



**IN THE SUPREME COURT OF BERMUDA
DIVORCE JURISDICTION
2016: No. 50**

CRMR

Petitioner

-and-

KLR

Respondent

JUDGMENT

(In Chambers)

[Ancillary Relief- Maintenance]

Mr Adam Richards of Marshall Diel Myers for the Petitioner
Ms Jaqueline MacLellan of MacLellan & Associates for the Respondent

INTRODUCTION

1. This judgment follows the hearing of the parties' cross-applications for ancillary relief.
2. By way of Notice of Application for Ancillary Relief dated 6th August 2016 and her Amended Notice dated the 16th November 2016, the Petitioner (Wife) sought orders for interim and/or periodical payments for the child of the family, a lump sum payment and property adjustment order. The Wife's application is supported by two affidavits:- her First Affidavit sworn on the 16 November 2016 and her Second Affidavit sworn on the 7 February 2017.
3. The Husband's Notice of Application for Ancillary Relief is dated 27th October 2016 and sought orders for interim and permanent periodical payments for himself and for the child of the family; a property adjustment order and a lump sum payment. The Husband also filed an Ex-Parte Summons dated the 2nd November 2016 seeking maintenance for himself. The Husband's main application was supported by three affidavits: - his First Affidavit sworn on the 21 October 2016, his Second Affidavit sworn on the 29 November 2016 and his Third Affidavit sworn on the 18 January 2017.

PREVIOUS COURT ORDERS

Order of Injunction

4. On the Wife's application, the Supreme Court granted a freezing injunction on the 18th May 2016, which ordered the Husband not to dispose of, deal with or diminish the sum of \$150,000 removed from the joint bank account between the 8th and 12th April 2016. The Husband was also ordered to repatriate the funds to the joint account within 14 days. The Husband and his attorneys were not served with the injunction order until the 13th June 2016. It is an agreed fact between the parties that the funds were not returned to the joint account, but the reasons for the funds not being returned is in dispute. It is not necessary for me to comment or resolve that dispute for the purposes of the maintenance application, save to confirm that the parties accept that the Husband had use of the funds in the amount of \$150,000.

Order made under Hague Convention Application

5. In April 2016, the Husband left Bermuda for an agreed trip to South Carolina with the child of the family and, at the conclusion of the planned 2 week vacation, he advised the Wife that he did not intend to return with the child to Bermuda. The Husband initiated proceedings related to the child in the US whilst the Wife commenced an application under the Hague Convention for the return of the child to Bermuda. Eventually, after both parties incurred significant legal fees and after four months, these applications were resolved by consent with the child being returned to Bermuda in August 2016, and the Husband paying towards the Wife's legal costs in the sum of \$30,000. The Husband also returned to Bermuda to reside in August 2016.

Consent Order on Maintenance

6. The Husband initially sought maintenance in the amount of \$20,000 per month by way of Ex-Parte Summons dated the 2nd November 2016.
7. Following a hearing before the Registrar, on 30th November 2016, the Wife agreed to pay the Husband's rent for December in the amount of \$4,500 plus \$8,000 per month in maintenance for December 2016, January 2017 and February 2017. This is reflected in the Consent Order dated 5th January 2017.
8. The Wife continued to make voluntary payments to the Husband of \$8,000 per month after the Order expired and on 18th April 2017, the parties agreed that the Wife would pay the Husband \$10,000 per month in maintenance commencing 1st May 2017 and continuing until matters of ancillary relief were resolved.

9. Both agreements were entered into without prejudice to any argument which either party may wish to make at the final hearing as to the back dating of maintenance and to the amount of maintenance.

Matrimonial Assets

10. Following without prejudice discussions, an agreement was reached in full and final satisfaction of all claims of a capital nature as follows:
 - The Husband received a payment of \$250,000;
 - The Husband retained the benefit of the \$150,000 that was the subject of the injunction application;
 - The Husband retained the property he owns with his mother in his native South Carolina;
 - The Husband retained one of the former matrimonial cars;
 - The Wife retained the full benefit of her Business; and
 - The Wife retained the second former matrimonial car.
11. This agreement has not been reflected in a Consent Order or written agreement, but at the commencement of the hearing, both Counsel confirmed that the Court should not look behind the agreement whereby all capital claims were resolved on a full and final basis. The parties were represented by Counsel when the agreement was reached, and had full and frank disclosure at the time the agreement was reached.

ISSUE

12. As set out above, the only issue to be decided is the quantum and term of spousal and child maintenance.
13. I wish to make it clear that the application has been conducted on the basis that I am only concerned with the parties' relative income positions, the capital division having taken place in full and final settlement of all capital claims. I cannot interfere with the settlement of the husband's capital claims, and have operated on the basis that all capital claims were resolved in full and final terms by agreement.
14. Further, while both parties put forward evidence in their affidavits, examinations in chief, through cross-examination and in counsel's submissions which could be characterised as re-opening the issue of the capital agreement or the alleged conduct of the other party in previous proceedings, that evidence was disregarded when determining the issues of the quantum and term of spousal and child maintenance.

BACKGROUND FACTS

15. These facts are not in dispute, save for when noted. The Husband is a US citizen and the Wife possesses Bermudian status. The Wife is forty-one (41) years of age. The Husband is forty-two (42) years of age. The Wife is a self-employed doctor specialising in obstetrics and gynecology. At the time of the hearing, the Husband had not worked since 2009, and planned to return to full-time education starting in September 2017.
16. The Husband and Wife met at college in the United States. After college, the Husband and Wife worked and resided in the United States from 2003 through 2009. The Husband obtained a degree in psychology and worked with consulting firms gaining experience in various business industries. The Wife continued her medical studies and worked as a doctor.
17. After dating for approximately 4 years, the parties started living together in 2003. The parties were married on 1st May 2004.
18. The child of the family was born 15th June 2009 while the family was residing in the United States. After the child was born, and after first relocating within the United States, the parties moved to Bermuda. There is a dispute as to the parties' intention when they moved to Bermuda and how long they were going to remain in Bermuda. What is agreed is that in October 2015, the Wife advised the Husband that she wanted the family to remain in Bermuda to continue her medical practice. Despite any discord this decision may have caused, it is not disputed that the family remained living in Bermuda with the Husband and child returning frequently to the United States for vacation purposes and in order to visit the Husband's family.
19. The Wife's medical practice in Bermuda was established during the marriage.
20. The Husband did not commence employment in Bermuda. The Husband contends that it was agreed that he would be a stay at home father and the primary care giver for the child until the family returned to the United States when he would return to full-time education. The Wife contends that it was always intended that the Husband would return to work once the child was in full-time education wherever the family was residing.
21. The parties separated briefly in 2014 but reconciled shortly thereafter. The parties separated permanently in 2016. Decree Nisi was pronounced on the 26th August 2016 and made Absolute on the 20th October 2016. The length of cohabitation and marriage was 13 years.

22. The child of the family is now 8 years old, and the parties agreed a shared care arrangement in 2017.
23. The Husband had not been in a position to apply for his extension of spousal rights certificate until the hearing in July 2017 when the Wife agreed a final order of joint custody.

THE PARTIES' POSITIONS

A. The Wife's Position:

Wife's Income

24. The Wife deposed that she pays herself a monthly salary from the Business, and then any surplus after paying the expenses for the Business, is retained in the business account and then used to meet personal needs or is accumulated by way of savings.
25. The Wife specified in her evidence that she pays herself \$35,000 net per month, but that the Business income has been diminishing over the last year and a half, and that it continues to do so for the following reasons:
 - (a) As a result of dealing with the breakdown of the marriage and the various legal applications in 2016, the Wife was unavailable repeatedly for her patients for a period of months, which caused her reputation to suffer resulting in fewer clients.
 - (b) There are now seven OB-GYN's practicing in Bermuda as compared to the four that were practicing when the Wife first established the Business. This increase in doctors has resulted in the work being spread around more.
 - (c) Birth rates are down in Bermuda, which means that there is less work to go around.
26. As a result, the Wife argues that her past earnings cannot be used to determine her current earnings or earning potential, and that only the \$35,000 amount can be attributed to her by way of regular monthly income.

Wife's Expenses

27. The Wife's monthly budget is \$31,399. This figure includes \$17,970 for her mortgage and related household costs. It includes \$5,473 for expenses which directly relate to the child, for which she is solely responsible. There is also a figure of \$7,955.32 for personal expenses.

Husband's Income/Earning Potential

28. In relation to the Husband's earning potential, the Wife accepts that the choices made during the marriage including the move to Bermuda and the Husband staying at home (she says for three years) as the child's primary carer have generated needs on behalf of the Husband. It is her position that there was an expectation that the Husband would return to work once the child commenced full-time education. She says that, in 2013, when the child began attending nursery, the Husband tried to set up a restaurant business in Bermuda, which ultimately failed, and that the Husband has chosen not to work since that time. Further, she questions why the Husband has taken no steps to obtain work since the parties' separated in April 2016.
29. The Wife submitted that the Husband holds a Bachelor's degree in psychology and previously worked in New York developing businesses and running medical practices. She accepts that he has returned to education as a result of his belief that he needs a further Bachelor's Degree and a Masters degree before he could return to the workforce in Bermuda.

Husband's Expenses

30. The Wife contends that the Husband's claims for maintenance have "vacillated, changed and become more outlandish". Counsel pointed to the Husband's first two affidavits where he failed to address the financial positions of the parties as to income or expenses so as to provide any evidence for his claims for maintenance. It was submitted that the Husband's position continued to change several times during the hearing.
31. The Wife disputes all of the above claimed expenses in fact and law on the following grounds:
 - The Husband's calculations are wildly inaccurate and should not be considered if based on spending during the marriage as she had no idea as to the level of spending by the Husband during the marriage, and as a result, it does not provide an accurate assessment of reasonable expenses.
 - The sums sought are not properly particularized or justified on the facts.
 - The claimed expenses are exaggerated and greater than the Husband's needs, even when generously assessed.
 - With some items, such as entertainment, the calculations are only based on what the Husband alleges was spent on those heads during the marriage, such amounts are not accepted by the Wife.

- The sums claimed for BELCO, food and the house cleaner do not reflect the average costs during the marriage and in any event, should be reduced as the Respondent lives alone and the parties share care and control of the child.
- The current rental expense is \$4,500 and given that the Husband lives in the former matrimonial home, he continues to enjoy the standard of living he did during the marriage and does not require additional monies to move residences.
- The amount claimed for household maintenance should be reduced as the Husband resides in rented accommodations and many of those expenses will be covered by the landlord.
- The amounts claimed for travel are not reasonable based on the proposed schedule. The Wife accepts that the husband will travel with the child for short breaks (i.e. two weeks at a time) and for four weeks over the summer, which provides for eight weeks of travel each year with the child. The Husband then seeks to travel monthly on his own to visit his family on top of that travel, which the Wife says is excessive. The Wife states that \$1,175 per month or \$14,100 per annum (3 tickets for child at \$700, 9 tickets for Husband at \$700, car rental for nine trips at \$4,500, clothing for child at \$1,200) is reasonable for all travel expenses.
- No substantive information has been provided in relation to the effect of the US tax burden upon spousal maintenance.
- The Husband has provided nothing to substantiate his claims regarding his educational expenses save for an admission letter confirming his enrolment and an invoice showing costs for initial semester hours.
- The additional claims for funds to provide for a pension or purchase a house are capital in nature should not be allowed as the capital division has already been resolved.
- This is not a case that falls into the exceptional line of cases that allows for the application of the compensation principle so as to allow for an uplift or separate head of claim for capital provisions, such as mortgage payments for a house or monthly payments towards a pension fund.

Wife's Proposal

32. The Wife accepts that she should pay 100% of the child's expenses including the child's school fees, extra-curricular activities, school uniforms and supplies, health insurance, co-payments and any miscellaneous expenditure until such time as the Husband is employed. She also accepts that she should continue to pay the Husband's health insurance premium until the Husband is employed.

33. It is the Wife's position that the Husband should receive an award based upon his needs with a view to achieving a transition to independent living as soon as is reasonable. In all the circumstances, the Wife asks for the Court to make an order that the Husband receive an award of \$10,000 per month in the proportions of two thirds spousal maintenance and one third child maintenance set out as follows.

Rent	\$4,500
Belco	\$378.71
Digicel	\$300
Cablevision	\$300
Groceries	\$1,300
Travel	\$1,175
Education	\$1,000
Household/Entertainment	\$800

Total	\$9,753.71

34. The Wife's counsel submitted that the Husband has not provided any information as to his earning potential, but that he should complete his education after three years, and then should be more than capable of earning a salary which would allow him to be self-sufficient and meet his reasonable needs. As such, it was the Wife's position that the order should have a three year extendable term with the obligation on the husband to seek the extension. The issue of child maintenance would also be reviewed at the end of the three year period by which time the Husband should be employed and should be able to contribute towards the indirect expenses for the child.

B. The Husband's Position:

Husband's Income

35. Currently, the Husband has no income. He avers that he has been a stay at home father and essentially out of the work force since the birth of the child in 2009 as agreed with the Wife during the marriage. The Husband submitted that he is currently enrolled in a course to obtain a degree in business administration which will take approximately 1.5 to 2 years, after which he will take his Masters of Business Administration which will take a further 2 years. Thereafter he will be looking to re-enter the work force.
36. The Husband further submitted that he is unable to work in Bermuda after the parties separated in 2016, and was unable to even file his application for his ESERC as the Wife refused to agree a joint custody order.

Husband's Expenses

37. The Husband submits that his list of expenses include those which will allow him to be compensated for the economic disadvantages he suffered as a result of the role which he assumed during the marriage. The expenses have been divided into two categories: (1) expenses for himself including his educational costs and the child; and (2) amounts for him to be compensated for his economic disadvantage.
38. The Husband has listed his expenses at pages 477/478 of the correspondence bundle with two different scenarios in mind. These calculations listed expenses between \$32,284.50 and \$38,242.50. During the course of the hearing, counsel for the Husband corrected a double accounting issue and added additional expenses for the car, and the monthly figure was revised to \$30,859.83 as follows:

Household

Rent	\$4,500.00
BELCO	\$1,000.00
Digicel	\$ 300.00
Cablevision	\$ 400.00
Cleaner	\$1,000 .00
Food	\$1,950.00
Maintenance/Entertainment	\$1,841.50
Car- Gas	\$ 200.00
Car Licence and Insurance	\$ 333.33
Subtotal	\$13,991.50

Travel Costs

Travel with child	\$1,333.33
Travel without child	\$1,900.00
Subtotal	\$3,233.33

Educational

Business Degree	\$1,460.00
Subtotal	\$1,460.00

Compensation Amounts

New Car	\$1,250.00
Pension	\$5,000.00
House Purchase Fund	\$5,925.00
Subtotal	\$12,175.00

39. In the event that the Court declined to order compensatory maintenance, the Husband set out a scenario which provided for sufficient maintenance to move into a different home such that his new residence would be similar in standard to the one that the Wife now resides in. He also seeks that his travel, entertainment and re-education expenses should be generously assessed.

Category	Monthly Total
House Rent	\$9000.00
BELCO	\$1000.00
DIGICEL	\$ 300.00
CableVision (AKA OneComm)	\$ 400.00
Cleaning	\$1000.00
Food	\$1950.00
Entertainment	\$2000.00
Travel with child	\$1333.00
Transportation (new car)	\$1250.00
Car gas/licence/insurance	\$ 500.00
Education	\$1,460.00 (increase by 1,040 in 2 years)
Travel (without child)	\$1900.00
Total Projected Monthly Expenses	\$22,093.00

(i) Wife's Income/Earning Potential

40. The Husband argues \$35,000 per month is not the Wife's true net income position, that early 2017 is not reflective of the Wife's future earning/income potential and that the Court should consider the income level when the parties were not going through divorce proceedings and the Wife did not have incentive to reduce her income. Counsel for the Husband highlighted the following:

- The Husband did not accept that the Wife's Business income had been reduced as argued by the Wife.
- There was no independent verification of the billings or accounts receivables for the Business.
- The Wife's spending from the business account in the past few months did not reflect that she is concerned about being able to meet all of her ongoing expenses.
- The net Business income claimed was not accurate as the amounts deducted from the gross income included personal expenses such as payments to her family and friends, and to the benefit of her family/friends.
- The Wife could be receiving rent from the two apartments attached to her new home, and

- The Wife's parents who are living in her new home should be contributing to the monthly expenses of the household.
41. The Husband contends that the Wife should be attributed an income of \$65,000 per month from the Business, plus an additional \$6,500 per month by way of rental income.

Wife's Expenses

42. The Husband challenged the expenses listed by the Wife as follows:
- \$1,000 per month for house maintenance was not reasonable given that the house had just been purchased.
 - \$3,000 per month in food expenses was too high, and the amount of \$1,800 claimed by the Husband was a more reasonable reflection of a two person household.
 - Church Tithes are discretionary spending and could be reduced substantially in order to pay legal obligations such as maintenance.
 - The Wife did not provide any list of expenses until June 2017, and then stated that the list of expenses was only estimated.
 - The Wife continues to pay for a mortgage for her parents' home (which could be rented) and consistently gives money to her brother and her sister.
 - Other than her mortgage, the Wife does not have any debts including legal fees.
 - The amounts claimed for travel and entertainment are similar to the Husband's expenses and confirm that these amounts reflect the standard of living during the marriage.

Husband's Proposal

43. Based on the principles of fairness and the sharing principle as well as compensatory maintenance, the Husband proposes that the Wife pay \$30,859.83 per month over the next four years. If there was an amount ordered in relation to compensation, the Husband submitted that the maintenance order would not have to be back dated.
44. In the alternative, the Husband submitted that if the Court was not prepared to award an amount for compensatory support, then his needs should be generously interpreted so that the monthly amount would be \$22,093.00 to take into account an increased monthly rent and the purchase of a new car. The Husband submits that this award should be back dated to the date of his application.
45. In either circumstance, the Husband submits that the amount should be reviewed after 4 years with the order continuing until the Wife applies to the Court for an order ceasing or reducing maintenance.

CONCLUSION

A. The Law

46. The Court has jurisdiction pursuant to Sections 27, 28 and 32 of the Matrimonial Causes Act 1974 (“the Act”) to order periodical payments, for such period of time, as the Court determines. In reaching a decision, the Court must have regard to all the circumstances of this case including the matters specified in paragraphs (a) to (g) of Section 29(1) of the Act as well as the relevant case law. In exercising its statutory duty, the Court must strive to reach an overall outcome which is fair to each party as identified in the decisions, as provided by Counsel, of the House of Lords in *White v White [2001] 1 AC 596* and later developed in *Miller v Miller; McFarlane v MacFarlane [2006] UKHL 24, [2006] 2AC 618* where the concepts of needs, compensation and sharing were developed as being considerations in the assessment of fairness.
47. Counsel helpfully provided the relevant jurisprudence in relation to spousal maintenance from both the United Kingdom and Bermuda. I have carefully considered all of the cases provided while also balancing the statutory duties under the Bermuda legislation and the principle that each case turns on its particular facts.
48. The starting point can be found in *Miller v Miller; McFarlane v MacFarlane* whereby the House of Lords confirmed that compensation and sharing are a requirement of fairness when determining the issues of financial relief, and that there are no statutory provisions for restricting periodical payments to the particular purpose of ‘maintenance’ as set out in the paragraphs below:

[32] In particular, I consider a periodical payments order may be made for the purpose of affording compensation to the other party as well as meeting financial needs. It would be extraordinary if this were not so. If one party’s earning capacity has been advantaged at the expense of the other party during the marriage it will be extraordinary if, where necessary, the court could not order the advantaged party to pay compensation to the other out of his enhanced earnings when he receives them...

...

[34] The Wife’s financial needs, or her ‘reasonable requirements’, are now no more a determinative or limited factor on an application for a periodical payment order than they are on an application for a lump sum...

49. The view that compensation is a strand of fairness, rather than a separate head of claim, is supported by the decisions that follow. In *VB v JP [2008] 1 FLR* which reviewed the principle of compensation as it relates to spousal maintenance, quoting from the decision in *RP v RP [2006] EWHC 3409 (Fam)*, Sir Potter warned as follows at paragraph 50 and 52:

[50] *...it is neither possible nor desirable to break-up, artificially, these ancillary relief claims into separate heads of claims as if they were actions for damages for personal injury. In this jurisdiction there is only one finite pot of resources which has to be divided between two parties fairly by balancing their competing claims with reference to s. 25...*

[52] *...Further, I endorse the warning sounded by the judge against the introduction of an approach which seeks to separate out and quantify the element of compensation, rather than treating it as one of the stands of the overall requirement of fairness in the assessment of the parties' joint contribution to the marriage, where the wife, as a result of joint marital decision has sacrificed her own earning capacity in the interests of bringing up the family.*

[59] *...in cases other than big money cases, where a continuing award of periodic payments is necessary and the wife has plainly sacrificed her own earning capacity, compensation will rarely be amenable to consideration as a separate element in the sense of a premium susceptible of calculation with any precision. Where it is necessary to provide ongoing periodic payments for a wife after the division of capital assets insufficient to cover her future maintenance needs, any element of compensation is best dealt with by a generous assessment of her continuing needs unrestricted by pure budgetary considerations, in length of the contribution of the wife to the marriage and the broad effect of the sacrifice of her own earning capacity upon her ability to provide her own needs following the ends of the matrimonial partnership.*

50. The approach to compensation was helpfully clarified in *SS v NS [2014] EWHC 4183 (Fam)* with the framework summarised at paragraph 46. The relevant principles in play in the case at hand are as follows:
- i) A spousal maintenance award is properly made where the evidence shows that choices made during the marriage have generated hard future needs on the part of the Claimant. Here the duration of the marriage and the presence of children are pivotal factors.
 - ii) An award should only be made by reference to needs, save in a most exceptional case where it can be said that the sharing or compensation principle applies.
 - iii) The marital standard of living is relevant to the quantum of spousal maintenance but is not decisive. That standard should be carefully weighed against the desired objective of eventual independence.
 - iv) The essential task of the judge is not merely to examine the individual items in the Claimant's income budget but also to stand back and to look at the global total and to ask if it represents a fair proportion of the Respondent's available income that should go to the support of the Claimant.

51. All of the relevant cases have acknowledged that there is no formula that can be used when determining the quantum of spousal maintenance, and that the assessment of need is elastic, fact-specific and highly discretionary.

B. Application of the Law

52. In applying principles set out in the jurisprudence and the relevant statutory provisions, I have carefully considered all of the evidence of the Wife and Husband, and taken full account of the submissions of Counsel, when reaching this decision.

53. There is no dispute that this case is one where the marital choices have given rise to needs which have to be met by a spousal maintenance order. However, neither of the parties' proposals in relation to the quantum of maintenance is reasonable. The principle of fairness requires that the Husband shall receive an award of maintenance, and that fairness requires consideration of needs, compensation and sharing.

54. I am not limited to the figures which have emerged from examination of the detail of the budgets provided by the parties. They represent the beginning in a case of this kind where the Wife's means are sufficient to make provision beyond the confines or discipline of a strict budget. There is nothing to suggest that periodical payments ordered should be limited to payments needed for maintenance, but rather there is support for the principle that "needs" or "reasonable requirements" are no longer a determinative or limiting factor in the search for fairness. For example, a claimant's budget may properly contain a margin for savings and contingencies, quite apart from questions of compensation. As such, I have reached my decision in relation to quantum of maintenance on the basis of the Husband's needs as "generously interpreted".

55. All income is currently earned through the Business which was established and developed during the marriage. A review of the Business chequing account shows that the following amounts were deposited into the business account in 2015, 2016 and 2017 until May 2017:

2015	\$1,168,518.21
2016	\$1,197,205.76
Jan to May 2017	\$ 362,778.63

56. Records put forward by the Husband show that the fixed monthly business expenses were \$34,120 for 2015 to May 2016, and \$32,508 from June 2016 to May 2017. This figure includes rent of \$24,000, insurance of \$1,400, payroll tax of \$3,375.00 and malpractice insurance payments of \$5,345.56 (reduced to \$3,733.00 in June 2016). These amounts were accepted by the Wife.

57. It is accepted by both parties that expenses not related to the business were deducted from the Business account during the marriage and after the breakdown of the marriage. Other than the bank account for the Business, the Wife did not produce any records from the Business setting out the exact monthly or annual Business expenses during the relevant period. As such it was extremely difficult to determine the monthly or annual Business expenses using the debit entries from the bank account. As such, there was a dispute in relation to calculating the net monthly or net annual Business income.
58. Using the debits in the bank account (the nature of which could not be confirmed in all cases), the Husband calculated monthly Business expenses (not including the Wife's salary) averaging between \$36,402.63 and \$38,835.51 in 2015 and 2016. The Wife's chart has monthly Business expenses (not including her salary) averaging \$41,431.09 in 2016. If the highest and lowest figures are taken into account, this equates to annual Business expenses between \$436,831.56 and \$497,173.08. Roughly speaking in 2015 and 2016, the Business would have received net income of approximately \$700,000 or \$58,333.33 per month.
59. While the gross Business income was less in 2017 for the first five months, a review of the historical monthly Business income shows decreases in certain months with corresponding increases in other months. Further, I accept the Husband's submission that if the Wife had been concerned about her ability to earn income in the remaining months of 2017, she would not have used \$245,537.47 toward the purchase of a property in late 2016, and paid \$29,100 to and on behalf of family and friends in 2017. As such, I find that the income attributable to the Wife from the Business ranges between \$50,000 and \$58,000 per month.
60. The Wife does have the ability to earn rental income from the units attached to her new residence. Currently, only the studio apartment is vacant, and it is my finding that rental income of \$1,200 should be attributed to the Wife for this unit.
61. The Wife's parents are living in the other unit in return for their assistance with the care of the child of the family. As such, they will not be paying rent to the Wife. They will, however, be responsible for their own living expenses. It was the Wife's evidence that this will be a cost saving as she will not be required to hire a nanny and incur the associated costs. This position is accepted by the Court. However, the Court finds that the Wife's parents have the ability to rent out their own three bedroom home and apartment in order to cover their mortgage and other related house costs, and the Wife is not obligated to pay for these expenses.
62. As such, I find that the total net income attributable to the Wife falls between \$51,200 and \$59,200.

63. If the parties' positions are put at their highest in respect of their expenses, the Wife's expenses (including her payment of 100% of the child's expenses) are listed \$31,399.00 per month, and the husband's revised expenses (after clarifying his initial position as outlined in paragraph 39 above) are approximately \$30,859.50 per month. This results in total expenses just over \$61,000.00 per month with the amount increasing once the Husband begins his Master's degree.
64. In relation to the expenses claimed by the parties, while some expenses are fixed and unavoidable, both the Husband and Wife will need to adjust some of their spending based on the family's new circumstances. While the parties may have enjoyed a certain standard of living during the marriage, now that they must meet the needs of two separate households such that there is no great disparity between the two households.
65. In relation to the Husband's expenses, I find that the Wife's proposed monthly maintenance amount of \$10,000 does not take into account the entirety of the Husband's reasonable expenses, and that the Husband's proposed amount of \$22,093.00 includes expenses that are not reasonable in the circumstances. In relation to the Wife's expenses, I find that there are items which can be easily reduced without affecting her or the child's standard of living in order to meet any court ordered maintenance payment.
66. In order to arrive at a generously interpreted monthly maintenance payment for the Husband, I have considered the following:
 - (a) The Wife's expenses in relation to food and entertainment for two people were \$3,000 and \$2,000 respectively. It is reasonable to attribute these same amounts to the Husband as they share care and control of the child and have the same number of adults in their households.
 - (b) I have accepted the Wife's submissions in part in relation to the travel expenses for the Husband, but also find that the Husband may have additional accommodation costs if he chooses to travel and not stay with family or friends. I also accept the Husband's submission that the Wife's claim for \$2,000 per month in travel expenses is not reasonable in the circumstances. The annual amount of \$18,000 should be sufficient to meet all travel expenses in the circumstances.
 - (c) I have accepted the average cost of the cleaner will be closer to \$800.00 per month.
 - (d) I have included the costs of gas, licence and insurance for the car, but have not included a monthly payment towards a new vehicle. I have noted that the Husband's expenses did not include provision for car maintenance.

- (e) I have adjusted the educational figure to provide one figure for the four year period thus putting the obligation on the Husband to save for his Master's program in two years and to account for educational expenses that are presently unknown. \$1,500 per month would equate to an educational fund of \$72,000 over 4 years which will cover the costs of the Business Degree (\$27,000) and the Master's Degree (\$45,000).
- (f) The Husband is currently living in the former matrimonial home and the rental income is \$4,500. If he wishes to move accommodations, he will have to find room in his budget to do so.
- (g) The Husband's budget did not include any amounts for personal expenses such as clothing, medical expenses not covered by insurance and sundry items.
- (h) The Husband's budget did not include any provision for a payment towards his legal fees and other debts.
- (i) The Husband's budget did not include any provision for any savings and contingencies.

67. In consideration of the above, I order as follows:

- (a) By consent, the Wife will continue pay for the Husband's health insurance and child's health insurance until further order of this Court.
- (b) By consent, the Wife will continue to pay 100% of the child's expenses including the child's school fees, extra-curricular activities, school uniforms and supplies, health insurance, co-payments and any miscellaneous expenditure until further order of this Court.
- (c) The Wife shall pay \$17,500 in monthly maintenance to the Husband until further order of the Court. This amount should be attributed between spousal and child maintenance once the Husband takes US tax advice.
- (d) This order shall be backdated to October 2016 and the amounts paid by the Wife (12,500 in December 2016, \$8,000 in January 2017 and February 2017 and March 2017 and \$10,000 from April to October 2017) to the Husband in monthly maintenance during that period should be taken into account.

(e) The above order shall be reviewed in October 2020 unless there is a material change in circumstances before that time, and either party may apply by way of letter to have the order reviewed. For the avoidance of doubt, the amount of maintenance shall not cease or be reduced until such time as there is an order from the Court either by consent or by way of the review.

68. I invite Counsel to prepare an order for the Court's approval.

69. I shall hear from the parties as to costs and as to any further directions which may be required for the implementation of this judgment.

Dated this 7 day of November 2017

Acting Registrar, R. Barritt