



IN THE SUPREME COURT OF BERMUDA

DIVORCE JURISDICTION

2005: No 16

B E T W E E N:

EDWARD ARTHUR DANIELS

Petitioner

AND

TERESA FAITH DANIELS

Respondent

Ms. Georgia Marshall, Marshall Diel & Myers for the Petitioner

Ms. Karen Williams-Smith for the Respondent

JUDGMENT

1. There are two applications before the Court.

First, the Petitioner's application for ancillary relief dated the 28th day of January 2005 in which he seeks the following (a) that the Respondent may be ordered to make such payments to the Petitioner by way of maintenance pending suite, periodic payments secured provisions, lump sum or sums as may be just; (b) that the Respondent may be ordered to make such payments or otherwise by way of property adjustment or variation of settlement as may be just and; (c) such further and other relief as may be just.

Second, the Respondent's application dated the 7th day of March 2005 in which she seeks an order for a lump sum or sum provisions, periodical payment, and property settlement or property adjustment as may be just.

2. I shall at times refer to the parties as husband and wife although Decree Nisi was granted on the 27th day of January 2006 and made absolute on the 14th day of March 2006.
3. The husband is Bermudian and is 38 years of age.
4. The wife is a citizen of one of the states of the United States of America and is 41 years of age.
5. Following a long tumultuous relationship the parties married on the 20th day of June 1999.
6. This was a very complex relationship. Pre-marriage, the parties were engaged on three occasions but subsequently separated on two of them. On one occasion, the wife returned to the United States of America and one year later returned to Bermuda and continued her relationship with the husband. During the third period of engagement, the wife became pregnant and the parties were married on the 20th day of July 1999. The child of the family, Keelina Faith, was born six months later, on the 8th day of December 1999. I formed the impression that there was tremendous uncertainty before the marriage. I believe that the marriage started on rather shaky ground. In the end it failed to withstand the test of time with the parties separating in July 2004. The actual marriage lasted 5 years but the relationship that pre-existed the marriage lasted some 14 years. Despite the overall length of the relationship Counsel are agreed that it should be treated as a marriage of short duration.

The wife has care and control of Keelina with reasonable access granted to the husband.

7. The husband has one child from a former relationship who is not in his custody but he also has reasonable access to her and is liable to pay maintenance for her. The husband said that his second wife was the main pursuer. Although she knew that the mother of his first child was pregnant she still went out with him.
8. When the evidence of wife and husband is in conflict I prefer the evidence of the husband.

9. For a number of years prior to their marriage, the husband worked both as an “exotic dancer” as well as in the hotel industry. However, immediately prior to the marriage the husband secured employment as a fireman in the Bermuda Fire Service.
10. I accept and find as a fact that there is a considerable financial disparity between the parties. In 2005, the husband earned an average monthly income of \$4,329.29. The wife is a chartered accountant and a senior executive at ACE (Bermuda) Limited and is a comparatively high earner. Her gross monthly salary inclusive of bonus and other benefits is not less than \$25,000.00. Her monthly remunerative package for 2005 was made up of her gross pay, bonus, car allowance, benefits, and contribution towards her rental income.
11. I am satisfied that from the very outset the wife made it clear to the husband that she was willing to fund the family. She controlled the family finances and made all the important financial decisions. She decided what expenditures would be made and how they would be financed and to what extent the husband would contribute and benefit. The wife was content to have the husband retain his earnings to meet his personal expenses and spend as he wished. In her affidavit evidence she said that the husband was not in a position to make payments towards the mortgage. She objected to the husband seeking additional employment to augment his income. She preferred to have him home in the evenings to assist with the care of the child. These arrangements were matters, which in my view did not trouble either party at the time.
12. **The Former Matrimonial Homes**

Two matrimonial homes were purchased during the marriage.

The first home – the Perry Drive property – was purchased for \$660,000 shortly after the marriage. The purchase price was financed with deposits of two hundred and sixty thousand dollars (\$260,000) paid by the wife and the balance of \$440,000 by way of a mortgage. As the wife was not a Bermudian and could not purchase property without a special licence to do so (a restricted person) the conveyance was taken in the sole name of the husband. The wife paid the monthly mortgage payments at a reduced level as she received a 3% contribution towards the interest on the mortgage as part of her employment remuneration package. The property had a rental unit from which they received income of \$1,700.00 per month. The husband received this income.

13. The Perry Drive property was sold for \$750,000.00, netting \$317,976.00. A portion of these net proceeds represented the deposit which the wife injected into the purchase price of the property.
14. The second home – 35 Seymour Farm – was purchased in June 2002 for \$1.1 million. The equity of \$317,976.00 from Perry Drive was used as part of the purchase price. The wife paid an additional deposit of \$110,000.00. A mortgage of \$791,660 was secured to enable the purchase. Again, as a restricted person, the wife was not eligible to purchase the property and the property was conveyed into the husband's name.
15. The Seymour Farm property also has a rental unit that was rented for \$1,700.00 monthly. In this instance the rental income was divided equally between the parties.
16. The Seymour Farm property is now worth \$1.6 million. The outstanding mortgage is \$508,000.00 leaving a net equity of \$974,387.00. The wife currently receives \$3,000.00 per month from the rental unit of the former matrimonial home. I have no doubt that it was the wife who made the necessary financial arrangements to facilitate the purchase of the properties and who paid the mortgage.
17. **The Separation Agreement**

The parties separated when the husband ended the marriage. I am satisfied and find this a fact that when the parties first separated they entered into a separation agreement about which the husband had no legal advice. He went to Messrs. Trott & Duncan, the wife's attorneys to sign the document. He was given a copy of the document, which he never took away. The husband's evidence is that the wife called him to say the separation agreement was ready and she asked him to meet her at the offices of Trott & Duncan. There were no lawyers present. The secretary, Ms. Lopes, was present. Although he was asked to read the document his wife paraphrased its contents. In the husband's evidence it is stated that she said it was a simple separation agreement that would facilitate "my signing the house over to her and at the end I would get a lump sum payment".

18. I believe the husband when he said his wife was basically in charge of all legal and financial matters because she had the university degree and that he trusted her completely. There was not a great depth of discussion when he entered into this agreement. He said his wife accepted that she

would pay him a lump sum and they had several discussions on what amount that lump sum should be. In the end, it was to be half of the equity of the house. He had a rough figure in his head but he did not know what really half the equity should be. The fact that the wife made arrangements with the bank to borrow \$400,000 to pay the husband supports the husband's evidence that they were discussing a lump sum payment.

19. **The Conveyance**

The husband's evidence was that he did not stand in his wife's way to obtain a licence to have the property transferred to her. She picked him up in order to take him to Messrs. Trott & Duncan to sign the conveyance and he told her that he was uneasy about signing over the property to her without having a figure which he would receive in writing. The discussion became heated and she told him that if he did not sign she would drag her heels in getting the money for the condominium. The husband said that he had paid \$12,000 (provided by the wife) deposit towards the purchase of a condominium that he had negotiated to purchase. He was renting the condominium for \$2,200 per month with an option to purchase and if he did not close by January 12 he would lose the opportunity to purchase it. He told his wife, prior to signing the conveyance, that he would like his lawyer to see the document.

20. She took him again to Messrs. Trott & Duncan, where he saw Ms. Lopes, the secretary who presented him with the deed of conveyance. No one explained to him what that document was nor the effect of signing it. He advised Ms. Lopes that he wanted to seek legal advice. I believe the husband when he said that he remained uneasy. He called his wife once again and they had a further discussion and he told her that he was not comfortable about this. He did not sign at that particular time. She said, "If you sign I will get you your money". He said he returned to Trott & Duncan again. He believed he saw Ms. Lopes, and he signed the conveyance. I am in no doubt that the husband signed the document because the wife alleviated his reluctance by promising to provide the funds to purchase the condominium.

21. The husband says that his wife has not lived up to her promise; she is insistent that he gives her child support and says that she has given him all the money she intends to give him. The husband says that he has no money to pay his wife a lump sum provision and has no sufficient income

to pay her periodical payments. He has no other property. He says that their relationship has always been strained due to financial issues.

22. The husband said the wife treated him as a “trophy husband”, that she was controlling and wanted things to go her way. He said that she was great at manipulating and steering things her way. When making vacation plans he left the arrangements up to her for fear that she would not find them suitable.

23. **US Visa Card**

During the course of the marriage, the husband said his wife gave him a US Visa Credit Card, which she told him, was mainly for emergency use. She did not consult with him before she organized the card and she did not give him the credit limit. Recently, he has learnt that his wife was proceeding with criminal charges against him for using the US visa card to make a purchase of \$40.00 on the Internet. He was never asked to pay back the \$40.00. The husband said inadvertently a friend used the US visa card instead of his Bermuda visa card to purchase an item for \$40.00 off the internet.

24. Further, his wife had him locked up for a weekend on the basis that he breached a DVO protection order. There was no threat of violence. He is not allowed to call the house to speak to his daughter. Now he has a criminal matter hanging over his head.

25. **Co-Respondent**

The husband now lives with Ms. Jennifer Hawkins, who he said has incurred a high level of costs because of the behaviour of the wife. He said that the wife had Miss Hawkins removed from her job by placing a call to Immigration and telling them that Ms. Hawkins was sleeping with a married man. Immigration suspended her work permit. She had just started working in February. She is now working to pay off her legal costs.

26. **Failure to Disclose**

The husband intercepted the wife’s mail and got hold of a number of bank statements. On behalf of the wife, Mrs. Williams-Smith said that “the husband’s theft of the wife’s bank statements, where he had carefully planned to meet the postman on given days to cipher through and steal particular pieces of the wife’s mail, is conduct that is obvious and gross”.

27. I am not convinced that this is the case. The wife had failed to disclose this information after several requests to do so. Indeed, I am fully satisfied that the Court would not have had a clear picture of the financial information without access to this material, which gave a more accurate picture of the available resources. I am convinced that the wife's lack of frankness would have continued if the husband had not resorted to, if you will, self help. Indeed, most of the wife's disclosure came during the trial only after she was trapped into disclosing the information.

28. **Marriage in Bad Faith**

The wife said that cumulatively the husband's behavior both prior and subsequent to the divorce has been gross and obvious and that it would be inequitable to disregard it when considering the question of ancillary relief. Among the matters complained of is the allegation of the husband's: (1) plan to marry for financial gain and then exit the marriage after 5 years (5 year plan); (2) adulterous relationship with the Party-Cited, (3) theft of the wife's bank statements, (4) non-payment of child support but accepting financial support of the Party –Cited since September 2005 and (5) unauthorized use of the wife's credit card.

29. In response to the wife's allegation that he entered the marriage for 5 years and exited for financial reward, the husband said that when he entered the marriage he had no such plan. He never at any time said to anyone that he had a 5-year plan. He said he has a British American plan that reimburses \$5,000.00 after every 5 years and he pays into it on a monthly basis. He gets his next \$5,000.00 in October. He has discussed this 5-year payback scheme at his place of employment. He said as regards Ms. Sandra Gladys Simons, who testified on behalf of the wife, they have had an intimate relationship prior to his marriage. He did not carry on an adulterous relationship with the Party-Cited.

30. On the other hand the husband submits that the wife's behavior in procuring his signature on the Separation Agreement and subsequently the deed of conveyance amounts to gross and obvious conduct. The husband urges that it is incumbent on the Court to take this conduct and the wife's subsequent conduct into account when considering the allegations against the husband. The subsequent conduct includes continuous complaints to the police following procurement of the DVO, which he agreed on the basis that no admissions were made as to the facts alleged. The wife has had him arrested when she had no cause for

concern for her safety and in circumstances where the alleged breach was a final reaching out to her in an attempt at reconciliation. The husband further complains that the wife's aim at having him incarcerated is further highlighted in the manner in which she dealt with the credit card charges. Having secured a refund of the US\$40 she proceeded to make a criminal complaint against his alleged theft.

31. Having seen and heard and weighed the evidence of the witnesses (George Smith, Sandra Gladys Simons and Antoine Michael Rawlins) I do not find that the husband entered the marriage with any plan to deceive the wife. I entertain no doubt and find as a fact that this was an attempt by the wife to bolster her claim of a 5 year plan to which there is no foundation. Each witness that spoke of this 5-year plan totally failed to persuade me that the husband married the wife with any such intent or plan. Two of the witnesses – Mr. Rawlins and Ms. Simons – have their own axe to grind with the husband. Mr. Rawlins believed that the husband was having an affair with his previous girlfriend. Ms. Simons was a former girlfriend. Mr. Smith is merely repeating what he said that he was told by the Party-Cited. Further, he said that he formed an impression that the husband and the party cited were having an adulterous relationship based on their “body language” displayed whilst they were having lunch together.

32. **Family Assets**

As far as family assets are concerned the husband owns a 100 cc motorcycle with an approximate value of \$10,000, furnishings \$15,000. In order to meet his legal expenses the husband owes Capital G \$15,000.

The wife's assets consist of Net Equity in Seymour Farm \$974,387; furnishings \$25,000, Deferred Bonus \$75,000; Gross value of options and restricted shares \$450,000; Loan Due \$40,000; Value of Pension Scheme \$300,000 and Value of 410K plan \$14,000. This gives a value of approximately \$1,878,387.

33. **How should the Family Assets Be Distributed?**

In dealing with the distribution of the Family Assets I must be guided by the statutory prescribed principles laid down by Section 29 of the Matrimonial Causes Act 1974 and by precedent. At the end of this hearing Counsel for the parties asked the Court not to make a final decision in this matter until the House of Lords delivers its decision in the case of Miller v Miller: McFarlane v McFarlane [2006] UK HL 24 [2006]

1FLR 1186 House of Lords 26th May 2006. I now have that decision and Counsel's supplemental submissions. I am grateful for the Miller decision, as it has provided further guidance as to how the distribution of the family assets should be approached.

34. In Miller *supra* at paragraphs [8 – 12] the Court said “for many years one principle applied by the Courts was to have regard to the reasonable requirements of the claimant, usually the wife, and treat this as determinative of the extent of the claimant's award.

Fairness lay in enabling the wife to continue to live in the fashion to which she had become accustomed. The glass ceiling thus put in place was shattered by the decision of Your Lordship's House in the White case. This has accentuated the need for some further judicial enunciations of general principle.

The starting point is surely not controversial. In search for a fair outcome it is pertinent to have in mind that fairness generates obligations as well as rights. The financial provision made on divorce by one party for the other, still typically the wife, is not in the nature of largesse. It is not a case of “taking away” from one party and “giving” to the other property, which “belongs” to the former. The claimant is not a supplicant. He is party to a marriage and is entitled to a fair share of the available property. The search is always for what are the requirements of fairness in the particular case.

What then, in principle, are these requirements? The Statute provides that first consideration shall be given to the welfare of the children of the marriage. In the present context nothing further needs to be said about this primary consideration. Beyond this several elements, or strands, are readily discernible. The first is financial needs. This is one of the matters listed in Section 25 (2) of the 1973 Act, in para b: “the financial needs, obligations and responsibilities which each of the parties to the marriage has or likely to have in the foreseeable future.

This element of fairness reflects the fact that to a greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money earner, homemaker and childcarer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provisions for the parties' housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's

standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter.

In most cases, the search for fairness largely begins and ends at this stage. In most cases the available assets are insufficient to provide adequately for the needs of two homes. The Court seeks to stretch modest finite resources so far as possible to meet the parties' needs. Especially where children are involved it may be necessary to augment the available assets by having recourse to the future earnings of the money-earner, by way of an order for periodical payments.

The Court continues, another strand, recognized more explicitly now than formerly, is compensation. This is aimed at redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage. For instance, the parties may have arranged their affairs in a way which has greatly advantaged the husband in terms of his earning capacity but left the wife severely handicapped so far as her own earning capacity is concerned. Then the wife suffers a double loss: a diminution in her earning capacity and the loss of a share in her husband's enhanced income. This is often the case. Although less marked than in the past, women may still suffer a disproportionate financial loss on the breakdown of a marriage because of their traditional role as homemaker and childcarer."

35. The Court is enjoined by the tailpiece of Section 29 that it must have regard to all the circumstances of the case. *Miller and McFarlane supra* have now clarified that the starting point is to arrive at a fair sharing of the available resources. Fairness requires that the assets of the parties should be divided primarily so as to make provisions for the parties' housing and financial needs taking into account a wide range of matters such as the parties' ages, their future earning capacity and the family's standard of living. Another strand of fairness is compensation in redressing any significant prospective economic disparity between the parties arising from the way they conducted their marriage.
36. A third strand relates to sharing. In Paragraph 16-17 Lord Nicholls of Birkenhead said this "equal sharing" principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. "Husbands and wives are now for all practical purposes equal partners in marriage. This is now recognized widely, if not universally. The parties commit themselves to

sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: Unless there is good reason to the contrary". The yardstick of equality is to be applied as an aid, not a rule. This principle is applicable as much to short marriages as to long marriages: See Foster v Foster [2003] EWCA Civ 565, [2003] 2FLR 299, at 305, para [19] per Hale LJ. A short marriage is no less a partnership of equals than a long marriage. The difference is that a short marriage has been less enduring. In the nature of things this will affect the quantum of the financial fruits of the partnership." (Emphasis mine)

37. Mrs. Williams Smith for the wife maintained that it is not set in stone that when a partnership ends there should be an even split of the assets between the parties. If it can be shown that there is a good reason to the contrary as to why equitable division should not occur then the Court must take this into consideration. The conduct of the husband merits consideration to the extent it should be taken into account to reduce his award even though Miller is suggesting an equal sharing of the matrimonial assets. Mrs. Williams Smith urged that the husband's conduct which she describes as obvious philandering, cheating and deceit raises the question whether there should be any award at all. For example, the husband's adultery; the 5-year plan to deceive the wife, the unwillingness to contribute to any portion of the maintenance of the household including mortgage repayments, his choice not to help his wife or child, instead choosing to spend money on dining other women, trips to visit other women and in his lifestyle forsaking fatherly and husbandly duties. This is the conduct, urged Mrs. Williams Smith, that would make it not fair for the husband to be entitled to half the assets, when he had already spent more than his fair share.
38. I emphasize what I said earlier that I reject the suggestion of a 5-year plan as I found no substance to that allegation. It is clear that the Court must have regard to the parties' conduct if it would be inequitable to disregard it. "In the olden days, when all the assets were assumed to be the breadwinners' and he was making an allowance to enable his wife to live separately from him, the wife's conduct might reduce the allowance she would otherwise have needed or even extinguish it altogether. She had, therefore, to be 100% blameless in order to be sure of her conventional one-third share of his income. In theory, if she were 50% to blame her share might be halved, although in practice the divorce courts were more flexible than that. Once, as now, the assets are seen as a pool and the

couple as equal partners, then it is only equitable to take their conduct into account if one has been very much more to blame than the other: in the famous words of Omrod J in *Wachtal v Wachtal* [1973] Fam 72, at 80, if “the conduct had been both obvious and gross”. This approach is not only just; it is the only practicable one. **It is simply not possible for any outsider to pick over the events of a marriage and decide who is the more to blame for what went wrong, save in the most obvious and gross cases.** Yet in *Miller v Miller*, both Singer J and the Court of Appeal took into account the parties’ conduct, even though it fell far short of this. In my view they were wrong to do so” (See Para 145). It is clear that the equal sharing principle applies as much to short marriages as to long marriages being no less a “partnership of equals”.

39. In my judgment, it would be inequitable to take either party’s conduct into account as I do not find any evidence which demonstrates that one is very much more to blame than the other. Indeed, there is no conduct of either party that I would characterize as “both obvious and gross”.

40. **What are the reasonable requirements of the parties?**

Having regard to how the parties arranged their affairs over the 5 years of the marriage which itself does not in any way limit the concept of equal sharing of the matrimonial assets I can find no good reason to deviate from this. At the beginning of this hearing, the wife wished to retain the matrimonial home as a home for herself and the child of the family. The husband agreed to this and signed the relevant documentation so that she could receive a licence to hold the property in her own name. This situation has now changed as the wife is seeking to return to the United States of America with the child of the family. It is clear, therefore, that she no longer requires the home as a home for herself and the child of the family.

41. In *Miller supra* the Court said at paragraph 22: **“the parties’ matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose.** As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been. (Emphasis added).

42. A key feature of this case is Section 80 of the Bermuda Immigration & Protection Act 1956. da Costa J in commenting on Section 80 in *Williams v. Williams* In the Court of Appeal for Bermuda Civil Appeal No.8 of 1982 wrote:

Lord Morris of Borth—Gest said in *Gissing v. Gissing* (1971) A.C. 886 at pp 897-898:

“When question arises between spouses or between former spouses or in relation to the affairs of one or another of them concerning the beneficial ownership of property the task of a court will often be one of much difficulty. But this should not be because the principles of law are in any way obscure or in doubt. It will be because in the nature of things the evidence will often not be specific and precise. The court must do its best to ascertain all the facts and then reach a conclusion...

To “the infinite variety of circumstances that may arise” one must add the case of the “restricted person” in Bermuda who purchases property in the name of his Bermudian spouse, or in their joint names.

Ironically enough, although the Matrimonial Causes Act, 1974 is patterned on the English 1973 Act, the effect of Section 80 of the Bermuda Immigration & Protection Act is to create radically different rights in the matrimonial home where one of the parties is a “restricted person”.

“...Where both spouses contribute to the acquisition of a property, my view (of course in the absence of evidence) is that they intended to be joint beneficial owners and this is so whether the purchase be in the joint names or in the name of one. This is the effect of the application of the principle of resulting trust. Even if the property be put in the sole name of the wife, I would not myself treat that as a circumstance of evidence enabling the wife to claim an advancement to her, for it is against all the probabilities of the case unless the husband’s contribution is very small.”

In Bermuda the spouse who is a restricted person and who contributes to the acquisition of property can never be in that happy position. The effect of Section 80 (1) is clearly to prevent any resulting, implied or constructive trust arising in favour of the restricted person who is the other party to the marriage. This seems to be the clear intention of the Bermuda Legislature. The law cannot presume a resulting trust which if made expressly the law would inexorably forbid.”

43. Mrs. Marshall submitted that as a result of the marriage the wife has been able to enter the real estate market and benefit substantially from the

increased value of real estate over the course of the marriage as a result of the Bermudian husband being able to hold real estate for the benefit of the family. Mrs. Marshall relies on the theory of advancement and the case of Williams supra and maintains that the benefit of the increase in value in the real estate is beneficially the husband's and not the wife's.

44. I agree with Mrs. Marshall's analysis except that the position changed once a licence was granted to the wife and the property conveyed to her. In my view if the property was not conveyed to her she would not have had a beneficial interest in it. In any event I view this as a significant contribution by the husband. Indeed the wife said that marriage to the husband gave her a competitive edge and allowed her to compete for and obtain certain jobs without any restrictions on her ability to do so.
45. Having regard to the primary consideration which is the welfare of the child of the family each parent should have adequate accommodation to exercise access. The Court should also have regard to the standard of living enjoyed during the five (5) years of the marriage and to each contribution, their ages and income. The statutory objective requires that the husband share in the assets equally. I ignore the complaint of the inappropriate conduct of the parties. The alleged conduct which I find proven falls short of the threshold stated in the Act. As stated earlier **it is simply not possible for any outsider to pick over the events of a marriage and decide who is the more to blame for what went wrong, save in the most obvious and gross cases.** Conduct should only be taken into account if it would be inequitable to disregard it.
46. Dealing first with the question of the maintenance of the child of the family, throughout the years the husband's financial contribution has been minimal. There was no necessity for it as the wife had sufficient means to take care of all the child's financial needs. Nevertheless, I believe that the husband should meet some of the expenses and I assess that \$400 per month would be an appropriate amount. With her earning capacity I have little doubt that the wife, who has been meeting all the expenses without any known stress, will be able to shoulder the additional expenses of the child of the family.
47. In so far as the division of the assets is concerned the wife should pay the husband five hundred and fifty thousand dollars (\$550,000). This sum would provide a significant down payment on a two bedroom condominium which would provide an appropriate setting to live and to exercise access to the child of the family. With his earning capacity he

should be able to meet the mortgage payments with a modest surplus to meet other expenses.

48. Bearing in mind the wife's assets consisting of the above mentioned net equity in Seymour Farm, deferred bonus, options and restricted shares, a pension scheme and 410K plan whether she remains in Bermuda or returns to the United States of America the wife should have no difficulty raising the funds to meet this payment. The husband should have his cost of these proceedings.
49. I would invite Counsel to prepare an agreed order for my signature.

Dated the 17th day of January, 2007.

The Hon. Justice Norma Wade-Miller
PUISNE JUDGE