Neutral Citation Number: S v H [2026] CA (Bda) 18 Civ

Civil Appeal No. 19 of 2025

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE SUPREME COURT OF BERMUDA SITTING IN ITS CIVIL JURISDICTION
BEFORE THE HON. ACTING JUSTICE ALEXANDRA WHEATLEY
CASE NUMBER 2024: No. 61

Dame Lois Browne-Evans Building
Hamilton, Bermuda HM 12

Date: 21 October 2026

Before:

THE HON IAN KAWALEY, THE PRESIDENT,
THE HON DAME ELIZABETH GLOSTER, JUSTICE OF APPEAL
THE HON SIR JULIAN FLAUX, JUSTICE OF APPEAL

- -

Between:

S

Appellant

- and -

H

Respondent

Appearances: **Nicole Cavanagh** of **Carey Olsen Bermuda Limited**
for the Appellant
Jonathan Casey of **Conyers Dill and Pearman Limited**
for the Respondent

Hearing date(s): 3 June 2026
Further submissions: 12 June 2026
Draft Judgment circulated: 7 October 2026
Date of Judgment: 21 October 2026

Divorce-ancillary relief-approach to maintenance orders-bar to extension of periodical payments order-deferred matrimonial capital-treatment of unvested stock-Matrimonial Causes Act 1974 sections 14, 27, 29, 35.

JUDGMENT

IAN KAWALEY P:

1. On 19 November 2025, Wheatley J (Acting) (the "Judge") delivered judgment (the "Judgment") on the Appellant Wife's consolidated applications for financial provision under section 14 of the Matrimonial Causes Act 1974 (the "Act") and her Amended Notice of Intention to Proceed with an Application for Ancillary Relief. The Order giving effect to that Judgment was made on the same date (the "Order"). By a Notice of Appeal dated 31 December 2025, the Appellant ("the Wife") appealed against the entirety of the Judgment and sought the following relief from this Court:

    (a) a reassessment of her financial needs;

    (b) a reconsideration of the parties' respective income positions after marriage and in retirement;

    (c) an order that the investments awarded to the Respondent ("the Husband") should be distributed to the parties on the basis that they constituted deferred matrimonial capital; and

    (d) (alternatively to (c)) a lump sum award in favour of the Wife on the basis of need.

2. In the course of argument on the present appeal, a dispute emerged as to an additional point of legal principle, namely the validity of paragraph 6 of the Judge's Order, which provided that after the expiry of the term fixed under paragraph 5 for periodical payments, the Wife could make no further application for similar relief. Directions were given for the filing of supplementary submissions to deal with this significant point of principle. The appeal otherwise centred on whether impugned findings of the Judge were so flawed that they should be set aside, as the Wife contended, or whether they fell within the ambit of the fact-finding function of the Judge, as the Husband contended. Counsel also provided on 12 June 2026 Joint Submissions on the Value of the Restricted Stock

Units ("RSUs") as at 10 June 2025 (the date chosen by the Judge for the valuation of matrimonial assets and said to be appropriate by the Wife) and August 2025 (the date the Husband contended was the appropriate one based on the Judgment).

The Judgment

3. The Judgment followed hearings spanning 6 days. By way of introduction it explains that the parties became a couple in 2015, and came to Bermuda from the US in 2016. They married in 2019 and divorced in 2024. It disposes of the consolidated "Financial Hardship Application" under section 14 of the Act (dated 28 November 2024) and the Amended Notice of Intention to Apply for Ancillary Relief (filed on 23 April 2025 but dated 6 June 2025).

4. The Judge then summarised the contending positions of the parties as follows:

> "*5. The basis of the Wife's Financial Provisions Applications is that she contends that her mental health difficulties have rendered her incapable of employment and that she requires long-term financial support to secure her housing and meet her living expenses. She was initially seeking the following orders: lump sum to discharge the mortgage on her property in Maryland, a further lump sum provision to enable her relocation from Bermuda to the United States, periodical payments of $16,087 per month until the Husband retires, and thereafter $10,064 per month, and a share of the Husband's pension, investments and Company stock options.*
>
> *6. During the Wife's viva voce evidence, she confirmed that upon seeking expert financial advise* [sic] *for the first time, that she is now seeking a lump sum of between $1.7 million and $2.36 million from the Husband on the basis that the investment of the lump sum will provide her with a monthly income of between $8,000 and $10,000. On this basis she says, she would not be seeking monthly periodical payments from the Husband. The Wife is also contending that the property that she owns prior to the marriage should remain as hers absolutely as it is not marital property.*
>
> *7. The Husband opposes the scale of the Wife's claims. He accepts that she requires some support during a period of transition but contends that her housing needs can be met by the property she already owns, and that her proposed budgets are unrealistic and unsustainable. The Husband says that his post-separation accruals, particularly of his stock options and his 401K, should be excluded from the matrimonial assets. Additionally, he argues that any financial provision must take account of his limited remaining working life as well as the tax liabilities he faces.*"

5. On 12 June 2025, when it became apparent that the hearing would not be completed within the originally allotted time, the Judge made an interim award to the Wife of $8,500 per month, $3,000 in respect of legal costs and a lump sum of $167,500. The Judgment then proceeds to summarise the relevant law, setting out section 14 (1), (3) of the Act,

mentioning section 27 and setting out section 29 (a)-(g). The governing principles are summarised by the Judge in the following terms:

> "*18. The Court is guided by the familiar principles of needs, sharing and compensation. Needs are the primary consideration where resources are limited. The sharing principle applies mainly to property acquired during the marriage; non-matrimonial property such as pre-acquired assets and post-separation accruals are generally excluded unless needs require otherwise. The supporting case law confirming these legal principles is cited at paragraphs 42 to 46 of the case of Wife v Husband [2025] SC (Bda) 12 div. (31 Jan 25)*…
>
> *19.There was no dispute between Counsel in relation to the legal distinction between matrimonial and non-matrimonial property. The position is summarized in S v S [2022] SC (Bda) 100 Div. 23 December 2022 in paragraphs 51 to 53*"

6. Counsel's submissions on conduct and its relevance to financial proceedings is next summarised (at [15]-[24]), before the evidence in relation to Income and Expenses, Assets, and Conduct is described ([25]-[70]). The parties' positions are summarised (at [71]-[79]) before the Judge's "*Findings and Analysis*" are set out (at [80]-[109]). The Court's conclusions are then set out (at [110]-[118]) before costs are addressed. Less attention is given to purely legal principles (7 pages) than is given to summarising the evidence and respective positions (13 pages) and the Judge's essentially factual findings (10 pages). At first blush the Judgment appears to be a careful and coherent one in a case which turned on a factual evaluation of mostly undisputed primary facts. The Judge concluded that the marital assets should be divided roughly equally with the Wife's share valued at slightly more than 50% ([115]).

7. The central findings were as follows:

> "*110. Balancing all the Section 29 Factors along with those set out in Section 14(3) of the Act, the Court concludes as well as having overall regard to all the circumstances of the case, as it relates to periodical payments for the Wife, her reasonable expenses can be met in the sum of $8,500 per month plus an additional $1,300 to be directly attributed to cover her medical insurance costs. These periodical payments shall end when the Husband's current employment comes to an end, when the Wife remarries or cohabits, whichever is the sooner.*
>
> *111. Regarding the Wife's housing needs, these will be met by allowing her to retain the* [US] *Property as hers absolutely. In addition, the following distributions shall be made which are based on the application of both the needs and sharing principles which has created as close as possible to the equal division of the marital acquest:*
>
> *(i) The Husband shall return to the Wife her wedding and engagement rings, valued at $30,000.*

(ii) The Husband shall transfer to the Wife a 50% share of the marital portion of the 401k pension, i.e. $317,000, which shall be transferred to a 401K to be opened by the Wife in her sole name.

(iii) The Husband shall transfer to the Wife 50% of the shares in their joint brokerage account to a brokerage account in her sole name or shall liquidate 50% of the shares (whatever value they may be at the time of liquidation) and transfer the cash value to a bank account of the Wife's choosing.

112.The Husband will retain his unvested Company stock options/awards/units and postseparation accruals as non-matrimonial future income. The Husband shall also retain the Bank of America/Merrill Lynch Investment Account as his absolutely.

113. All other assets not addressed in paragraphs 111 and 112 shall be retained by the respective party as his or hers absolutely without future claim from the other.

114. This outcome meets the Wife's needs while recognizing her potential to regain earning capacity and preserves for the Husband the assets and future source of income he requires to rehouse himself on retirement. It achieves a fair balance and allows both parties to make a clean financial transition from what has been a short marriage…

116. It is important to acknowledge, as part of this judgment, the financial reality that necessarily follows the breakdown of any marriage. During the course of the relationship, the parties combined their resources to maintain a single household. Their respective incomes (when trust funds were available to the Wife), capital and credit were applied towards joint living expenses, housing, holidays, and assistance to their adult children. While this allowed for a certain standard of living to be maintained, that arrangement is no longer sustainable now the marriage is coming to an end. Upon divorce, those same resources must be stretched to support two entirely separate households. What was once sufficient to maintain one home and one set of shared expenses must now cover two sets of housing costs, utilities, insurance, transportation, and day-to-day living needs. It is therefore inevitable that the overall standard of living for both parties will fall to some extent, even where one of the party's incomes is substantial.

117. This is not a reflection of any failure by either party, but simply the consequence of living apart rather than together. Both the Husband and the Wife will now need to make realistic adjustments to their personal budgets. Their former pattern of joint expenditure cannot be replicated on an individual basis without creating financial strain as debt was only avoided by the liquidation of assets. The parties each will have to temper their expectations and reduce discretionary spending so that their outgoings align with the new financial reality…"

8. However the complaints which the Wife made included the following. Firstly and most broadly, the Wife's actual needs were not adequately focussed on in the Judge's

evaluation of the evidence. Secondly, the failure to assign a specific term to the periodical payments obligation was said to be contrary to the correct approach. Thirdly, the way in which assets were allocated as falling within or without the marital assets pot was complained of, principally as regards (1) treating the Wife's US property as marital assets and (2) not treating the Husband's RSUs as marital assets at least to some extent.

The Grounds of Appeal

9. The Wife's Grounds of Appeal were essentially as follows:

   (a) **Ground 1**: an error was made in the evaluation of the Wife's needs, in particular by failing to record findings about the income the Wife would be able to generate after the end of the maintenance period, by defining the maintenance period in an uncertain way which could be determined by the Husband and by failing to consider the ability of the Wife to meet her needs in retirement;

   (b) **Ground 2**: an error was made in treating the stock awards as income rather than as a matrimonial asset and by treating the US property as a matrimonial home capable of being shared. Alternatively, the Judge failed to consider whether if the awards were indeed future income, they should have been used to fund the lump sum award;

   (c) **Ground 3**: Alternatively to (2) the Judge failed to consider whether, if the awards were indeed future income, they should have been used to fund the lump sum award.

Submissions on behalf of the Wife

Ground 1

10. In Ms Cavanagh's Written Submissions, the legal framework was submitted to be as follows. Sections 29 (1) (a) and (b) of the Act made similar provision to section 25 (a) and (b) of the Matrimonial Causes Act 1973 of England and Wales. Accordingly, English authorities on maintenance were relevant. Although the Bermuda legislation did not expressly require consideration to be given to a "clean break"., it was accepted that seeking to achieve a "clean break" was a goal accepted as forming part of Bermuda law by the local courts. No error of law was complained of. It was argued that English case law emphasised the importance of an evidence-based approach to any adjustments made to a maintenance claim and determining when maintenance should end: *Fisher-v-Fisher* [1989] 1 FLR 433; *C-v-C* [1997] 2 FLR 26 at 45-46. More recent cases were said to require a more critical focus on the question of when the receiving party would achieve independence: *SS-v-NS* [2014] 2 FLR 1124 at [45].

11. As regards the Judgment, it was submitted that the analysis at [99] linking the term to the date of the Husband's retirement was less than what was required. Inadequately explained was (a) why was it fair to choose a term linked to when the Husband chose to retire, (b) how the Wife could arrange her affairs in relation to such an uncertain term, (c) what the Wife's future earning capacity was likely to be given her age and mental health challenges, (d) findings in relation to costs of living differences between the US and Bermuda were overly reliant on judicial notice as opposed to evidence, and (e) there was no detailed analysis of what the Wife's capital assets would yield after her retirement. In oral argument Ms Cavanagh argued more specifically that the Judge ought to have attached a fixed term to the periodical payments ending on 16 December 2028. As regards the Husband's 401k pension fund, the Wife's counsel complained in written and oral argument that its full value should have been taken into account rather than just the value during the relationship.

12. In her oral submissions, the Wife's counsel also argued that there were problems with paragraphs 5 and 6 of the Order because there was no statutory power to exclude further applications, as in the UK. Reliance was placed on section 35 of the Act, which expressly provides that when a periodical payments order is made, "*the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended*" (section 35 (1) as read with section 35 (2) (b)). In her supplementary written submissions on this issue, Ms Cavanagh explained that the wording in paragraph 6 had seemingly derived from a form of draft order submitted by the Husband's counsel which was not agreed. Most of those submissions addressed why it was inappropriate to debar further applications and why a fixed term was appropriate rather than elaborating upon the jurisdiction point itself. There was seemingly no direct authority on this jurisdictional point. It was pivotally submitted that:

> "*13. Whilst Bermuda does not have the option to impose a non-extendable term, even if it were the case, the circumstances of this present case dictate that caution should be exercised and the Appellant's weaker financial position considered as the paramount factor in making a decision.*"

Grounds 2 and 3

13. In the Wife's Written Submissions, the following foundational arguments were advanced in support of Ground 2:

> "*34. The Learned Judge mischaracterised the RSUs as income over which no 'sharing' claim arose, when the appropriate treatment of them was in fact as a capital asset generated during the marriage. They were accordingly susceptible to characterisation as 'matrimonial' property over which a share in A's favour arose, irrespective of the vesting date. These are the most valuable asset in the case, worth approximately $1.5m plus $820,000 retirement plan per A's closing submissions. This presentation was rejected by the Learned Judge through an erroneous focus on the 'vesting date' of the various options.*

> *35. The nature of the RSU's in question were earned during the marriage and do not have a 'performance condition' that makes their receipt in the future contingent upon anything other than ongoing employment (which is itself remunerated by income, and further, post-marital grants of stock. It is of course accepted that such post-marital grants are not matrimonial capital over which a sharing claim arises).*"

14. Reliance was placed in terms of legal principle on *SS-v-NS* at [10]-[12] where, it was argued, "*the sole condition of receipt was ongoing employment. That is the condition that Mostyn J rejected as a reason of itself from excluding this form of deferred capital from a computation of marital capital*". The cases of *C-v C* [2019] 1 FLR 93 (at [58]-61]) and *WX v HX* [2020] 1 FLR 1015 were distinguished on the grounds that there the RSUs were conditional upon performance and more than mere employment.

15. As regards the valuation of the Husband's 401k account, Ms Cavanagh submitted that the Judge wrongly took into account only the value of that asset during the relationship rather than the full value. This criticism was not buttressed by any coherent principle as the approach adopted seems on its face to accord with both common sense and logic.

16. Treating the US property as entirely a matrimonial asset was said to be an improper exercise of the Judge's evaluative discretion because she ignored factors she ought to have taken into account (the substantial pre-marital contribution of the Wife, the shortness of the occupation period and the modest income the Wife derived from it) bearing in mind that a binary choice was not required. The need to evaluate the way in which a pre-marital asset should be divided was illustrated by reference to English cases including *FB-v-PS* [2016] 2 FLR 697 (at [120]-[121], [123]). The following conclusory submission was set out on these grounds in the Written Submissions:

> "*Finally, the court did not stand back and assess what the overall division of the parties assets created by the order was the context of global resources. Instead the division is focussed simply on what the court identified to be marital assets. Because of the focus on the exercise on the 'matrimonial' division of assets the picture of where each party was left is misleading. In reality, R was in possession of $2,408m of shares (gross) that were excluded from the distribution. Had the Court done this, it is submitted that closer focus would have been applied to the ability of both parties to meet their longer term needs.*"

17. In oral argument, Ms Cavanagh further submitted in relation to the RSUs that the Wife's share should be net of tax and dependent on the price which the stock is sold at. Ms Cavanagh was unable to identify any reviewable errors as opposed to identifying issues on which a different conclusion might potentially have been reached. In that regard, the following potentially valid submissions were made:

    (a) the Husband's disposable income was greater than the Wife's maintenance award;

(b) *SS-v-NS* at [12] supported the inclusion of the RSUs as marital assets; and

(c) *the* lump sum the Wife had received was already allocated to relocation expenses incurred in June 2025.

The Husband's submissions

18. Mr Casey's most significant overarching submission in his Skeleton Argument was that an appellate court ought not to interfere with the Judge's findings and evaluation of the facts "*unless compelled to do so*": *Fage UK Ltd-v-Chobani UK Ltd* [2014] EWCA Civ 5 (at [114]-[115]). He contended that the Judge clearly understood the governing legal principles and that it "*can be taken that the Learned Judge therefore took into account the extent to which the Respondent held an obligation arising from the marriage to support the Appellant, after a relatively short, childless marriage where the Respondent had a limited timeframe in which to earn*" ([14]). The conclusions reached were all fairly open to the Judge.

19. As regards the alleged failure to fix a definite term, it was submitted that a definite term was fixed by reference to the duration of the Husband's employment which was not in his gift but that of his employer. He was 64 years old. As regards the jurisdiction to exclude further applications, it was submitted in the 'Written Submissions of the Respondent in relation to paragraph 6 of the Order':

> "*3. Paragraph 6 is no more than the means by which the Learned Judge defined the term of the periodical payments order. It is the natural and necessary incident of the exercise of the Court's power under s 32 of the Matrimonial Causes Act 1974…to specify 'such term as the Court thinks fit'.*"

20. As regards the decision to only include in the marital asset pot the value of the vested portion of the RSUs, Mr Casey submitted this approach was justified by the uncertain value of the unvested portion of those assets the vesting of which depended on the Husband's continued employment. It was also consistent with the fact that any value which accrued to the Husband would be attributable to post-marriage employment. It was contended that the approach to the 401k assets was part of a balancing exercise the Judge was entitled to take into account, considering her findings that the Wife has in the marriage made excessive spending demands and over-estimated her likely future expenses. Similarly, treating the US property as marital property was based on a combination of living in the property, the Husband's contributions to it and the intention that they would have returned there.

21. In oral argument, it was submitted that the appeal was simply a disagreement with the conclusions of the Judge who had, having heard the parties, carried out a balancing exercise. The Husband's evidence was that his work permit expired at the end of 2025

and he hoped that it would be extended to the end of 2028. Mr Casey referred to a letter from the Husband's employer which explained his retirement requirements were the attainment of 62 years of age and 10 years' service. These requirements would be met by the end of 2026. In response to an intervention by Gloster JA, counsel conceded there may have been some uncertainty about the income figures referred to at [28] in the Judgment. As regards the approach to the US property, he said that the Husband's evidence about his contributions was unchallenged and it was central to the marriage. The Judge's approach was supported by reference to *Standish-v-Standish* [2025] UKSC 26 at [54].

22. Mr Casey argued that the decision was balanced overall, and it was possible that another judge might have arrived at another result with neither decision being appealable.

Findings

Overview

23. This appeal turns on an analysis of whether the Judge's approach to identifying and dividing the matrimonial assets justifies this Court in setting aside any of the findings made in the Supreme Court.

24. The parties cohabited for 8 years and separated after 5 years of marriage. At the time of the appeal, the Husband was 64 years of age and the Wife was 57 years of age[1]. There were no children of the marriage and the Judge rejected the Wife's contention that she was incapable of returning to work expressly finding that she was "*very much a strong and resilient woman*" ([108]). Based in part on the Wife's admission that the Husband's disapproval of her spending habits was a significant aspect of marital conflict, the Judge also made reference to one striking illustration of "*the Wife's excessive spending being unsustainable and unreasonable*" ([94])[2].

25. Against this background, the Judge found that the Wife was not entitled to financial support for the rest of her life, nor was either party entitled to enjoy the same standard of living running separate households as they enjoyed when sharing one during the marriage. These contextual findings were central to the approach the Judge adopted to the controversial aspects of her decision. The Wife's appeal advanced no or no coherent basis for this Court to interfere with these important contextual findings. Instead, the Wife's case seemed to confirm the Judge's view that she had unrealistic financial expectations. Her complaints implied, counterfactually, that the Husband was a man of unlimited resources who should be obliged to support her in the lifestyle to which she had become accustomed because she had dedicated her life to assisting him to accumulate or preserve substantial wealth.

[1] According to the Wife's Position Statement dated 5 June 2025, the parties were then 63 and 56 respectively.
[2] Her dog was relocated via private jet using part of her lump sum payment.

26. The following table appears in the Judgment (at [114]) summarising the result the Judge considered should be achieved:

ASSETS	**HUSBAND**	**WIFE**
[US] PROPERTY	*$0*	*$697,000*
JEWELLERY (Husband has agreed for wedding band and engagement rings to be returned to the Wife)	*$0*	*$30,000*
INTERIM LUMP SUM PAYMENT TO WIFE	*$0*	*$167,500*
CAR VALUE SUZUKI	*$38,000*	*$0*
MOTORBIKE	*$2,000*	*$0*
JOINT BROKERAGE ACCOUNT (was $218,000 at time of separation)	*$43,277.50*	*$43,337.50*
CASH IN BANK ACCOUNTS	*$45,000*	*$19,000*
MERRILL LYNCH INVESTMENT ACCOUNT	*$278,317*	*$0*
COMPANY EMPLOYEE 401K (Value at time of separation)	*$317,000*	*$317,000*
CB RESTRICTED STOCK AWARD (Value at date of hearing)	*$375,000*	
COMPANY RESTRICTED STOCK UNITS (Value at date of hearing)	*$110,436.20*	
TOTALS:	***$1,209,460.30***	***$1,273,777.50***

27. No arguable basis was advanced for challenging the Judge's findings as to what type of case this was (a short marriage between two parties of limited rather than almost unlimited means) and the overall approach which was required. Nonetheless, each of the specific grounds of appeal which were vigorously advanced on the Wife's behalf by Ms Cavanagh require evaluation on their own merits.

Legal findings

<u>The General Approach</u>

28. It was common ground that the Financial Hardship Application was governed by the principles set out in section 14 (3) of the Act, which require the Court to have regard to "*all the circumstances including*":

> "*(a) the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties to the marriage; and*
>
> *(b) the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the applicant should that person die first.*"

29. It was common ground that the Amended Application for Ancillary Relief required the Court to have regard to the following statutory factors set out in section 29 (1) of the Act:

> "*(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.*"
>
> [Emphasis added]

30. It is accordingly clear from the plain terms of section 29 (1) that neither party to an ancillary relief application is entitled to expect to enjoy the same standard of living they enjoyed during the marriage as of right, regardless of the parties' financial and other relevant circumstances. The general goal of achieving such a result is subject to the constraints of financial practicality, the impact (if any) of conduct, and the overarching goal of achieving a just outcome.

The Power to Debar Further Maintenance Applications

31. Section 32 of the Act provides as follows:

> "**Duration of continuing financial provision orders in favour of party to marriage, *and effect of remarriage***
> *32 (1) The term to be specified in a periodical payments or secured periodical*

payments order in favour of a party to a marriage shall be such term as the court thinks fit, subject to the following limits, that is to say—

(a) in the case of a periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death of either of the parties to the marriage or, where the order is made on or after the

(b)making of a divorce order or nullity of marriage order, the remarriage of the party in whose favour the periodical payments order is made; and

(c)in the case of a secured periodical payments order, the term shall begin not earlier than the date of the making of an application for the order, and shall be so defined as not to extend beyond the death or, where the order is made on or after the making of a divorce order or nullity of marriage order, the remarriage of the party in whose favour the secured periodical payments order is made.

(2) Where a periodical payments or secured periodical payments order in favour of a party to a marriage is made otherwise than on or after the making of a divorce order or a nullity of marriage order, and the marriage in question is subsequently dissolved or annulled but the periodical payments or secured periodical payments order continues in force, that order shall, notwithstanding anything in it, cease to have effect on the remarriage of that party, except in relation to any arrears due under it on the date of the remarriage.

(3) If after the grant or making of a decree or order dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply."

32. Section 32 expressly addresses the jurisdiction to fix the duration of a periodical payments order under the headnote (not strictly admissible for construction purposes) which describes such orders as "*continuing*" in character. Section 35 provides direct support for that continuing character:

"***Variation discharge, etc., of certain orders for financial relief***
35 (1)Where the court has made an order to which this section applies, then, subject to this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

(2) This section applies to the following orders—

(a) any order for maintenance pending suit and any interim order for maintenance;

(b) any periodical payments order;

> *(c) any secured periodical payments order;*
>
> *(d) any order made by virtue of section 27(3)(c) or 31(7) (b) (provision for payment of a lump sum by instalments);*
>
> *(e) any order for a settlement of property under section 28(1)(b) or for a variation of settlement under section 28(1)(c) or (d), being an order made on or after the making of a judicial separation order…*"
>
> [Emphasis added]

33. It is common ground that the Wife's Ancillary Relief application is for present purposes made under section 27 (1) of the Act which empowers the Court to make, *inter alia*, periodical payment orders, secured periodical payment orders and lump sum or other specific payment orders. Section 25 (1) of the Act expressly provides that the term "*periodical payments order*" includes orders made under section 27 (1). Accordingly, it is clear beyond sensible argument, and consistent with the longstanding treatment of such orders as being interlocutory rather than final in character, that a periodical payment order for maintenance (or child support) is capable of being varied before the order is spent.

34. Ms Cavanagh accordingly correctly limited her attack on the jurisdiction to preclude further applications to the periodical payments strand of the Order. However, Mr Casey responded that all that paragraph 6 was doing was defining the term of the maintenance obligations:

> "*5. …Payments shall end on the first to occur of:*
>
> *a. the death of either the Applicant or the Respondent;*
> *b. the Respondent's cohabitation or remarriage; or*
>
> c. *when the Husband's current employment with… comes to an end.*
>
> 6. *Upon expiry of the term in accordance with a to c in paragraph 5 above, the Respondent shall not be entitled to make any further application in relation to the marriage for an order under the Matrimonial Causes Act 1974, for periodical payments or secured periodical payments ,and for the avoidance of doubt, the Respondent may not apply for an order to extend this term or apply under any inheritance provisions in the event of the Applicant's death.*" [Emphasis added]

35. Paragraph 6, in my judgment, does not add anything to the definition of the term of the maintenance obligations set out in paragraph 5. It can only sensibly be viewed as reinforcing the expiry provisions in paragraph 5 by setting out what the practical legal consequences of expiration of the maintenance period would in any event be. By operation of law, independently of the terms of paragraph 6 of the Order, the result of any periodical payment order expiring is that no variation application can be made because there is nothing left to vary. In substance Mr Casey was entirely correct to submit

that this belatedly raised point, not originally advanced as a ground of appeal, was on close analysis misconceived.

The circumstances in which an Appellate Court can disturb factual findings made following a trial

36. The applicability of the principles the Husband relied upon about the scope of appellate review of factual findings was not (and could not sensibly be) challenged by the Wife. In *Fage UK Ltd-v-Chobani UK Ltd* [2014] EWCA Civ 5, Lewison LJ opined as follows:

> "*114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: Biogen Inc v Medeva plc [1977] RPC1; Piglowska v Piglowski [1999] 1 WLR 1360; Datec Electronics Holdings Ltd v United Parcels Service Ltd [2007] UKHL 23 [2007] 1 WLR 1325; Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively McGraddie v McGraddie [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many. They include*
>
> *i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.*
>
> *ii) The trial is not a dress rehearsal. It is the first and last night of the show.*
>
> *iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.*
>
> *iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.*
>
> *v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).*
>
> *vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.*
>
> *115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give*

> *reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see Customs and Excise Commissioners v A [2002] EWCA Civ 1039 [2003] Fam 55; Bekoe v Broomes [2005] UKPC 39; Argos Ltd v Office of Fair Trading [2006] EWCA Civ 1318; [2006] UKCLR 1135.*"

37. The first of the cases cited by Lewison LJ at [114] of the *Fage* case in the passage set out above (a *dictum* of Lord Hoffmann) was cited with approval by Lord Sumption in a Bermudian case where the trial judge's factual findings, which this Court had set aside, were restored by the Privy Council: *Mutual Holdings (Bermuda) Limited and others -v - Diane Hendricks and others* [2013] UKPC 13 (at [28]). In the second case cited in the same passage, *Piglowska-v-Piglowski*, a family case, Lord Hoffmann held[3] in relation to evaluative findings made in a family law case:

> "*In G. v. G. (Minors: Custody Appeal) [1985] 1 WLR 647, 651-652, this House, in the speech of Lord Fraser of Tullybelton, approved the following statement of principle by Asquith L.J. in Bellenden (formerly Satterthwaite) v. Satterthwaite [1948] 1 All E.R. 343, 345, which concerned an order for maintenance for a divorced wife:*
>
> > *'It is, of course, not enough for the wife to establish that this court might, or would, have made a different order. We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere.* '"
>
> [Emphasis added]

38. Not only must this Court show deference to the primary factual findings made by the Judge. We can only properly set aside the evaluative conclusions she reached in the exercise of her statutory discretion if those conclusions were "*plainly wrong*".

Ground 1

39. The two main criticisms of the Judge's approach to maintenance were that (1) there was an insufficient judicial analysis of the Wife's ability to transition to independence at the end of the periodical payment order's term, and (2) a term more definite than the end of the husband's employment should have been fixed. Ms Cavanagh's submissions were potentially supported by the following passages in *SS-v-NS* (per Mostyn J):

[3] [1999] UKHL 27 at page 14.

> "*45. If the choice is, as here, between an extendable and a non-extendable term then the court would have to be satisfied on the evidence that it is more probable than not that independence will be achieved at the expiration of the term. If the choice between an extendable and a non-extendable term is finely balanced the decision should normally be in favour of the economically weaker party (almost invariably the payee).*
>
> *46. Pulling the threads together it seems to me that the relevant principles in play on an application for spousal maintenance 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…*"

40. However, Mostyn J was explaining his approach as trial judge to the facts of the ancillary relief application upon which he was adjudicating, not purporting to lay down general judicial guidance. The parties' relationship had started 12 years before the hearing and the marriage had lasted 7 years before the wife petitioned for divorce. However, she had given up work to raise the three children of the family. The parties were roughly 20 years younger than the parties in the present case, and the marital asset pot was roughly three times larger than the corresponding pot in the present case. The choice between an extendable and non-extendable term which necessarily arose in that case did not arise out of the factual matrix in the present case. Here, the parties married comparatively late in life, and there was no long runway of future employment against which an extendable maintenance order term could be measured. The Husband's looming retirement could not be ignored. Moreover, as Mostyn J himself pointed out earlier in the same judgment when analysing the question of "how long" periodical payments orders should last:

> "*40. I would suggest that these swirling considerations cannot be pressed into a formula which provides an answer, and it is right that that should be so, for the assessment of need is elastic, fact-specific and highly discretionary. For as King Lear pointed out, needs are exceedingly hard to reason; even the poor have things superfluous to their basic needs; and most luxuries are strictly unnecessary. Since the advent of secular divorce in 1857 a decision about spousal maintenance has always been left by Parliament to the unfettered discretion of the individual judge…*"

41. It was submitted that the following findings were inadequate to support the approach adopted on the term of the payments:

> "*99. These periodical payments totally $9,800 per month shall continue as long as the Husband remains employed. It is hoped that the Husband's employment shall continue for the next three years until he retires and this should be adequate time for the Wife to arrange her finances appropriately so that she will be able to support herself.*"

42. That criticism has merit if one reads that paragraph, artificially, in a decontextualised manner. That is a conclusionary finding supported by earlier findings, which include the Judge's findings that the amount of the payments would go much further in the US, that the Wife could become more self-supporting, and the fact that the asset pool was simply not large enough to justify the scale of asset-sharing the Wife sought. I consider that it was open to the Judge to take judicial notice of the notorious fact that Bermuda's cost of living is literally the highest in the world, with one current index putting Bermuda 21 places above the United States[4]. The rationale for linking the maintenance payments to the Husband's employment required little elaboration. There was admittedly a hypothetical downside risk for the Wife in that the Husband might choose to retire early; but there is also an upside risk that he might be able to extend his employment. Mr Casey submitted that the Husband's evidence was that the main question mark about his continuing employment was his work permit, which expired at the end of 2025 and he hoped would be renewed until the end of 2028. The overall view the Judge formed of the Husband's financial position in light of this evidence made it reasonable, in my judgment, for the Judge to assume that the downside risk of voluntary early retirement was a minimal one and that it would be unjust to make the Husband liable for meeting payments if he lost his employment due to circumstances beyond his control.

43. Ground 1 of the appeal must accordingly be refused.

Grounds 2-3

44. Grounds 2 and 3 related to the property adjustment orders that were made. The main arguments advanced were that (1) the RSUs were wrongly excluded from the marital asset pot, and (2) the US property was wrongly treated as entirely a matrimonial asset. A third issue which arose in the course of the hearing was whether the stock values should be computed at the date contended for by the Wife or the Husband.

45. The following findings were made in relation to excluding the unvested value of the RSUs:

> "*102. As it relates to the values of the Company stock options and RSUs, I reject the Wife's proposed value of these as being $2,408,365 at their current vested value and the value upon retirement being $3,113,101. The Company stock options and RSUs are currently valued at around between $1.2 and $1.5 million gross. They are unvested in part, subject to market fluctuations, and are subject to capital gains tax of approximately 40% on realization. However, the stock is dependent on the Husband's continued employment and would cease to vest if he was no longer employed at the Company. Valuation of the vested shares will be based on their market price as of 4 August 2025. Unvested shares as at the date of the hearing are therefore excluded from current asset division.*"

[4] https://www.numbeo.com/cost-of-living/rankings_by_country.jsp. (2026).

[Emphasis added]

46. On the face of it this was an approach which accorded entirely with common sense in light of the fact that there were genuine doubts about the duration of the Husband's employment which was subject to work permit approval. However, Ms Cavanagh argued that persuasive authority demonstrated that this was as a matter of principle an incorrect approach. The following passages in *SS-v-NS* were relied upon:

> "*12. I wondered if Mr Ewins was making an unconscious reference to Lawrence v Gallagher [2012] EWCA Civ 394. I say "unconscious" because Mr Ewins did not cite this case to me. In it at paras 52 – 53 Thorpe LJ removed entirely from the divisible pool certain earned but unvested deferred bonuses. He stated:*
>
> > *'....These bonuses were not vested and, and even on the view most favourable to the respondent half of them were acquired post-separation. ... Apart from the factual errors these were annual bonuses' deferred in collection and conditional on performance. They were not capital assets but part of the appellant's income stream upon which he is taxed at top rate. I can see no principled basis upon which the respondent should be awarded 45% of that as though it were a present capital asset. I would delete this element of the judge's award entirely.'*
>
> *It is very difficult to understand why a bonus already earned (and particularly earned (at least in part) during the span of the civil partnership or marriage) but which is deferred and the payment of which is conditional on turning up to work (but not to any other performance related condition) should not form part of the divisible pool. And it is also difficult to understand why the fact that income tax would be payable on the bonus should influence the decision. After all in McFarlane v McFarlane, Parlour v Parlour [2004] EWCA Civ 872 [2005] Fam 171, CA at para 109 Thorpe LJ himself stated: 'the consequence has been the erosion if not the elimination of the hallowed distinction between capital and income. What people spend is money which is likely to be derived from a variety of sources.' Perhaps there were aspects to that bonus scheme which are not apparent from the judgments. In my judgment there would have to be special features present before money earned but which is 'deferred in collection and conditional on performance' is excluded from the divisible pool. Of course, the features of deferral and conditionality would often justify separate treatment of division of those assets. They would be very apt for Wells sharing (see Wells v Wells [2002] EWCA Civ 476, CA), for example. The feature of a condition of future work may justify a departure from equal sharing. On the other hand the question of needs may well require that these risky assets are allocated to the respondent alone. That will happen here, as will be seen.*
>
> *13. In my judgment, subject to the question of needs, there is no reason why the matrimonial property should not be divided equally, giving each party £1,645,184. I do not regard the elements of deferral or conditionality in relation to the unvested shares as justifying a departure from equal sharing of those assets on the particular facts of this case.*" [Emphasis added]

47. These observations clearly support the proposition that good reason is required to justify not treating deferred income as part of the marital asset pot if the only conditionality is performance of the employee's duties. This can only be based on the premise that it is reasonable to assume that the employment will continue over the relevant deferral period. In the present case, there was an additional condition beyond the Husband turning up to work which impacted on the status of the invested RSUs: his need for a work permit. At the end of the day, the conclusion reached by Mostyn J in possibly the best case which Ms Cavanagh could deploy was based on "*the particular facts of* [that] *case*". In issue there also was an assessment of future income to fund maintenance and child support payments over several years.

48. In the context of the materially different circumstances of the present case, the approach adopted by the Judge to the unvested portion of the RSUs was not beyond the ambit of her judicial discretion as trial judge. It is not enough to demonstrate that a different approach might have been adopted to this issue. This limb of these grounds of appeal fail.

49. Probably the most initially attractive point advanced in support of the appeal overall was the attack on the inclusion of the full value of the US property as a matrimonial asset. The platform for the point is the status of the property pre-marriage (solely owned by the Wife), the arguably modest contributions made to it by the Husband and the Judge's reliance on the financially insignificant consideration of the parties' intention to return to the property if the marriage had continued. It was not suggested that it was not open to the Judge to reach the conclusion she reached as a matter of legal principle. However, the error of principle which Ms Cavanagh did advance was the Judge's adopting a binary approach (either in or out) and failing to consider that a portion only of the property's value could be attributed to the marriage. Nonetheless it was fairly conceded that "*if the property was 'non-marital' it would nonetheless have been available to meet A's need*" (Written Submissions [47]).

50. So even assuming in the Wife's favour that the Judge erred in failing to explain why she decided to attribute all of the value of the US property to the marital asset pot, it was not articulated (clearly or at all) how this adversely affected the Wife in terms of the overall financial outcome. If this significant asset was treated as non-marital, it would have been attributed wholly to the Wife whose assets would have been more while the Husband's assets would have been less. No practical in between scenario was identified according to which the Judge would have been bound to require the Husband to provide more generous financial support. Accordingly, the attack on this limb of the decision must also be rejected.

51. It remains to consider the appropriate date for the valuation of the vested RSUs which were found to be marital assets and which were divided. The parties' Joint Submissions indicated a value of $750,555.86 as at 4 August 2025 (the date of continuation of the

trial), and $917,368.26 as at 10 June 2025 (the beginning of the trial). The Wife submitted the appropriate date was the beginning of the trial:

> "*51. Ms Cavanagh noted that the Husband claims the values of the assets should be taken at the time of separation, however for the purposes of ancillary relief proceedings, the asset value is taken at the time of trial. In the first listing of this matter in June both parties provided their asset schedules to the court. The Husband submitted updated values based on a decrease in the stock price as at the date of the trial continuation, i.e. 4 August 2025. Ms Cavanagh argued that it follows that the figures for valuation of assets taken at the date of trial are not varied unless an intervening event has occurred. She therefore submitted that a change in share price is not momentous enough an event as it occurs on a day-to-day basis and has not significantly damaged the integrity of the asset. Accordingly, the relevant values must be taken as of 10 June 2025 which is when the trial commenced.*"

52. However, the Judge also set out a summary of both parties' submissions on this point as follows:

> "*87. In evidence H produced share prices for…stock as of 4 August 2025. The share price had decreased since the valuations provided to the Court on 10 June 2025. W has provided Exhibit H and Exhibit I setting out the share price for …over time and the vesting price for the past three years. The stock price increases over time. H maintained that the stock price should be taken at the time of the trial. The interesting point in this trial is that the date of valuation could be taken as of 10 June due to that being the commencement date of trial. It follows that the figures for valuation of assets taken at the date of trial are not varied unless an intervening event has occurred. It is submitted that a change in share price is not momentous enough an event as it occurs on a day to day basis and has not significantly damaged the integrity of the asset.*"

53. The summary conclusion on this issue was: "*Valuation of the vested shares will be based on their market price as of 4 August 2025*" ([102]). The failure to address this point as a ground of appeal, and the difficulty in understanding why the Judge opted for the valuation date she did, prompted the Court at the end of the hearing, out of an abundance of caution, to invite counsel to submit a joint submission on the values, which they did without elaborating on the arguments made before the Judge. However, there is no basis to doubt that the Judge had a discretion to choose whatever valuation date she considered appropriate having regard to the evidence, even if in many cases a fixed date (such as the commencement of the final hearing) might well be appropriate for the reasons Ms Cavanagh advanced before the Judge.

54. In the parties' Joint Submissions on value, the Husband's counsel pointed out that the closing price of the stock on 10 June 2025 was $286.40. This needs to be understood against the backdrop of the oral submissions Mr Casey made to the Judge on 8 August 2025 to the effect that in April the stock had been worth $600 and the fact that the stock

was "*a risky asset*" had to be taken into account in making a fair assessment of its value[5]. A further decline as at 4 August 2025 was obviously relied upon by the Judge as a basis for concluding that the value at that date was a fairer one to use in all the circumstances. The Husband was not opportunistically choosing the later date to take advantage of a momentary dip in the market. This explains why the Wife's appeal focussed instead on the more monetarily significant complaint that unvested RSUs should have been taken into account. It also explains why there is no proper basis for this Court to interfere with that discretionary decision.

Summary

55. For the above reasons, I conclude that the appeal in this matter should be dismissed.

GLOSTER JA

56. I agree.

FLAUX JA

57. I also agree.

[5] Transcript Bundle/pdf 947.