

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

Cause No.: FAM 110 of 2018 (RMJ)

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6 **BETWEEN:** A **PETITIONER**
7 **AND:** B **RESPONDENT**
8 **AND:** C **CO-RESPONDENT**

9 **CHAMBERS**

10 **Appearances:** **Ms. Cherry Bridges of Ritch & Conolly for the Petitioner**
11 **Mr. David McGrath of McGrath Tonner for the Respondent**
12 **The Co-Respondent neither represented nor attending**
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15 **Before:** **The Honourable Justice Robin McMillan**

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17 **Heard:** **15 November 2018**

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20 **Reasons for**
21 **Judgment**

22 **Delivered:** **20 November 2018**



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27 **HEADNOTE**

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30 *Interim Maintenance pending suit – Applicable principles of law – Circumstances where party’s*
31 *assets have been placed beyond her control – Reasonableness and fairness considered.*
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REASONS FOR JUDGMENT

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1. These brief Reasons for Judgment follow a decision which this Court made on 15 November 2018.
2. The Petitioner had applied for periodic maintenance payments pending suit pursuant to Section 20 of the Matrimonial Causes Law (2005 Revision) (“the governing Law”) in a sum which after an initial exchange of learned Counsels’ submissions was ultimately posited in the sum C.I \$11,000 per month. This claim was in relation to a number of items set out in the form of what is described as a Scott Schedule.
3. The outstanding items are described in Part B headed “*Other Living Expenses for Wife,*” and Part C headed “*Expenses Specifically Related to the Children.*” The items in contention primarily relate to the Petitioner’s expenses, but are not exclusively so.
4. Compendious Court Binders have been provided along with detailed Written Submissions, for which the Court expresses its gratitude.
5. The parties have enjoyed a high standard of living in the past, and have been able to ensure that their two children have also been amply cared for.
6. Without in any way delving into the facts beyond what is absolutely necessary for present purposes, the Court notes that the Respondent without consulting his wife or seeking her agreement has purchased from what is accepted to be jointly owned matrimonial property both a house in Scotland and a Ferrari motor car. This unilateral expenditure extends to many hundreds of thousands of dollars and in the view of the Court it has a practical and a legal bearing on the issue of whether an order of interim maintenance in favour of the Petitioner is appropriate.
7. The Court considers that the governing Law permits it to award interim maintenance taking into account the principles set out by Mr. Nicholas Mostyn Q.C (as he then was) in *TL v.*



1 *ML and others [2005] EWCA 2860 (FAM)* and further adopted by Williams J. in *B v B*
2 2012 (2) CILR 124.

3 8. Mr. Mostyn states at paragraph 124:

4 *“i) The sole criterion to be applied in determining the application is “reasonableness”*
5 *(s22 Matrimonial Causes Act 1973), which, to mind, is synonymous with “fairness”.*

6 *ii) A very important factor in determining fairness is the marital standard of living (F v F).*
7 *This is not to say that the exercise is merely to replicate that standard (M v M).*

8 *iii) In every maintenance pending suit application there should be a specific maintenance*
9 *pending suit budget which excludes capital or long term expenditure more aptly to be*
10 *considered on a final hearing (F v F). That budget should be examined critically in every*
11 *case to exclude forensic exaggeration (F v F).*

12 *iv) Where the affidavit or Form E disclosure by the payer is obviously deficient the court*
13 *should not hesitate to make robust assumptions about his ability to pay. The Court is not*
14 *confined to the mere say-so of the payer as to the extent of his income or resources. (G v*
15 *G, M v M). In such a situation the court should err in favour of the payee.*

16 *v) Where the paying party has historically been supported through the bounty of an*
17 *outsider, and where the prayer is asserting that the bounty had been curtailed but where*
18 *the position of the outsider is ambiguous or unclear, then the court is justified in assuming*
19 *that the third party will continue to supply the bounty, at least until final trial (M v M).”*

20 9. In addition to those broad guiding principles, the Court also reminds itself that it must
21 enquire into and as appropriate satisfy itself as to the needs of the claiming party.

22 10. In the instant case the Court considers that the needs of the Petitioner have been both
23 expanded and indeed exacerbated by the unfortunate purchasing actions of the Respondent
24 which in summary form have been above described. In other words, the Petitioner no
25 longer has access to funds and resources which she could otherwise call upon both for her
26 own use and for the general benefit of the children of the marriage as she might deem fit



- 1 11. This application involves a consideration as to what is reasonable, which I understand is
2 synonymous with fairness. For the reasons identified in the previous paragraph, the Court
3 considers an award to be permissible in law as well as desirable in practice. In fact the way
4 in which the Respondent has chosen to live his life, and to make those large expenditures,
5 has created relationship needs in this regard. The Petitioner's own liquid assets have been
6 placed beyond her immediate grasp.
- 7 12. The Court also bears in mind that while it is not able to replicate the former standard of
8 living enjoyed by the parties it should not at the same time seek to be overly precise in the
9 award that it makes.
- 10 13. One problematic issue which has arisen is that at this stage, beyond the professional
11 accounts of the Respondent for 2017 alone, the Court is not more fully informed as to the
12 Respondent's personal financial circumstances, but that does not deter the Court from
13 making the best estimate that it can. The Court is prepared to accept for that purpose that
14 the Petitioner's total monthly income is in the region of C.I \$10,000-\$12,000 and the
15 Respondent's total monthly income is the region of C.I \$54,000. There are numerous
16 ongoing expenses such as mortgage payments to which entirely properly both of them have
17 committed a portion of their respective earnings.
- 18 14. The Petitioner puts forward a figure of CI \$11,000 for interim maintenance which I
19 consider not to be extravagant. In fact it is relatively modest when compared to the standard
20 of living previously enjoyed by the parties. The Court is not however as has been indicated
21 able to set interim maintenance which represents the standard of living previously enjoyed.
22 This is unfortunately the consequence of the very sad state of affairs which has arisen.
- 23 15. The Court bears fully in mind that the welfare of the children is paramount, and the Court
24 seeks to avoid the creation of circumstances under which by mischance the children may
25 develop a perception of disparity between the circumstances of each parent. In reaching a
26 decision this is an important factor for the Court to bear in mind where there was previously
27 a high standard of living enjoyed by the whole family.



- 1 16. In the circumstances which have arisen, and where the Court deems an interim award
2 appropriate in principle and desirable in fact, the Court must further take note that the
3 purpose of any award pending suit is to put in place a relatively short-term measure on a
4 needs basis as those needs are suitably identified so as to preserve the situation until the
5 Court may make whatever final ancillary orders that the interests of justice require.
- 6 17. The Court is of the view that a composite order for both the Petitioner and the children is
7 expedient rather than making separate provision. It is also recognised that at present the
8 Respondent is meeting the childrens' expenses and that in any 30-day period approximately
9 15 days are spent by the children with each parent.
- 10 18. As the Court has indicated, it has reviewed carefully the outstanding items in the Scott
11 Schedule and it adopts a generous approach as to the validity of the claims been made. In
12 other words, the sum of C.I \$11,000 per month is reasonable and fair and by no means
13 excessive.
- 14 19. However, there is one additional matter to which this Court must allude .That consideration
15 is that in considering the welfare of the children both parents should contribute and should
16 be seen to contribute to the home environment. I have therefore come to a final figure for
17 interim maintenance of less than C.I \$ 11,000 per month. In order to reflect this
18 consideration and in fairness to both parents the Court shall make a notional deduction per
19 month of C.I \$ 2,500, bringing the figure for maintenance down to C.I\$ 8,500 per month.
- 20 20. Finally, it is emphasised that this is an interim arrangement only.

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Robin McMillan
THE HON. JUSTICE McMILLAN
JUDGE OF THE GRAND COURT

