



# In The Supreme Court of Bermuda

## DIVORCE JURISDICTION

2023: No. 107

**BETWEEN:**

**P**

**Applicant**

**-and-**

**S**

**Respondent**

### RULING

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**Before:** **Hon. Alexandra Wheatley, Acting Justice**

**Appearances:** **Adam Richards of Richards, for the Respondent**  
**Tanisha Butler of Chancery Legal, for the Applicant**

**Dates of Hearing:** **28 February 2025**

**Date Draft Circulated:** **10 March 2025**

**Date of Ruling:** **11 March 2025**

*Interim spousal and child maintenance; Section 27 of the Matrimonial Causes Act 1974; Direct and indirect expenses; Duty to provide full and frank disclosure; Adverse inferences; Legal costs allowance*

**RULING** of Hon. Alexandra Wheatley, Acting Justice

#### INTRODUCTION

1. The parties were married on 28 December 2018 and divorced on 26 June 2024. Their relationship consisted of a one-year cohabitation and six years of marriage. There is one child of the family (who shall hereinafter be referred to as **L**) and who is 6 years old. The Respondent (hereinafter referred to as **the Wife**) filed an application for Ancillary Relief

which included claims for maintenance and is dated 14 January 2025 (**Wife's Application for Ancillary Relief**).

2. This is the Wife's application for interim spousal and child maintenance to include a provision for legal fees (**the Interim Maintenance Application**) where she is seeking the following orders:
  - (a) Interim child/spousal maintenance in the sum of \$2,000 per month backdated for twelve months.
  - (b) Legal fees in the sum of \$5,000 per month backdated to the date of the application.
  - (c) The Applicant (hereinafter referred to as **the Husband**) continue to pay Liam's school fees as they fall due.
  - (d) The Husband pay the Wife's costs on an indemnity basis given the refusal to provide voluntary disclosure, the refusal to provide any financial support and the baseless and coercive claims of the Wife being a sex worker.
3. The Husband filed two affidavits in relation to this application which were sworn on 13 January 2025 (**Husband's First Affidavit**) and on 21 February 2025 (**Husband's Second Affidavit**). The Wife relies on her affidavit sworn on 24 January 2025 (**Wife's Affidavit**).

## THE LAW

### Interim Maintenance

4. The Court's jurisdiction to make an award for interim maintenance falls under the provisions of section 27 of the Matrimonial Causes Act 1974 (**the Act**) and reads as follows:

#### *Financial provision orders in connection with divorce proceedings, etc*

*"27 (1) On making a divorce order, nullity of marriage order or judicial separation order or at any time after making such an order (whether, in the case of a divorce order or of nullity of marriage order, before or after the order is made final), the court may make any one or more of the following orders, that is to say-*

- (a) *an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;*

...

*(d) an order that a party to the marriage shall make to such person as may be specified in the order for the benefit of a child of the family, or to such a child, such periodical payments for such term, as may be so specified; [Emphasis added]*

5. When considering an application made under section 27 (a) of the Act for spousal maintenance, the Court is required to have regard to the check list of factors specifically listed in section 29(1) of the Act which are as follows (hereafter referred to as **the Section 29 Factors**):

“29 (1)...

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;*
- (b) the financial needs, obligations, and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*
- (c) the standard of living enjoyed by the marriage before the breakdown of the marriage;*
- (d) the age of each party to the marriage and the duration of the marriage;*
- (e) any physical or mental disability of either of the parties to the marriage;*
- (f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;*
- (g) In the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;*

*and so to exercise those powers as to place the parties, so far as it is practical and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.”*

6. As it relates to child maintenance, section 29 (2) must also be considered:

*“(2) Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—*

- (a) the financial needs of the child;*
- (b) the income, earning capacity (if any), property and other financial resources of the child;*
- (c) any physical or mental disability of the child;*
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;*
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;*

*and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in subsection (1)(a) and (b), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.” [Emphasis added]*

7. The cases cited by Mr Richards related to maintenance pending suit which only applies when an application is made under section 26 of the Act which is not the case in this matter. There are different legal principles that surround making an application for maintenance pending suit.

### **Legal Cost Allowances**

8. The Court has the power to include in its award for interim maintenance an amount to cover payment for a party's on-going legal fees.
9. The provision of legal cost allowance has been allowed in Bermuda cases. In *TM v CM* [2018] SC (Bda) 80 Div, the court confirmed the availability of such a provision and referred to the guidance from *Curry v Curry (No. 2)* [2006] EWCA Civ 1338, where Wilson LJ summarized the prerequisites in order to receive an order for cost allowance at para 20:

*"In my view the initial, overarching enquiry is into whether the applicant for a costs allowance can demonstrate that she cannot reasonably procure legal advice and representation by any other means. Thus, to the extent that she has assets, the applicant has to demonstrate that they cannot reasonably be deployed, whether directly or as the means of raising a loan. in funding legal services. Furthermore, she has also to demonstrate that she cannot reasonably procure legal services by the offer of a charge upon ultimate capital recovery." [Emphasis in original.]*

10. The Wife confirms in her affidavit that she has liabilities of \$80,000 for her legal fees to date and that she has exhausted all options to raise further funds. Mr Richards produced correspondence from his law firm dated 27 February 2025 (**Richards Letter**) confirming that he would no longer be able to act for the Wife unless monthly payments of \$5,000 were received moving forward. The said correspondence also confirmed that the firm was not agreeable to a "Sears Tooth" agreement.
11. Going forward, Mr Richards noted that the Court must still determine the substantive application for care and control as well as the substantive claims for ancillary relief. Although all evidence has been filed, there will be significant preparation needed to move each matter towards a conclusion. It is anticipated that the costs for doing so will not be less than \$5,000 per month and likely significantly more.

## PARTIES' POSITIONS

### Wife

12. The Wife is a self-employed cosmetologist and hairdresser and receives approximately CAD\$2,000 (USD\$1,394.17) per month net after paying her business expenses. Although she does not receive traditional payslips, given her self-employment, she exhibited eight months of her business bank accounts (RBC and CIBC) which shows her income coming into her accounts, as well as her tax returns for 2022 and 2023.
13. During the hearing, Mr Richards produced proof of the Wife's tax rebates from the Canadian Government which confirms she will receive \$547.52 (USD\$379) per month for child allowance going forward and a once quarterly benefit of CAD\$150 (USD\$137.50). Ms Butler contended that these sums should be deducted directly from the expenses attributed to the child rather than be considered a source of income.
14. The Wife has stated in her affidavit that she has had to rely upon support from friends and family to meet her expenses. This includes payments from her mother, one of which was for CAD\$6,800 to assist the Wife with her legal fees. In addition, friends, both male (approximately USD\$4,380.00) and female (approximately USD\$7,517.48) have provided her with small sums to help with meeting basic expenses. The Husband has alleged that the payments from what she says are her "friends" must be from sex work given some of the descriptions of the transfers shown in the Wife's bank statements. The Wife denies this allegation.
15. Ms Butler submitted that based on the bank statements disclosed by the Wife, her average monthly income is approximately US\$7,106 (which includes the payments the Wife says are from friends and family). Mr Richards says that the Husband's income analysis is not accurate as there are transfers between the Wife's accounts which are incorrectly being labelled as income, i.e. double accounting. He also raised the fact that none of the Wife's business expenses are being taken into consideration such as the hiring of the chairs in the hair salon and purchasing products. Ms Butler emphasized that the Wife has neither provided any itemization of her purported business expenses, nor any proof of them. In response, Mr Richards argued that these sums are *de minimis* and certainly not sufficient to contend that this is a bounty that should be considered<sup>1</sup>. Furthermore, Mr Richards argued that even if the Husband was right about the Wife's monthly income being US\$7,106 (which is not accepted), this figure would represent her gross "income". He also highlighted that even if it was accepted that this was the Wife's net "income" it would still be the equivalent of less than half of the Husband's net monthly earnings (if those earnings are accepted as being accurate).

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<sup>1</sup> *Thomas v Thomas* [1995] 2 FLR 668

16. The Wife says that her monthly household expenses total approximately CAD\$3,609 (USD\$2,504.76) which are modest and are as follows:

Rent	CAD\$1,950 (USD\$1,353.37)
Groceries	CAD\$600 (USD\$416.42)
Transportation	CAD\$400 (USD\$277.60)
Car insurance	CAD\$48 (USD\$33.31)
Electricity	CAD\$111 (USD\$77.04)
Phone internet	CAD\$200 (USD\$138.81)
Clothing/hygiene/personal needs	CAD\$300 (USD\$208.21)

17. She also contends that a reasonable sum for both her and L's needs that would be consistent with the standard of living during the marriage would include additional expenses totalling CAD\$1,900 (USD\$1,318.54) (made up of dining out, travel, gifts, entertainment and an uplift in clothing). Therefore, this produces a total budget of monthly expenses in the sum of approximately CAD\$5,500 (USD\$3,816.84). The Husband contends that the expenses proposed are not agreed (although he does not say which costs are unreasonable and why).

18. Ms Butler submitted that the Wife has not provided proof of these expenses and reiterated that the Wife's income position is far from being accurate. In particular, Ms Butler argued that the Wife has not provided any supporting evidence of her purported loans from family and friends. Ms Butler also argued that the Wife has travelled extensively since her move to Canada which she says does not support her narrative that she does not have enough monthly income to meet her and L's needs. Ms Butler highlighted that the Wife has neither provided any itemization of her purported business expenses, nor any proof of them. Ms Butler ultimately submitted that the Wife has shown to be able to meet her expenses and suggested that she continue to do so with the Husband continuing to pay his own expenses in addition to L's school fees, but nothing further.

19. The Wife does not have any monies in savings, and at the time of filing her Affidavit had a total of \$592.39 in her only personal bank account. Mr Richards highlighted that this sum does not even cover half the amount of her monthly rent, let alone her very basic outgoings which total CAD\$3,609 per month. The Wife also says she has outstanding loans to friends and family which taken together, total to \$80,000. Furthermore, she has business and personal debts which total to \$77,887.

### **Husband**

20. The Husband is employed by a large insurance company and is the Head of one of its divisions. He earns a net salary of \$10,911.95 per month. In addition, the Husband receives dividend income (which for the purposes of this hearing the Wife accepts) from his shares in his employer's company of approximately \$938.19 per month. The Husband also receives a bonus each year. His pay slip for 31 December 2024 shows a

bonus payment of \$49,822 for 2024.

21. Mr Richards brought to the Court's attention that amongst other financial disclosure requested of the Husband back in October 2024, the Wife requested that he confirm his bonuses for the last three years and this was not provided. Mr Richards noted that the 2024 bonus payment was only disclosed as an exhibit to the Husband's Second Affidavit by chance as it was referenced on his year-end pay slip. The same pay slip shows that the Husband received net pay in 2024 of \$174,139.62 or the equivalent monthly net income of \$14,511.63 per month. Therefore, after taking into account the Husband's dividend payments, in 2024 the average net monthly income received by the Husband is \$15,449.82.
22. The Husband's declared expenses are \$5,721.74. Mr Richards noted that no supporting evidence for these monthly expenses have been submitted save for bank statements. Ms Butler suggested that the disclosure had not been provided as the Wife had not provided satisfactory disclosure to the Husband's liking.
23. In addition to his expenses referenced in paragraph 21 above, the Husband is also claiming that he would have to pay \$715.44 monthly (prorated annually monthly) to cover his travel expenses to exercise access with L. He has also been paying the monthly school fees payments for L in the sum of \$759.50. Taking these additional expenses into account (if all expenses were to be accepted), the Husband would still have a significant excess of income of approximately \$8,500 per month.
24. The Husband also argues that the cost for health insurance in Bermuda that he provides for L should also be taken into account when determining interim maintenance. In response, Mr Richards submitted that this payment is already accounted for in the Husband's net salary.
25. Ms Butler in conclusion submitted that the Wife has continued to meet hers and L's expenses since she moved to Canada and likewise, the Husband has met L's expenses in Bermuda. Therefore, the Husband's position is that what he is currently contributing to L is fair and reasonable.
26. As it relates to the Husband's purported lack of financial disclosure, Mr Richards pointed out that the not only did the Husband not obtain leave to file the Husband's First Affidavit, the Husband's First Affidavit failed to provide any financial disclosure save that at paragraph 21 the Husband claimed to earn \$10,911.95 net from his income and \$938.19 from dividends. Mr Richards also noted that no documents were produced to support his alleged income and that the Husband failed to disclose his bonus, evidence of his assets or information regarding the contributions made by his partner (who admittedly cohabits with the Husband) to the expenses. Instead, he exhibited hundreds of pages of the Wife's Instagram account alleging that she takes several vacations and clearly did not need any more money. Mr Richards submitted

that this is unhelpful as it does not address the factors which are required to be considered by the Court. Mr Richards submitted that adverse inferences should be drawn from the Husband's lack of full and frank disclosure.

## **FINDINGS AND ANALYSIS**

27. I agree with Mr Richards' submission that even if US\$7,106 was accepted as the Wife's monthly income it would still be the equivalent of less than half of the Husband's net monthly earnings. In any event, I have not been convinced that the Wife's income is anything other than what has been submitted in her tax returns.
28. Whilst the Husband has been contributing to L's direct expenses by paying L's school tuition in the sum of \$759 per month, the Husband is not making any contribution towards L's indirect expenses, which the Wife must incur to retain a roof over L's head. The Wife's basic, indirect expenses amount to approximately CAD\$3,609 (USD\$2,505.07) to retain a roof over L's head and keep him warm and fed.
29. The Husband's Second Affidavit fails to provide a complete picture of his financial position. This, and the fact that the majority of the Husband's Second Affidavit focuses on contesting the Wife's level of income and the number of vacations she has taken since she moved to Canada rather than focusing on setting out his clear position regarding the Wife's expenses, is not helpful.
30. My view is that the Wife's indirect expenses are reasonable, save for that I am unclear about the transportation position being CAD\$400 per month and an additional CAD\$48 for car insurance; therefore, at this time I will allow CAD\$200 per month for transportation, bringing the total of the indirect expenses being CAD\$3,409 (USD\$2,365.95).
31. Given that the indirect expenses relate to both the Wife and L, it is reasonable to attribute fifty percent of these expenses to L, i.e. CAD\$1,704.50 (USD\$1,182.79).
32. In my view, the tax rebate being received by the Wife should not be applied by way of subtracting this monthly stipend from L's indirect and direct expenses. I believe these rebates should be considered a source of income.
33. As it relates to the Wife seeking an uplift in her indirect expenses in the sum of CAD\$1,900 or USD\$1,328.48 (which she says reflects the parties' standard of living during the marriage), at this time, I am not prepared to accept that there should be an uplift. I am not satisfied that I have adequate evidence to determine this issue on an interim basis and should be left for the determination at the substantive ancillary relief application wherein the Wife can argue that any uplift should be backdated.

34. Based on the evidence before me, I have not been presented with any evidence or argument that the Husband does in fact have an excess of \$8,500 each month after paying his monthly expenses. Moreover, as the Husband also cohabits with his partner who is another career professional, there is highly likely a much greater excess as it would be expected that she would be contributing to the household expenses. As such, I have no concerns in the Husband's ability to pay a fair and reasonable sum of monthly maintenance.
35. In relation to the Wife's claim for legal costs, I accept the legal position as set out in paragraphs 40 and 41 of *TM v CM* [2018] SC (Bda) 80 Div which state as follows:
- “40. *F v F* also addressed the issue as to whether a party is entitled to obtain an order for payment of legal costs when the other party lacks the financial resources. *Kawaley J* determined in such circumstances legal costs orders can be made when:
- “16. “[The Court is] satisfied that he can (not perhaps without some difficulty) comply with such legal costs order, in addition to meeting the payment obligations imposed below in respect of the Wife's reasonable living expenses.”
41. *Mr. Luthi* relied on the Court of Appeal decision of *Curry v Curry (No 2)* [2006] EWHC Civ 1338 on the issue of the awarding of legal costs awards which in my view support the very same test as set out in *F v F*. Paragraph 21 of *Curry v Curry (No 2)* states as follows:
- “21. Although in making a costs allowance the court has a discretion, I cannot imagine that it would be reasonable to exercise it unless the applicant had thus duly demonstrated that she could not reasonably procure legal advice and representation by any other means....”  
[Emphasis added]
36. Based on the evidence provided by the Wife, I accept that she is not in a position to be able to afford to pay legal fees moving forward and that the Husband has available income to meet such payments for the Wife.
37. I must also address the Husband's lack of full and frank disclosure of his financial position. Whilst the Husband argues that the Wife has not provided adequate disclosure, I do not accept that this is the case.
38. It is trite law that parties to divorce proceedings have an ongoing duty until the conclusion of the proceedings to provide full and frank financial disclosure to the opposing party and ultimately to the Court. The Husband has not produced a complete picture of his financial circumstances. In the Husband's First Affidavit, only his monthly salary was provided as well as a list of his monthly expenses, albeit with no supporting evidence of those expenses. It was not until the Husband's Second Affidavit where a broader picture of his

financial position was provided, albeit, in my view the evidence is still lacking. For example, the Husband co-habits with another woman who is employed in a professional role. There is no disclosure as to the co-habitant's income and no confirmation as to what contributions she makes to household expenses.

39. Furthermore, given that the Court does not have any knowledge of the Husband's asset position or what a true reflection of his household income and expenses are, I accept that adverse inferences should be drawn.
40. It is unfortunate that the Husband's response to this criticism has effectively been "*I'll show you mine if you show me yours*". Whatever the criticisms the Husband may have of the Wife's disclosure, it does not obviate his legal requirement to provide full and frank disclosure.

## CONCLUSION

41. Taking into consideration the findings above as well as considering the Section 29 Factors, I grant the following orders:
  - (a) The Husband shall pay interim child maintenance in the sum of BMD\$1,200 per month to the Wife by way of direct deposit to one of the Wife's HSBC accounts.
  - (b) The said child maintenance payments referred to in paragraph (a) above shall be backdated to be effective from 1 February 2024 for which those payments total \$15,600. This sum may be paid by either a lump sum to one of the Wife's HSBC accounts within twenty-eight (28) days from the date hereof, or may be paid by way of monthly instalments of BMD\$600 per month to one of the Wife's HSBC accounts, with the first payment due on 11 March 2025, and thereafter shall be paid on the 1<sup>st</sup> of the each month until such time as the BMD\$15,600 is extinguished.
  - (c) As of 7 March 2025, the monthly sum of BMD \$1,200 for child maintenance referred to in paragraph (a) above, shall fall due on that date and thereafter on the 1<sup>st</sup> of each month.
  - (d) The Husband shall pay to the Wife's attorneys, the sum of BMD \$4,000 per month which is a provision towards her ongoing legal costs for these proceedings. The first payment shall be made by 11 March 2025 and thereafter shall be paid by the 1<sup>st</sup> of each month directly to the Wife's attorneys. For the avoidance of doubt, these fees shall be accounted for in the determination of the substantive application for ancillary relief.

- (e) The Husband shall continue to pay L's school fees (as being a representation of child maintenance payments) directly to the school as they fall due.

**Costs**

42. The Husband took an unreasonable approach to this application as he considered himself to already be contributing what he says is half of L's direct expenses by paying the school fees and health insurance in Bermuda. Even though the Husband is disputing the Wife's income, the Husband accepts that there are indirect expenses that the Wife must incur to retain a roof over L's head. Despite this, the Husband who has been shown to be in a far superior financial position to that of the Wife refused to accept his obligation to contribute towards any of L's indirect expenses.
43. Additionally, Mr Richards wrote to Ms Butler in October 2024 setting out the Wife's financial position, requested disclosure and asked that the Husband make a proposal for interim maintenance. This was met with complete resistance and, in my view, unreasonably so. This is not a complex matter and could easily have been resolved between the parties based on the well-known legal principles of child maintenance contributions.
44. Accordingly, I award costs of this application to the Wife on an indemnity basis. These costs should be assessed summarily at the next return date of either the ancillary relief or care and control applications. Thereafter, the sum assessed shall be paid for by the Husband directly to the Wife's attorneys within seven (7) days of the assessment.

**Dated this 11<sup>th</sup> day of March 2025**



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**ALEXANDRA WHEATLEY**  
**ACTING PUISNE JUDGE OF THE SUPREME COURT**