

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

CAUSE NO. FAM 232 OF 2010

BETWEEN:

JANET ROSE JOHNSON MINZETT

Petitioner

AND

DANIEL G. MINZETT

Respondent

Appearances: Ms. Keva Reid of McKinney Reid & Co. for the Petitioner
Ms. Vanessa Allard of Brooks & Brooks for the Respondent

Before: Hon. Mr. Justice Richard Williams

Heard: 10 December 2019

**Date of Circulation
Of Draft Judgment:** 17 December 2019

Date of Judgment: 23 December 2019



HEADNOTE

Financial Provision - Ancillary relief - child maintenance

JUDGMENT

1. This is a hearing for determination of ancillary relief in divorce proceedings commenced by the Petitioner wife's Petition filed on 17 September 2010. An order that the Petition was proved was made by Henderson J on 18 October 2010. She and the Respondent husband agree that there is no dispute about s.10 Children Law Orders, with a Residence Order now being made by consent in relation to MM, their twelve year old daughter.
2. This being a case in which the parties agree that there are no assets to divide and that there should be a clean break, the remaining issues for determination concern (i) the arrears of child maintenance that have accrued and (ii) the level of ongoing child maintenance payments in relation to MM by the Respondent.

3. I have considered the affidavits which have been filed. In addition to that evidence, I have received written and oral closing submissions from the attorneys on both sides. I have also had the benefit of receiving oral evidence from the parties and from Yvonne Minzett, the Respondent's former wife.
4. I hope that the parties will not be offended if I refer to them for convenience as the husband and the wife.



The Parties

5. The husband is aged 77 and the wife is aged 52, so she is 25 years younger than him. The parties, who both have Caymanian status, married on 16 February 2002. The parties separated in or around 2009.
6. MM is the only relevant child of their marriage¹ and she appears to be in good health. She lives with the wife and maintains a relationship with her father.
7. On 29 June 2011 Smellie CJ ordered that the husband pay a total of CI\$175/week² child maintenance to the mother for the three children of the family who, at the time, were all aged under the age of 16. That Order remains in force. Taking into account the total amount of payments made and the fact that payments for the two older children expired when they reached 16 and were not in full-time education, the agreed arrears that have accrued as of the end of November 2019 are CI\$2,154.52.³

¹ There are also another two children of the marriage who are both over 16 years of age and who are not in full time education. They reside with the wife at this time.

² The Court has treated that to be CI\$58.33 per child per week.

³ As per the printout provided to the Court and to the parties by the Family Proceedings Unit.



8. The husband is asking for the arrears to be remitted. The wife is asking for the arrears figure to be assessed and placed in an order, but does not seek enforcement of the same at this time. Having regard to the fact that the wife has received no maintenance payments for MM since February 2017 following the last payment to the husband of his severance pay⁴ in January 2017, I informed the parties at the hearing that (i) the arrears should be assessed; (ii) an arrears order should be made; and (iii) the arrears should not be remitted. When I made that observation I also recognise that this is a father who had a good record of paying maintenance and was even willing to use up his severance pay to do so after he retired. In addition, I note that the wife had, prior to January 2017, greatly benefitted from substantial overpayments of maintenance by the husband for the boys after they had reached the age of 16 and for whom maintenance was therefore no longer required to be paid pursuant to the earlier orders.⁵
9. Accordingly, I assessed the arrears at the agreed figure of CI\$2,154.52. I also informed the parties that, having regard to the husband's poor financial position and non-existent employment prospects, I would not make any order to enforce the arrears at this time.

The Law

10. The Law pertaining to the making of periodical payment orders and to the division of matrimonial assets is governed by s.19 of the Matrimonial Causes Law ("the Law"), which reads as follows:

"In dealing with all ancillary matters arising under this Law the court should have regard first of all to the best interests of any children of the marriage and thereafter to the responsibilities and financial and other resources, actual and

⁴ Severance pay was around CI\$390-\$400 per week for 35 weeks. The husband continued making maintenance payments after he ceased work from his severance payments.

⁵ This is why the arrears figure as of November 2020 is only CI\$2,154.52 despite no monthly payment of CI\$233.32 having been made for the 33 months after January 2017.

potential earning power and deserts of the parties." [My emphasis by underlining].

11. It must be read in conjunction with s.21 of the Law, of which the relevant part for my consideration in this matter is s.21(f) which provides as follows:



"At the time of pronouncing a decree under this law, the court shall, as appropriate, make order for:

- (a) ...;*
- (b) ...;*
- (c) ...;*
- (d) ...;*
- (e) ...;*

(f) providing for periodical payments to be made by either spouse for the benefit of the children of the marriage and for the other spouse; and
(g) costs."

12. Sections 19 and 21 of the Law gives the Court a wide discretion when it comes to financial provision and any awards made to the parties.

13. The Courts in the Cayman Islands, in deciding whether to exercise its powers under s.21 and, if so, in what manner has, when considering what is fair in all the circumstances of the case, traditionally has had regard not only to the matters set out in s.19, but also to the relevant factors raised in s.25(1) of the Matrimonial Causes Act 1973, and now s.3 of the Matrimonial and Family Proceedings Act 1984 in England and Wales.⁶ The factors to be considered include:

- (i) The income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (ii) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

⁶ Doak v Doak and Riley [2002] CILR 224, [17], [21], [22], Wight v Wight CICA 6 of 2006 [62] ("Wight"), Wood v Wood [2009] CILR 255, [12] and McTaggart v MacTaggart [2011] 2 CILR [39].



- (iii) The standard of living enjoyed by the family before the breakdown of the marriage;
- (iv) The age of each party to the marriage and the duration of the marriage;
- (v) Any physical or mental disability of either of the parties to the marriage;
- (vi) The deserts of the parties, including contributions made by each of the parties to the welfare of the family (to include contributions made by each of the parties to the accumulation of matrimonial assets as well as non matrimonial property) and any contribution made by looking after the home and caring for the family;⁷
- (vii) The value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party will lose the chance of acquiring; and
- (viii) The conduct of each of the parties. If that conduct is such that it would in the opinion of the court be inequitable to disregard.

The Husband's Income and Outgoings

- 14. The husband retired from his almost 35 years of employment at Thompson Shipping in April 2016 at the age of 74. Due to his age and poor health he has no capacity to find employment and/or increase his current income. Following receipt of his final severance payment in January 2017 the only source of regular income that the husband has received is his seaman's pension which commenced at CI\$650 per month and was increased in early 2019 to CI\$750/month.
- 15. As he has such a low income, he has received benefits in the form of fortnightly CI\$150 food vouchers from the Needs Assessment Unit ("NAU") to go towards his food and grocery needs. That assistance is not ongoing at this time and the remaining balance of

⁷ Deborah M. Wight v Ian A.N. Wight, CICA 6 of 2006 Zacca P at para 33.

CI\$75 from the November voucher has been used up. In fact the husband's situation has been so dire that recently his MLA provided him with CI\$50 to buy food.

16. When the husband gave his evidence it became clear that he has great difficulty walking, suffers from chronic pain, suffers from diabetes and has high blood pressure. He appeared frail and it is inarguable that he requires a full-time carer to enable him to live in the community. His former wife, Yvonne Minzett, had been living in New York. However in 2012, after the husband's sister passed away, she returned to the Cayman Islands primarily to care for the husband. I prefer the husband's and her evidence to the wife's evidence in this regard, the wife contending the former wife did not come back to care for him but to restore their former relationship.

17. The former wife is aged 72. She does not have employment, has no income capacity and in reality she is the husband's unpaid full-time carer. They live in rented accommodation which cost \$400 per month back in 2014. As she holds a green card, she receives a US pension, but when converted it amounts to only CI\$260 per month. This means that the total regular income coming into the husband's household is CI\$1,010 and this does not cover the basic daily needs of the aging husband and his required 72 year old carer. The husband's health insurance coverage as a seaman has lapsed as he has been unable to pay the outstanding premiums now totalling CI\$1,800 which was again due in January 2019⁸.

18. On occasion his former wife/carers has had to reach out to their daughter who lives in New York and she has on occasion been able to provide sums of money to enable them to meet the basic household expenses. When his former wife has to return to New York, which she has to do every six months to enable her to retain her green card, their daughter

⁸ He has not been able to make the payments since 2016.





has paid for both of their flight tickets as the husband is not well enough to remain in the Cayman Islands on his own. In addition the former wife says that one of the husband's and the wife's sons sometimes will provide his father with CI\$50 or some fruit when he visits the home on a weekend.

19. The parties did not seek to take me through the husband's outgoings as it was sensibly accepted that his income (including the pooled income with his former wife) did not meet the basic monthly expenses in his household. It is clear that this is the case and that he has no disposable income.

The Wife's Income, Income Capacity and Outgoings

20. The father states in his affidavit evidence, and this has not been challenged, that from around 2008, whilst the parties still lived together, the wife began a relationship with another man. In 2010 a daughter was born from that relationship. The wife informed the Court that, when she was pregnant with that child, she gave up her career as a chef employed at the Marriott Hotel because the smell of the cooking made her feel nauseous. She informed the Court in her oral evidence that her salary at the time was between CI\$800-\$900 per fortnight.
21. After the wife had that child she decided not to return to that better paid employment. Instead she has since been self-employed selling souvenirs at the crafts market in George Town Monday through Friday. The crafts market is very conveniently located to attract the large amount of cruise ship passengers that usually alight in George Town. In her affidavit sworn on 1 June 2011 the wife stated that her income was on average US\$1,200 (CI\$960) per month. In her oral evidence, despite it being 7-8 years later on and despite the massive upsurge since 2011 in the numbers of cruise passengers arriving in Grand

Cayman, the wife claimed that her income from her sales has remained at US\$300 per week.



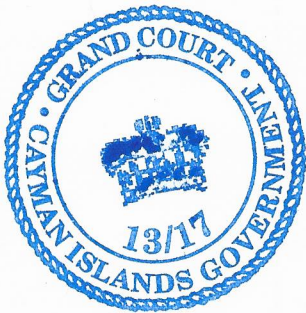
22. The parties' two sons also live in the wife's home. They are both over 16 and there is no reason why they should not be in employment and should not be paying their fair share of the household expenses. One of the son's employment ended last month and the wife states that he is looking for work. The wife gave no evidence about what he had and would pay towards the household bills, although she did say that he had greatly assisted with the purchase of her motor vehicle and the taxing and licensing of the same. She informed the Court that the other son had an income of around CI\$1,220 per month and that he sometimes gives her something in the region of CI\$100 towards the monthly CUC power bill. It is clear from the wife's evidence that she is content to look after the boys without them adequately contributing to the household expenses. She stated that this was because she wanted them to be able to save money towards each of them buying their own motor vehicle and, in the interim, to enable them to pay for their buses to work. That is her choice, but the boys should be contributing much more. Those payments would not be to support MM or to replace the husband's responsibility, but simply to pay for their fair share of their living expenses and thereby lessen the difficult financial situation of the mother, which her Counsel has relied upon when arguing a need for the income that would be derived from a child maintenance order.

23. The wife has listed her basic outgoings in her affidavit as being CI\$2,142. This does not include the CI\$200 per month that she says she spends on her youngest child's lunches which would bring the total up to CI\$2,342. The wife was very clear that these figures were not what she was seeking to be regarded as being her future outgoings but that they had been and remained her actual outgoings. This means that the wife would have a

shortfall of roughly CI\$1,300 each month and that, since the last payment from the husband in January 2017, she would have had a shortfall of that amount for about 33 months, a total of around CI\$42,900.

24. When asked more than once how she has absorbed this debt, the wife was defensive in her demeanour and failed to give a frank answer. For the first time, she answered in oral evidence that her wider relations gave her money. She said that the parties' sons, when in employment, might contribute towards the CUC bill and for some of her annual car expenses. However, the small figures that she mentioned from these sources would in no way balance the monthly shortfall. This, coupled with the lack of any disclosed increase in her income over the past eight years when the cruise industry has massively developed, gave the impression that the wife's income and/or the income coming into the household must be far greater than that disclosed.

25. When it was rightly pointed out to the wife that, at the age of 52 and if her income figures were correct, she was clearly not maximising her income capacity, she replied that she did not want to be a chef again. At first she said it was her choice because she wanted to be at home at the start and end of the school day to care for her two younger children and did not want to work on the weekends. She said that she feared that otherwise they might get mixed up with gangs or get molested. She later added that she was now in poor health as she also suffered from diabetes. The wife exhibited to her affidavit sworn on 22 November 2019 photographs of medication that had clearly been prescribed to her and which I acknowledge are ordinarily used to treat diabetes and blood pressure. She also said that she gets arthritis in her fingers when they get hot or cold. There was no formal medical evidence to support a contention that she could not work as a chef or verifying that she suffered from arthritis. When she gave her evidence, to use her own Counsel's



words, the wife did so in a “feisty” manner and she appeared to be someone who was strong and physically capable of such employment. She is in far better health than the much older and infirm husband.

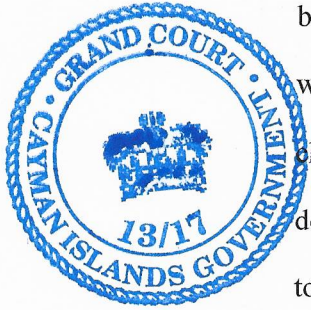


26. The wife was also asked why she has not sought any child maintenance for her youngest child from that child's father. She indicated that she did not want to do that, as the father was living in Canada and had threatened her that if the child came to Canada he would seek to retain her there. It is clear that it is her choice not to bring proceedings under Schedule 1 of the Children Law or under the Affiliation Law for orders for child maintenance which, if required, she could then possibly seek to enforce any order made in Canada. She was not willing to share any details about the youngest child's father and about his financial position. Although I accept that that child's father is in no way responsible for the upkeep of MM, any child maintenance she could receive from that man could greatly assist with the outgoings in her household.

27. If the wife's figures concerning her income from all sources into the household are correct, which I do not accept as I do not believe she was frank in her financial disclosure and about her income capacity, I am not satisfied that she is maximising her income capacity. She is clearly better placed financially to meet MM's needs, especially if she maximises her income capacity.

28. However, an imbalance of income or income capacity does not mean that the Court should ignore the principle, forcefully expressed by Ms. Reid in her submissions, that both parents have a responsibility to financially support their child. I accept that the wife has shouldered the financial burden for supporting MM since the father was last able to

make a payment in January 2017 although, as I mentioned earlier, she had benefited from considerable over payments in maintenance up until 2017.⁹



29. The wife's declared income figures, if correct, would mean that there is a significant shortfall each month. I do not see any grounds to expressly challenge the wife's disclosed basic outgoings, save possibly to note the excessive claimed expenditure on lunches when she states that she and MM spend CI\$15 per day on lunch and that the youngest child spends \$10 per day on lunch. Although I do not accept the veracity of wife's declared income figures, which even if they were accurate I would find that she is failing to maximise her income capacity, it is clear that her likely income means that her finances are stretched.

30. Importantly, I also note that, unlike the husband, the wife does not have to pay any rent. She is able to live rent free in the former matrimonial home which is a government low income home in West Bay. The Government agreed in 2014 that she could stay there until they disposed of the home which she said has been condemned.

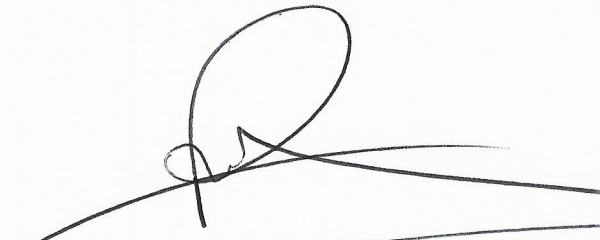
31. Arguably, if the husband was able to provide some financial contribution then that would be of benefit to MM. So when I consider all of the other factors in s.19 of the Law, I have the overarching principle that the child's interest should be first at the forefront of my mind. However, that does not mean that I take a narrow approach to the effect of husband's trying circumstances and of his dire financial position. When I consider his income, earning capacity, property and other financial resources, financial needs, obligations and responsibilities now and in the foreseeable future, age and his physical disability it is clear that he simply does not have any disposable income to contribute and

⁹ See paragraph 8 above.

his own needs are considerable. Even without paying any maintenance he is relying on handouts to meet his very basic expenses. Regrettably, I can see no way that he can readjust his finances to enable any child maintenance order to be paid. Even if I were to accept the wife's submission that the husband has "*a duty*" to maintain the child and that his circumstances were a secondary or minor consideration, any payment that would be ordered would be minimal and in reality would not be of any significant benefit to the child but would proportionally greatly diminish the husband's ability to meet his very basic requirements.

Conclusion

32. Although I recognise the responsibility of both parents to maintain their child, this is one of those rare cases, having regard to the s.19 factors in the Law, in which the Court feels unable to make a meaningful maintenance order. Accordingly, I order that there be a nominal maintenance order of CI\$1 per annum by the husband in relation to MM. Such order is to last until MM is 16 years of age or ceases full-time education whichever is the later.
33. The parties should now draft the ancillary relief order to reflect both the s.10 Children Law and the ancillary relief financial orders made by me in this Judgment. The order should reflect which orders are made by consent and which are not.


Honourable Mr. Justice Richard Williams
Judge of the Grand Court

