



# In The Supreme Court of Bermuda

## DIVORCE JURISDICTION

2010 No: 206

**BETWEEN:**

**T. M.**

**Petitioner**

**and**

**C. M.**

**Respondent**

### **Judgment**

*Maintenance Pending Suit*

**Date of Hearing:** 20 November 2018

**Date of Ruling:** 27 November 2018

Adam Richards of Marshall Diel & Myers Limited for the Petitioner  
Christian Luthi of Conyers Dill & Pearman for the Respondent

JUDGMENT of Registrar Alexandra Wheatley

### **INTRODUCTORY**

1. The Petitioner and the Respondent were married on 9 April 2005. The divorce petition was originally filed in 2010; however, the parties attempted a reconciliation for an eight year period. Regrettably, this was unsuccessful and the Petitioner was granted leave to

file an Amended Petition on 6 November 2018. The divorce proceedings will now follow the usual course. There is one child of the family who is now 12 years old.

2. The Petitioner filed her Notice of Application for Ancillary Relief on 24 September 2018 (“the Application”). The Application sets out the relief being sought by the Petitioner as follows:

*“The Petitioner applies for an Order that the Respondent be ordered to pay maintenance pending suit and/or interim periodical payments for herself and the child of the family....to include a provision for her reasonable legal fees and such further or other interim relief as may be appropriate in all the circumstances.”*

3. Counsel for the parties appeared before me on 23 October 2018 seeking directions specifically to address the issue of maintenance pending suit. As per the Order dated 23 October 2018, the hearing was set down for 20 November 2018. This the application before me now. Both parties filed Affidavit evidence which they relied on for the purpose of the determination of this application.

## THE FACTS

### *Petitioner’s position*

#### Income

4. The Petitioner’s net monthly income is \$1,200 per month for her salary at the Company<sup>1</sup>. It is noted the Petitioner owns 60% of the shares in this Company which are held in a trust that was settled during the marriage. The evidence submitted is that this income was previously supplemented by dividend payments which amounted to approximately \$20,000 per year. This would bring her monthly income to \$3,000 per month. Whilst it was submitted by Mr. Richards that a dividend payment has not been made since April 2018 which means the Petitioner’s income is only \$1,200 per month, at this time I was not able to identify evidence in the Petitioner’s Affidavit to support this position. Therefore, I accept the Petitioner’s monthly income from the Company as being \$3,000 per month. The Petitioner’s income position was not disputed by the Respondent.
5. The Petitioner does not receive any other source of income, although she has indicated she has use of a credit card with a limit of \$5,000 that she uses to pay household expenses. The Respondent has solely been responsible for the payments of this credit card.

#### Expenses

6. In summary, the Petitioner is seeking a total of \$30,000 per month which is based on the following expense estimations:

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<sup>1</sup> This reference has been used for the purpose of anonymizing this Ruling.

- (i) \$19,600 for maintenance for herself and the child of the family
  - (ii) \$2,300 per month in order for her to fund and obtain a loan of \$75,000 for the purchase of household furniture.
  - (iii) \$10,000 per month for legal fees.
7. It should be of note that at the commencement of the hearing, Counsel queried whether I would be considering the Respondent' proposal for the Petitioner to remain in the matrimonial home. Given the recommencement of the divorce proceedings which have been filed on the basis that marriage has broken down irretrievably and the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent, I would not consider any requirement for the Petitioner to remain in the matrimonial home even though the hearing of the Decree Nisi has yet to be heard. In any event, I do not believe I have any jurisdiction to make an order requiring a party to remain in a particular household.
8. The Petitioner's expenses are listed at page 162 of the Exhibit to her affidavit. All of the monthly expenses submitted by the Petitioner are disputed by the Respondent. Consequently, I will address each item in turn.
9. The Petitioner is seeking \$10,000 per month for rental accommodation. This property is a 4 bedroom home which can also accommodate the three dogs the Petitioner wishes to take with her. It is also centrally located in close proximity to the school where the child of the family attends.
10. The Respondent has indicated he believes this level of rent is excessive on the basis that it would just be the Petitioner and the child of the family residing at the property. The Respondent wishes to keep the dogs. It was further submitted there was no need for the property to be centrally located as Mr. Luthi submitted "*I am sure there are people who live in Warwick who have children that attend [school<sup>2</sup>]*". He also submitted the parties have not enjoyed a high standard of accommodation throughout the marriage and has proposed several rental properties at Tab 7 of the Respondent's Skeleton Arguments ranging between \$5,500 and \$7,000 per month.
11. The Respondent wishes to remain living in the matrimonial home which consists of a main house comprising 4 bedrooms, 5 bathrooms, a gym/store room, a den/TV room, etc. There is also a 1 bedroom, 2 bathroom apartment. The matrimonial home has a value of approximately \$3 million<sup>3</sup> which has been newly reconstructed. It is accepted the monthly mortgage payments are \$15,000 per month.

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<sup>2</sup> The name of the school has not been referenced for anonymity purposes.

<sup>3</sup> The value of the matrimonial home is disputed and each party has produced their own valuation. At this early stage in the proceedings, I am not making any findings as to the value of the property. The estimation I have used is simply the approximate mid-point between the two valuations

12. I find it difficult to accept Mr. Luthi's submissions that the parties have not always lived in such a luxury accommodation, however, the reality is this is the lifestyle the parties are now living. It would be completely remiss of me to require the Petitioner to live in accommodation which is far below the standard of the matrimonial home where the Respondent will be residing on the basis the parties did not live in such a luxurious property until the past year. Further, it is not for me to decide who keeps the three dogs as this is clearly disputed. Having said this, the Petitioner should be afforded the opportunity to obtain accommodation where a landlord is willing to allow the dogs to reside there. The rental accommodation which the Petitioner wishes to reside in, is in my view reasonable given the luxurious matrimonial home the Respondent will be residing in.
13. The Petitioner is claiming \$2,000 per month for groceries for herself and the child of the family. In addition, she is seeking \$600 for restaurants. The Respondent has submitted both amounts are unreasonable given they are in relation to one adult and one child. The reality is that grocery expenses in Bermuda are very high and if one is purchasing higher quality and healthier foods, such as organic produce or the like grocery expenses can skyrocket. Bearing in mind the evidence the Petitioner has provided by way of credit card statements to evidence the monthly grocery expenditure, I will accept that \$2,000 is a reasonable sum as it is representative of two-thirds of the usual monthly expense. I accept the Petitioner should have a sum of maintenance apportioned to eating at restaurants as this is a part of the standard of living the parties are accustomed. Having said this, I believe \$500 would be a more reasonable figure as this represents approximately two-thirds of the expense of \$769.06 which is representative of the expensive for both parties and the child of the family.
14. The Respondent avers the monthly expenditure of \$1,250 on clothing as being excessive and has proposed a sum of \$250 to be what he considers as being more reasonable. Whilst the Respondent has taken this position, he has not made any reference to whether this has been the norm during the marriage given the parties' high standard of living and his simple assertion of this being unreasonable is unhelpful. It very may well be the case the Petitioner has spent this monthly sum of clothing for her and the child of the family and as such has been the status quo. At this time, without having more evidence as to the as to the benchmark of this spending and given the vast difference in submissions, I believe \$625 depicting half of the expense proposed by the Petitioner is reasonable to award on an interim basis.
15. The expense of vacations is also contended as being excessive. The Petitioner asserts \$750 per month is representative of this expense, whereas the Respondent argues \$500 would be more of a reasonable sum as he states her sum is based on travel she has taken during the last year to the US and Europe. Again, if this is the standard of living established during the marriage, the Petitioner has not provided and convincing reasoning as to why this should be reduced. However, as this is an interim application, I believe \$500 per month allocated to travel is reasonable. This can be revisited in the final hearing for ancillary relief or should there be any interim hearings following the granting of the Decree Nisi.

16. I accept the Petitioner should be provided the sum of \$900 plus \$125 which relate to the extra-curricular activities and other sports expenses for the child of the family. The Respondent has not disputed these figures, but has submitted that he continue to pay these expenses rather than this money being provided to the Petitioner. The Petitioner's evidence is the Respondent does not make timely payments of these expenses and as such I see no reason as to why the Petitioner cannot take over responsibility for these payments. It should be noted there was another line item for the same \$125 referring to sporting expenses which I accept is likely a duplicate.
17. The Respondent accepted he has been responsible for what is defined as the "Canadian expenses" since the parties became a couple. The Petitioner is claiming \$832 for this expense and I see no reason for the status quo not to remain.
18. The expenditure for dry cleaning was also disputed by the Respondent, stating that given the Petitioner's occupation compared to his where is he required to wear business attire on a daily basis, a more reasonable sum would be \$150 rather than \$250. Whilst the parties' occupations may require them to wear differing attire during their course of business, I am sure the Petitioner wears clothes outside of her occupation which require dry cleaning. For the purposes of this application, I will accept both parties as being entitled to same sum of \$150 per month for dry-cleaning.
19. It is the Petitioner's position that she retain the 3 family dogs as they are all licensed in her name, she trained them and is responsible for walking them, etc. As I have already addressed this matter as it relates to the Petitioner's rental accommodation, I will accept \$150 per month for the care of the dogs is reasonable.
20. The Petitioner has claimed \$500 for miscellaneous expenses which is not accepted by the Respondent on the basis it is not clear what expenses this item encompasses. However, the Respondent in his own evidence has provided \$1,000 for personal expenses with no breakdown which was not challenged by the Petitioner. As such, I find \$500 per month on miscellaneous items to be reasonable. It may be helpful for both parties moving forward to specify what items are included in more general categories such as these as it was greatly assist the Court in its determination.
21. The issue of the Petitioner's claim for legal fees was strongly disputed. The Respondent did not accept he should be required to pay any legal costs for the Petitioner. The Petitioner is seeking a lump sum, which was accepted I cannot award for the purposes of this application, so she was therefore seeking \$15,000 per month to be paid for this expense. Mr. Richards confirmed the current outstanding fees at his firm are approximately \$30,000. The Petitioner as no ability to pay legal fees given the level of her income and is ineligible to obtain Legal Aid due to capital assets. Remarkably, the Respondent himself has asserted he will be required to allocate \$10,000 per month for his own legal fees. In the circumstances, it is not unreasonable for the Petitioner to be granted the same monthly contribution of \$10,000 towards her legal fees as the Respondent. The Respondent is fully aware of the Petitioner's extremely limited income

and its vast disparity with his, that such a position is quite frankly appalling. I therefore find \$10,000 to be a reasonable sum which the Respondent should pay to cover the Petitioner's ongoing legal fees.

***Respondent's position***

**Income**

22. The Respondent has submitted his net monthly income amounts to a total sum of \$60,288.95. This is broken down as follows:

- (i) **\$58,088.95 from his employer.** This sum does not include the Respondent's year end variable payment ("the 5<sup>th</sup> Payment") as it he believes given he will not receive this payment until September/October 2019 it should not be included. Mr. Luthi also submitted the 5<sup>th</sup> Payment should not be included as the 5<sup>th</sup> Payment the Respondent received this year as the total of sum of this payment was used to repay a loan to his employer and used to pay for expenses/construction at the matrimonial home.

The Petitioner disputed these submissions entirely and quite rightly so. The actuality is the Respondent receives 5 payments/distributions each year on top of his base salary. This therefore formed part of his income during the last fiscal year just as it will next year. The Respondent's additional reasoning for it not to be included due to it being spent is nonsensical. This amounts to arguing none of his income which has been spent to date to should considered, such reasoning is clearly flawed. Whether it has been spent or not is irrelevant. Indeed, it should be noted the 5<sup>th</sup> Payment was invested in the works being carried out at the matrimonial home which have created a luxury property where the parties reside.

- (ii) **\$2,200 for rental income** of the apartment located at the matrimonial home. There is no dispute between the parties as it relates to this source of income.

23. A sum of \$3,650 is also paid to the Respondent each month from the Company, but has submitted this should not be included as part of his income as three payments were missed in 2018. This is not accepted. There is no evidence supporting there is a pattern of a delinquency of these payments other than the three months this year. However, for the sake of fairness, if these payments remain outstanding, it cannot be denied for 2018, the Respondent received \$10,950 less of income from this source. Based on the assumption payment will be made for December 2018 as payments were made for October and November 2018 and based on the fact there was no evidence presented to me during the hearing of an intention of these arrears being, I can only accept the Respondent's total income from this source for 2018 is \$32,850 (9 months of payments at

\$3,650); i.e. \$2,737.50 per month. I find this is a source of income of the Respondent which must be included.

24. I therefore find the Respondent total net monthly income to be **\$81,040.71**. This consists of his net monthly salary from this employer plus all five payments/distributions from his employer for the last fiscal year \$913,238.55; i.e. \$76,103.21 per month, \$2,200 for rental income and \$2,737.50 from his payments from the Company.

Expenses

25. The Respondent contends his monthly expenses total \$53,742.46. Therefore, if both the net monthly income was accepted as well as this level of expenses, the Respondent would have a surplus of \$6,546.49. As stated previously, the Respondent has offered to pay the Petitioner \$8,000 per month for her and the child's maintenance. Remarkably, the Respondent also asserted at page 14 of his Affidavit (paragraphs 12, xxvi. and xxvii.) in addition to his monthly expenditure of \$53,742.46, he will also be required to allocate \$10,000 per month for payment of his legal fees. This will bring his total monthly expenses to \$63,742.46 which would give him a shortfall of \$3,453.51 per month (\$60,288.95 less \$63,742.46) before even making any accommodation for his proposed payment of \$8,000 to the Petitioner.
26. Furthermore, in Mr. Luthi's submissions for the Respondent at paragraph 9, ii. of the Skeleton Argument, the Respondent alleges to have savings of \$50,795.37 of which \$11,920 is earmarked to cover the child of the family tuition as well as for the expense of the nanny. The appearance consequently being the Respondent has very little liquidity.
27. The largest items of expenditure disputed by the Petitioner are as follows: monthly payments to his mother of \$15,000; maintenance for the household of \$1,000; land tax is \$534.17 per month rather than \$950.65 per month; the Respondent's payments of \$500 per week to assist in his nephew's tuition (\$2,166.67 per month); payment of the child of the family's extra-curricular activities as the Respondent has proposed to pay these moving forward; payments of \$4,500 per month to Cat Con; and medical expenses of \$400 per month.
28. In relation to payments by the Respondent to this mother in the sum of \$15,000 per month, I do not accept there has been any adequate evidence put before me to determine this is even a real expense. The letter dated 20 November 2018, notably the same day of the hearing, from the Respondent's mother is self-serving. Neither has there been convincing evidence whatsoever of a loan being provided to the Respondent in the first place, nor has anything compelling been presented for me to accept such large monthly payments are required, if at all.<sup>4</sup>

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<sup>4</sup> The Respondent has not accepted the Petitioner is also required to repay his mother \$2,000 per month in relation to another loan which he purports to be given by his mother; however, for the purposes of this interim hearing, it was accepted by the Respondent as evidence of payments of the \$2,000 has been provided from January 2018 to date. I have not addressed this issue as it was clear the Respondent will

29. The sum of \$1,000 per month in relation to a newly renovated property is highly unreasonable in my view and at this time, I cannot accept any maintenance is required. Further, it is clear the land tax has been calculated incorrectly based on the Land Tax Demand Notices provided by the Respondent at Volume 2, Tab 5 of the Exhibit to his Affidavit. These notices show a twice annual payment of \$2,733.00 in relation to the main house and \$472.00 in respect of the apartment. Therefore, accept the sum of \$3,042.00 as presented by the Petitioner rather than \$4,504.75 in relation to household costs.
30. Another fairly large expense item the Respondent asserts to pay each month is \$4,500 per month for his company Cat Con. Despite the Respondent filing a large amount of documentary evidence such as his bank statements to the Court, I do not accept the Respondent has provided any convincing evidence to support he is indebted to pay this monthly sum.
31. In respect of the child of the family's school tuition payments, the Respondent accepts the Petitioner will continue to pay the fees directly to the school; however, the Respondent has raised concerns about late payment of fees for extra-curricular activities and as such is seeking this payment be made directly to her. In the circumstances, I do not believe it is unreasonable for the Respondent to make this request and it does not provide any prejudice to the Petitioner as the expense will not differ. Having said this, the Respondent has included in this expense the sum of \$2,166.67 per month as payment to assist in his nephew's school tuition. Whilst this is most admirable, the Petitioner's and the child of the family's needs are of paramount importance and as such, the Respondent cannot reasonably claim this as an item of expenditure.
32. I understand the Respondent is diabetic and as such has submitted his average monthly expense on medication is approximately \$400. The Respondent has provided evidence of his recent purchase of an insulin pump in the sum of \$3,900 (Volume 2, Tab 6 of the Exhibits to his Affidavit). In addition, the Respondent will have to purchase insulin, etc. and therefore I do not accept this expense to be unreasonable given his condition.
33. An item which is not disputed is in relation to the nanny in the sum of \$2,066 per month. I raise it as the Respondent has indicated she does not require this service and as such this expense could be mitigated. As the Respondent has accepted this expense for the purpose of this hearing, I will not make any findings in this regard. It should also be noted that the submissions made by Mr. Richards in respect of the items which have been accepted, in my understanding, were made on the basis they were accepted for the intent of this hearing alone.
34. In light of the above, and specifically upon my findings of the Respondent's income being \$81,040.71 and the true reflection of his monthly expenditure (based on the

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likely take another position as it relates to the final application for ancillary relief and as such I make no findings in this regard.

evidence, or lack thereof, provided) being **\$40,447.71 (\$30,447.71 plus \$10,000 for legal fees)**. It is abundantly clear, the Respondent has a surplus of \$40,593 per month from which he is able to pay the Petitioner monthly maintenance payments.

## The law

35. Section 26 of the Matrimonial Causes Act 1974 (“the Act”) provides the Court with the statutory jurisdiction to grant maintenance pending suit. Section 26 states as follows:

***“Maintenance pending suit***

*26 On a petition for divorce, nullity of marriage or judicial separation, the court may make an order for maintenance pending suit, that is to say, an order requiring either party to the marriage to make to the other such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.”*

36. Mr. Richards correctly submitted the only relief available to the Petitioner for maintenance pending suit is that of monthly periodical payments and as such no other forms of relief such as a lump sum payment are available to the Petitioner at this time.<sup>5</sup>
37. Mr. Richards also relied on the case of *F v F* [2001] Bda L.R. 43 which is a case that determined an application for maintenance pending suit by the Kawaley J. Mr. Richards referred me to paragraphs 6 and 7 at page 2 which states as follows:

*“6. Mrs Marshall for the wife referred the Court to authorities in respect of the following three key principles upon which she relied. Firstly, since section 26 of our Act is derived from section 22 of the Matrimonial Causes Act 1973 (England & Wales), counsel emphasized the breadth of the Court’s discretion as explained by French J in *Offord v Offord* (1982) 3 FLR 309 (transcript, page 4):*

*“Maintenance pending suit...is governed by s. 22 of the 1973 Act which gives the court as wide and unfettered discretion as can well be imagined. It provides that the court may order such periodical payments until the hearing as “the court thinks reasonable”, reasonable, that is to say, in the light of the means and needs of the parties and any other relevant circumstances.”*

*7. Mr Kessaram did not challenge this proposition which I accept governs the present application”. [Emphasis added]*

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<sup>5</sup> Rayden and Jackson on Divorce and Family Matters, Sixteenth Edition, Chapter 29, Section II. Relief Pending Suit, paragraph 29.3 on pages 535 to 536

38. The case of *BD v FD* (Maintenance Pending Suite) [2016] 1 FLR 390 was a case which Mr. Luthi relied where Moylan J set out the principles which are to be applied in applications for maintenance pending suit. The principles are summarized at paragraph 33 of the judgment as follows:

“33. ...From these cases I derive the following principles:

- (i) *The sole criterion to be applied in determining the application is “reasonableness” (s 22 Matrimonial Causes Act 1973), which, to my mind, is synonymous with “fairness”.*
- (ii) *A very important factor in determining fairness is the marital standard of living (F v F). This is not to say that the exercise is merely to replicate that standard (M v M).*
- (iii) *In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long term expenditure more aptly to be considered on a final hearing (F v F). That budget should be examined critically in every case to exclude forensic exaggeration (F v F).*
- (iv) *Where the affidavit of Form E disclosure by the payer is obviously deficient the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources. In such a situation the court should err in favour of the payee...”*

39. I fully accept these are the principles which are the benchmarks for the determination of this application and is very helpful providing further expansion and clarification which is in my view provided by Kawaley J’s judgment in *F v F*.

40. *F v F* also addressed the issue as to whether a party is entitled to obtain an order for payment of legal costs when the other party lacks the financial resources. Kawaley J determined in such circumstances legal costs orders can be made when:

“16. “[The Court is] satisfied that he can (not perhaps without some difficulty) comply with such legal costs order, in addition to meeting the payment obligations imposed below in respect of the Wife’s reasonable living expenses.”

41. Mr. Luthi relied on the Court of Appeal decision of *Curry v Curry (No 2)* [2006] EWHC Civ 1338 on the issue of the awarding of legal costs awards which in my view support the very same test as set out in *F v F*. Paragraph 21 of *Curry v Curry (No 2)* states as follows:

“21. *Although in making a costs allowance the court has a discretion, I cannot imagine that it would be reasonable to exercise it unless the applicant had thus duly demonstrated that she could not reasonably procure legal advice and representation by any other means....”*

42. Mr. Richards confirmed his firm is not willing to act on the basis of fees being paid out of the final award and there is no jurisdiction for me to require the Petitioner's attorneys to continue to act for her on this basis. The Petitioner cannot meet her legal fees on her income alone and is not eligible to obtain Legal Aid. Further, in accordance with the test set out in *F v F*, I am fully satisfied the Respondent can meet an obligation to pay a legal costs order to the Petitioner as well as meet his other obligations to the Petitioner and the child of the family.
43. Mr. Luthi further wishes to rely on *Curry v Curry (No 2)* as to the end date for the legal costs order; however, the reasoning set out in this case refers to the FDR which does not form part of the law in Bermuda and as such, in my view holds no weight. Rather, *F v F* supports the position in Bermuda as being that any order made for maintenance pending suit can be up "*until the hearing as "the court thinks reasonable"*".

### **Conclusion**

44. This is a case where the Respondent is essentially the sole source of household income and has an extremely high level of income being close to \$1 million per annum. The matrimonial has a value of approximately \$3 million<sup>6</sup> which has been newly reconstructed. The Respondent wishes to remain living in the matrimonial home. The parties have undoubtedly had the means to live a very high standard of living during the marriage.
45. The Petitioner has a very minimal income in comparison to the Respondent which would not allow her to adequately provide for her and the child of the family's day to day expenses. Whilst the Respondent accepted he would be required to pay a sum of maintenance to the Petitioner; the vast disparity in the parties' positions in relation to quantum did not facilitate any agreement being reached. The Petitioner is seeking \$30,000 per month and the Respondent is proposing \$8,000 per month.
46. It goes without saying, the Respondent's general unreasonableness as it relates to disputing practically every single item of expenditure the Petitioner has put forward, has been most unhelpful, specifically in such early stages of litigation where applications have a limited scope. Moreover, the proposal of \$8,000 per month to cover all of the needs of both the Petitioner and the child of the family is woefully inadequate, unreasonable and far from conveying any modicum of fairness.
47. Taking into account all of the circumstances of this case, I grant the following relief:
- (1) The Respondent shall pay to the Petitioner \$10,000 per month which is representative of payment for her rental accommodation where she will be residing with the child of the family. For the avoidance of doubt, this

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<sup>6</sup> The value of the matrimonial home is disputed and each party has produced their own valuation. At this early stage in the proceedings, I am not making any findings as to the value of the property. The estimation I have used is simply the approximate mid-point between the two valuations

is figure is based on whether the parties agree shared care and control or not as this payment is necessary to retain a roof over the heads of both the Petitioner and the child of the family. This payment shall be backdated to 1 November 2018 and as such shall be paid forthwith. Thereafter, this sum shall be paid to the Petitioner on the last day of each month; i.e. the next payment will be required to be paid on 30 November 2018, etc. In the event, the Petitioner choses on her own volition to rent accommodation which is less than \$10,000 per month, there will be reduction in this sum awarded to her for this purpose.

(2) The Respondent shall pay to the Petitioner \$8,500 per month representing a sum which will meet her and the child of the family's day to day needs. This sum is based on the following breakdown of expenses I have accepted for the purposes of this hearing:

(i)	Cablevision	\$165
(ii)	Belco	\$750
(iii)	Groceries	\$2,000
(iv)	Internet	\$125
(v)	Car maintenance	\$100
(vi)	Clothing	\$625 (for both Petitioner and child)
(vii)	Dry cleaning	\$150
(viii)	Salon	\$250
(ix)	Entertainment	\$100
(x)	Gas for car	\$200
(xi)	Gifts	\$30
(xii)	Medication	\$200
(xiii)	Restaurants	\$500
(xiv)	Cell phone	\$200
(xv)	Travel	\$500
(xvi)	Car parking	\$100
(xvii)	Pet care	\$150
(xviii)	Canadian expenses	\$832
(xix)	Miscellaneous	\$500
(xx)	Ava's extra-curricular and sports	\$1,025

**TOTAL: \$8,502**

For clarity, should the Petitioner be required to make further applications in respect of interim maintenance; i.e. relief after the granting of the Decree Nisi; these expenses can be revisited as I have based my findings on the limited period of time relief for maintenance pending suit is intended to encompass.

- (3) The Respondent shall pay \$10,000 per month towards the Petitioner's legal fees directly to Marshall Diel & Myers Limited. This payment shall be backdated to 1 November 2018 and as such shall be paid forthwith. Thereafter, this sum shall be paid directly to Marshall Diel & Myers Limited on the last day of each month; i.e. the next payment will be required to be paid on 30 November 2018, etc.
  - (4) The Respondent shall continue to pay the child of the family's school tuition directly to the said school.
  - (5) The above relief has also been granted taking into account the Respondent's confirmation he will provide the Petitioner with the use of the family car and well as one of the family motorbikes and will continue to be responsible for payment of the annual license and insurance. The issue of the Respondent continuing to pay for the Petitioner and child of the family's major medical insurance also did not arise as an issue. In light of the Respondent's position for these two particular expenses, I would encourage the Respondent to provide an undertaking preserving the status quo.
48. It is trite law that I have a broad discretion as it relates to the determination of costs whether it be a civil or matrimonial case. Taking into consideration both the Respondent's unreasonableness in proposing such a minimal sum of \$8,000 per month to the Petitioner (which is not only for her benefit, but for the benefit of the child of the family) as well as the monthly sum I have granted being remarkably close to that sought by the Petitioner, I will award costs to the Petitioner for this application. Costs are awarded on an indemnity basis and shall be taxed if not agreed.
49. Given the outcome of this hearing, I am hopeful the parties will be in a more informed position moving forward as it relates to the principles which guide the courts in such an application. As such, I will encourage the parties to consider entering into discussions with a view of reaching a resolution of all claims.
50. I invite Mr. Richards to prepare the order reflecting the terms of this ruling for my review and consideration.

27 November 2018

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**ALEXANDRA WHEATLEY**  
**REGISTRAR OF THE SUPREME COURT**