 section 2(2) of schedule 1 of the CL)
25



1 66. The two minor children are in need of a safe and healthy home together with
2 running utilities and groceries, as well as the usual school and personal
3 purchases. They currently reside in the FMH in terrible conditions. How the
4 FMH came to be in such a state of disrepair is of little moment. The husband
5 has not suggested that the children should live anywhere other than the FMH.
6 If the house it put in a satisfactory condition, it is in the children's best interests
7 to remain in the only home they have ever known. The husband's position is
8 that the wife should only have the benefit of the FMH until the daughters are
9 18 after which the wife should vacate the FMH and the house is either signed
10 over to the daughters or returned to him. His argument is based largely on the
11 fact that he purchased the house before their marriage.

12
13 67. In determining whether to grant a Mescher Order, the court has to consider
14 (a) the best interests of the children; (b) the fact that such an order did not
15 give the parties a "clean break"; (c) the length of time for which the order
16 would apply; and (d) whether the party with the responsibility for caring for
17 the children would otherwise be able to purchase a family home (**E (R) v D**
18 **(C) [2016(1) CILR 55]**). In this case, I find that the need for a clean break is
19 high, and that the wife will not be able to afford suitable accommodation,
20 thereby making a Mescher order inappropriate.

21
22 68. The parties are in agreement that the insurance money received after
23 Hurricane Ivan was not utilised in full to repair the home and replace
24 furniture. Based on the evidence adduced by the wife, which has not been
25 contested, I find that the cost of putting the house into a habitable condition is
26 approximately CI\$63,000 for structural repair.



1 69. I have considered the wife's assessment of the financial needs of the family,
2 which included her own needs/costs. I find that the following are reasonable
3 expenses attributable to the minor children –
4

5	CUC	\$100 p.m.
6	Water	\$50 p.m.
7	Groceries (including snacks)	\$400 p.m.
8	Telephone	\$100 p.m.
9	Gas	\$100 p.m.
10	Petrol	\$50 p.m.
11	Medication ¹⁹	-----
12	Cable/Internet	\$0 p.m. ²⁰
13	School lunches	\$200 p.m. ²¹
14	Personal care/clothing for daughters	\$300 p.m.
15	School uniform/all supplies	\$100 p.m. ²²

16
17 70. I find that the wife should be responsible for maintaining and licensing her
18 own vehicle.
19

20 71. The total assessed costs for the minor children are \$700 p.m. per child. Given
21 the wife's likely difficulties securing employment, she is unlikely to be able to
22 secure income which will allow her to meet half of the assessed costs while
23 meeting her own needs.



¹⁹ Insufficient evidence at this time

²⁰ This is currently free and there is no evidence that that cannot continue once reconnected.

²¹ \$10 p.d. per child

²² \$600 p.a. per child

1 72. As I have already stated, given the hostility of the parties since the breakdown
2 of the marriage, any order that would continue the wife's financial dependence
3 on the husband is likely to cause more conflict and prevent the parties from
4 moving forward with their lives. This would also likely have a negative impact
5 on the minor children's emotional wellbeing. In making these orders I bear in
6 mind that neither party's conduct has been exemplary, either during or after
7 their separation in 2011. I find that the husband's behaviour in entering into
8 a bigamous marriage is the type of conduct that should result in an adjustment
9 to the distribution of assets in favour of the wife.
10

11 73. This is a case where appropriate arrangements can be made to meet the future
12 needs of the children and the parties, their financial resources (including
13 earning capacity), their obligations, the contribution made to and the benefits
14 derived from the marriage (including assets) and the deserts of the parties. A
15 clean break can be achieved and is fair.
16

17 74. I am also mindful that despite the need to repair the FMH, the husband
18 mortgaged the property and used the funds for other purposes, therefore
19 increasing his post-separation assets while placing the matrimonial assets into
20 debt. In that respect the equity in his new residence and the property overseas
21 is relevant consideration to the distribution of the assets.
22
23
24
25



1 **I make the following order for the settlements of assets and maintenance -**

2
3 75. The wife shall be assigned the FMH (Block 56C parcel 10) free from
4 incumbrances. The wife shall also receive a lump sum of CI\$63,000 to be used
5 to refurbish the FMH. I am satisfied that this sum can be raised by the
6 refinancing of the remaining marital assets and therefore shall be paid to the
7 wife within 120 days of judgment.

8
9 76. In addition, the wife shall be assigned the Breaker land with the studio
10 apartment (Block 48C Parcel 137) free from incumbrances. This second
11 property can provide the wife with either a rental income or be sold for a lump
12 sum for her benefit. As a rental property it can provide the wife with a modest
13 income to subsidize any income from employment, and act as a pension in the
14 future. As a result the wife will have no entitlement to the husband's pension
15 or need for spousal maintenance.

16
17 77. All other marital assets are awarded to the husband together with
18 responsibility for the loans at CICSA and Butterfield Bank. The husband may
19 sell one or more of these properties to extinguish the mortgages, or he can
20 maintain such parts of the debt as he wishes in order to keep said properties.
21 The husband will also retain ownership of the motor vehicles and boat listed
22 at paragraph 58. The husband shall remove said vehicles from the FMH within
23 30 days and is at liberty to sell them or gift them if he so wishes.

24
25 78. The wife will have no further entitlement to any of the other marital assets,
26 including motor vehicles or responsibility for the debt at CICSA or Bank of
27 Butterfield.



1 79. The husband shall pay maintenance for the children in the amount of CI\$550
2 per child per month to the wife until each child attains the age of 18 or
3 complete tertiary education, whichever is later, but, in any event, not beyond
4 their 21st birthday. Payments shall be made through the Court Funds Office
5 starting 1st April July 2018. April 2018 and May 2018 payments are to be
6 added to the arrears balance. The wife shall be responsible for any additional
7 expenses in relation to the upkeep of the children, with the exception of
8 medical costs/medical insurance/co-payments, which shall be shared
9 between the parties equally. I have excluded the medical expenses from the
10 maintenance calculations because there is no evidence as to what those likely
11 costs will be. The maintenance order is inclusive of all school supplies,
12 although the husband is at liberty to make additional purchases for the
13 children should he wish to do so.
14
15

16 *VARIATION OF MPS*
17

18 80. The husband seeks a retrospective variation of the MPS. In this jurisdiction the
19 Court does not have the jurisdiction to remit arrears which have accrued and
20 are owing under an order for maintenance payments (**AT v TT 2014(1) CILR**
21 **Note 10, Franklin v Franklin [2014(2) CILR 79]**). However, the court does
22 have the jurisdiction to vary maintenance orders, both under the MCL and the
23 CL, and to do so retrospectively, in circumstances where party is shown to
24 have been no longer able to meet the terms of an order (see **Franklin ibid**).
25 This may be retrospective to the date of the summons seeking the variation so
26 that the applicant is not prejudiced by delay in the matter being listed (see
27 **Worden v Worden [1981] 3 WLR 10**).
28
29
30
31



1 81. The husband submitted that the wife's affidavit misled Williams J as to the
2 number of minor children in the household affecting the figure reached.
3 Reading the affidavit, I note that mention is made of the youngest son, then 17,
4 being in education, but also that he is not residing at the FMH. There is no
5 evidence that Williams J was misled.

6
7 82. The husband has largely focussed his argument on his inability to pay the sums
8 ordered. In March 2017 the husband accepted that his average earnings were
9 CI\$9,000 per month gross²³. Despite his protest that he is unable to meet the
10 court's order made at that time, the husband has failed to provide any details
11 or evidence of his expenditure to support this assertion. Given his own
12 admissions as to his income, I find it is more likely than not that he had
13 sufficient funds to meet the order until his retirement on 31st July 2017.

14
15 83. Carter J (Actg) had previously adjudged the arrears at July 2017 to be
16 CI\$6,565.50. Payments made to the twins directly are not made in accordance
17 with the court's order and, therefore, the husband will not receive credit for
18 those. On the evidence adduced, the husband has failed to make the
19 maintenance payments, save for four payment of CI\$1,000 each²⁴. These
20 payments will be applied to maintenance payments accruing after 31st July
21 2017. Therefore **CI\$6,565.50 remains outstanding on the July 2017 order.**



²³ Husband's affidavit dated 3rd April 2017, paragraph 24

²⁴ 1st August 2017, 28th August 2017, 29th September 2017 and 2nd November 2017

1 84. I accept that on the evidence before me the husband's financial situation
2 changed significantly on his retirement on 31st July. The husband
3 communicated his decision to retire the day after Carter J (Actg) adjudged the
4 arrear, made an AEO and adjourned his application for the variation of the
5 MPS. While the court was seeking information on the husband's retirement
6 options, he went ahead and elected to retire without consulting or advising the
7 court of his intention to do so immediately. His letter to his employer, nor their
8 reply, spoke to the retirement being as a direct result of ill health or that his
9 pilot's license had not been renewed. The timing of the husband's election to
10 retire struck me as a deliberate act to frustrate the court's order.

11
12 85. As I have already set out, I believe that the husband has had access to funds in
13 excess of his pension; not least he has considerable equity in his new property
14 (see above). His offer in the face of the court to pay CI\$1,278 per month in
15 addition to the mortgage payments satisfied me that he would be able to meet
16 such an order. There is nothing before me to suggest that the husband's
17 financial situation changed between his retirement and the date of the offer.
18 Consequently, I am satisfied on the evidence before me that from the 1st August
19 2017 the husband was able to pay CI\$1,278 per month in maintenance. Given
20 that the husband's summons for variation was adjourned, it is appropriate that
21 any arrears accruing after the 31st July 2017 are adjusted to reflect the new
22 sum of CI\$1,278, including the cost of any utilities. The responsibility for any
23 mortgage payment remains upon the husband.



30

1 86. Consequently, the maintenance payments due from 1st August 2017 to 31st
2 March ~~May~~ 2018 total ~~CI\$10,224~~ **CI\$12,780**. A credit of **CI\$4,000** is given for
3 the payments made since 31st July 2017, reducing the balance to ~~CI\$6,224~~
4 **CI\$8,780** owing. Upon presentation of proof of payments, further credit shall
5 be given for any utilities bills paid by the husband during that period for the
6 FMH. Such proof shall be produced to the court within 7 days of the date of
7 this judgment for the purposes of drafting the final order. The remaining
8 amount is adjudged to be arrears owing to the wife. These arrears are in
9 addition to the arrears still outstanding from the order made on 25th July 2017.
10 The arrears are consolidated and shall be paid at **CI\$600** per month starting
11 1st ~~May~~ **July** 2018
12
13

14 *SECTION 10 ORDERS*
15

16 87. Finally, I make a Residence Order in respect of both minor daughters to reside
17 with the wife and that they should continue to have liberal contact with the
18 husband. This order reflects the reality of the current arrangements (which
19 neither the wife nor the husband seeks to change): the daughters live with the
20 wife who provides their day-to-day care and they visit the husband as and
21 when they wish. This order will automatically expire on their 16th birthday.
22
23

24
25 
26

27 Hon. Kirsty-Ann Gunn

28 Acting Judge of the Grand Court

