In The Supreme Court of Bermuda

DIVORCE JURISDCITION

2011 No: 62

BETWEEN:

P. B. B.

Petitioner

and

P. H. B.

Respondent

JUDGMENT

Application for Variation of Periodical Payments

Date of Hearing: 23 May 2018
Date of Ruling: 20 July 2018

Both parties acting in person.

JUDGMENT of Acting Registrar Alexandra Wheatley

Introductory

1. The Petitioner and Respondent were married on 1 December 1995. The parties were married for approximately sixteen years. Decree Nisi was pronounced on 27 May 2011 and made absolute on 26 March 2012. There was one child of the family at the time of making the Decree Nisi absolute.

2. The application before me was made by the Respondent, who is seeking a variation of the periodical payments (interchangeably used with "spousal maintenance" throughout this judgment) to the Petitioner in accordance with paragraph 5 of the Consent Order dated 26 October 2011 ("the Consent Order"). Paragraph 5 of the Consent Order states as follows:

> "*5. The Respondent shall pay to the Petitioner $850.00 per month for her maintenance.*"

3. The Respondent is seeking a variation of this provision on the basis there has been a material change in his financial circumstances.

4. It should be noted, the Consent Order, *inter alia*, also included a provision for periodical payments for the child of the family at paragraph 8:

> "*8. The Respondent shall pay $100.00 per week by way of maintenance for the child of the family up until the age of majority. Should the child after the age of majority go onto higher education, the parties will equally bear the costs of said education and expenses.*"

5. The parties confirmed the provision for child maintenance ended some time ago as the child of the family had completed his higher education and has been in full-time employment for many years.

6. The issues I therefore must determine are: (1) the level of spousal maintenance which is reasonable in the circumstances; and (2) an appropriate timeframe the said payments should continue.

The facts

Respondent's position

7. At the time the parties entered into the Consent Order, the Respondent obtained income from two different sources. The Respondent confirmed his current circumstances are now that his only source of income is from his employment with Fairmont Southampton Princess as a Steward. Helpfully, the Respondent submitted pay advices to the Court for the period 1 January to 8 April 2018. Upon my calculations, using the sum of $8,739.93 evidenced as the Respondent's Year-to-date Net Salary as of 8 April 2018, his average, weekly net pay is $624.28. Therefore, it can be estimated that the Respondent's current average, net monthly income is $2,703.14; i.e. $32,437.68 per annum.

8. The Respondent gave evidence he has attempted to supplement his income from obtaining "hustles", but has been unable to do so. This position was challenged by the Petitioner in her cross-examination of the Respondent. The Petitioner attempted to convince the Court the Respondent was very resourceful and submitted it was likely he had other ways in which to earn extra income. Neither do I accept the Respondent has an additional source of income nor that he has the ability to obtain extra income at this time. I fully accept the Respondent's financial circumstances as laid out by him are an accurate reflection of his position for over a year.

9. Nonetheless, it is important to note the Petitioner did accept that at the time the parties entered into the Consent Order, the Respondent did have two regular sources of income which she conceded he lost in March 2017. The Respondent's Affidavit of Means sworn on 14 July 2011 indeed confirmed his income as follows:

> "*I am currently employed at the Heron's Nest Trust, also living at said place of employment.*
> *Earning a salary of $426.32 a week...*
> *...*
> *I am also currently employed at the Fairmont Hotel in Southampton, as a part time Kitchen Porter working nights. My salary at Fairmont is $604.05 a week...*"

10. Thus, at the time the parties agreed the terms of the Consent Order, the Respondent was earning an average net, monthly salary of $4,464.94. This calculation being based on the Respondent earning on average $22,168.64 per annum from Heron's Nest employment, plus an average of $31,410.60 per annum from Fairmont employment. This brings the Respondent's total, average annual income in 2011 to $53,579.24.

11. During the hearing, the Respondent informed the Court the parties' son resides with him and has done so since 2011. The Respondent confirmed he has been responsible for assisting with his son's living expenses as he has only been employed on a part-time basis since December 2017. The Respondent believes his son earns approximately $350 net, per week; however, he was clear in that this was only a vague estimate as it is purely dependent on the number of hours he is able to work each week. By way of example, the Respondent confirmed his son was not working the week of the hearing as he was representing Bermuda in a sporting event. The transfers made into the Respondent's savings account from his son for the period 12 February to 7 March 2018 amounted to a total of $1,249.24. I do not believe his income should be taken into consideration for the purposes of this application.

12. The Respondent's list of expenses, in my view, was reasonable and comparable to that of the Petitioner's expenses. A monthly estimate of $3,523 was submitted, which, *inter alia*, included a rental payment of $750 and the periodical payment to the Petitioner of $850. The Respondent further informed the Court of additional expenses he has had to occur as he is currently before the courts in relation to a criminal matter which is causing him further financial strain. The Respondent's evidence is that he had already paid a $1,000 retainer to his attorneys, but will be required to pay a further retainer in the sum of $20,000 for the trial. He also confirmed he made an application to Legal Aid in respect of retaining Counsel for his criminal matter, but was unsuccessful due to his income being over the statutory limit.

13. Given the Respondent's current financial circumstances, he submitted the monthly sum of periodical payments should be reduced from $850 to $300 to reflect his current financial circumstances.

Petitioner's position

14. The Petitioner confirmed her sole source of income is from her employment with the Bermuda Government in the Department of Public Transportation. The Petitioner unfortunately only produced one pay advice which is dated 26 April 2018. The said pay advice shows the Petitioner's net earnings for the week of 22 April 2018 as being $571.92. The Petitioner confirmed her salary varies minimally as she stated she does not work vast amounts of over-time. It can therefore be estimated that her average, net monthly salary is $2,478.32. However, during cross-examination the Petitioner accepted that as shown on her pay advice, the sum of $200 is deducted weekly from her salary and deposited to an account with the Credit Union. Annually, this amounts to an additional $10,400 being paid to the Petitioner which must be included in her net monthly income in order to accurately reflect her net earnings. Thus, $866.67 per month should be added to the sum of $2,478.32 referred to above which totals $3,344.99 net per month; i.e. $40,139.88 per annum.

15. What has also not been taken into account in terms of the Petitioner's monthly income is the $850 per month she receives from the Respondent as required per the Consent Order. Accordingly, the Petitioner's total net monthly income is $4,194.99; i.e. $50,339.88 per annum.

16. It was accepted by both parties that the Petitioner has retained her employment since entering into the Consent Order. Indeed, at paragraph 8 of the Petitioner's affidavit sworn and filed on 24 June 2011 ("the Petitioner's Affidavit"). Paragraph 8 states as follows:

> "*8. I am employed as a Cashier at the Bermuda Government Public Transportation Department. I have a net weekly income of $623.81...*"

17. Based on this figure, the Petitioner's annual income in 2011 would have been approximately $32,438.12. Without the benefit of the Petitioner's pay advice from 2011, it is unclear whether there would have been the $200 weekly deduction paid to the Credit Union as is currently the case.

18. The Petitioner submitted the total of her monthly expenses as being $2,715.43. Included in this total are a $1,000 rental payment as well as a $400 payment for her mother's expenses for her residence at the Purvis Park Rest Home. The Petitioner's evidence is that when the parties agreed the terms of the Consent Order, she had the expense of contributing to her mother's care. Upon review of the Petitioner's Affidavit, paragraph 12 set out her monthly expenses in 2011. In the said list, the following is stated:

> "*12. My financial means, obligations and responsibilities currently extend to providing for my son and myself. The following is a summary of my current monthly expenses:*
>
> *...*
>
> *q. Petitioner's mother's expenses $50.00*
>
> *...*"

19. It therefore appears, since entering into the Consent Order, the Petitioner has increased her commitment to paying substantially. I do not take issue with this expense, I merely demonstrate the level at which the Petitioner was making in 2011. Overall, I accept the Petitioner's monthly expenses as being more than reasonable.

20. On cross-examination, the Petitioner confirmed she resides with her brother and has done so for approximately one and a half (1 ½) years. She confirmed they contribute equally to the monthly rental payment of $2,000; i.e. $1,000 each. The Petitioner declared her brother is employed on a full-time basis as a caregiver, but was adamant she was unaware of his earnings. I struggle to grasp this to be the case when two persons are residing together and have agreed to share household expenses in particular.

21. The Petitioner submitted she was willing to agree a reduction in the monthly spousal maintenance payments by $150; i.e. to $600; for a specified period of time, after which the original sum of $850 per month would be reinstated.

22. The Petitioner wished for the court to give consideration to the detrimental impact the divorce had on her. It was apparent during the hearing that the divorce had a devastating impact on the Petitioner. I fully sympathize with this and hope she is able to find resolution in the near future.

The law

Jurisdiction

23. Section 35 of the Matrimonial Causes Act 1974 ("the Act") provides the Court with the statutory jurisdiction to vary an order in relation to ancillary relief applications. Section 35 states as follows:

> "***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 the 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:*
> *…*
> *(b) any periodical payments order;*
> *….*
>
> *(7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates.*"

24. In *A v A* [2016] Bda LR 2, Hellman J, affirmed this position:

> "*26. In summary, the Court has a broad jurisdiction under section 35 of the 1974 Act to vary or discharge an order made in ancillary relief proceedings, including a consent order…* "

25. Hellman J further reiterated the stance the Court must take in terms of how such an application for a variation should be approached:

> "*23. Lewis v Lewis was followed by the Court of Appeal in Bermuda in Robinson and Robinson [1989] Bda LR 13. The Court explained that pursuant to that decision:*
>
> > *"…it is the duty of a court, when exercising its discretion under Section 31 of the Matrimonial Causes Act, 1973 (Section 35 of the Bermuda Matrimonial Causes Act, 1974) to have regard to the actual means of the parties as they stand at the time when the case it heard by it.*
> >
> > *Thus a court will not take into account only those changes in the means of the parties which have taken place since the original order was made. It must approach the matter as if it were fixing the payments afresh and make an order which is reasonable in the current circumstances.*" [Emphasis added]

Exercising of powers

26. Being satisfied on the issue of jurisdiction as well as the requirement to consider the application afresh, the next aspect which I must consider is in what circumstances the Court will exercise its powers. Hellman J also addressed this within his summary at paragraph 26 of his judgment in *A v A*, as follows:

> "*26. …Where, as in the present case, the order is very recent, the Court is unlikely to exercise that jurisdiction unless there is a good reason to do so, e.g. because there has been a material change in circumstances or material non-disclosure by one of the parties. If the Court does decide to reopen the order, then it may do so in whole or in part, giving such weight to the existing order as it sees fit.*" [Emphasis added]

27. Neither party in this matter had to exert any energy into convincing me there had been a material change in circumstance from the date of the Consent Order. Given the Respondent's substantial reduction in his income, I fully accept this being a material change in circumstance which allows me to vary and/or discharge the Consent Order as a whole or in respect of varying and/or discharging any of the specific terms set out therein.

Underlying principles and factors to consider

28. I must start by stating that upon receipt of this application and review of the Consent Order, it is quite peculiar to me that spousal maintenance payments were agreed at all between the parties, let alone there not being any timeline set out for such payments to cease.

29. In cases where no timeline is provided for by the order, such as in this case, the discharge of periodical payments to the former spouse is defined by Section 32(1) of the Act is 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 grant of a decree of divorce or nullity of marriage, the remarriage of the party in whose favour the order is made; and*
>
> *(b) 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 grant of such a decree, the remarriage of the party in whose favour the order is made.*"

Therefore, had the Respondent not pursued this application, he would be required to pay the Petitioner the monthly sum of $850 per month until such time as she remarried.

30. A clean break between former spouses in ancillary relief proceedings is the ideal which the Court should look to achieve in such applications. The matters which the Court must take into consideration in attempting to achieve this outcome have been the source of great debate in the courts, going back decades. In the pivotal House of Lords case *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24, [2006] 2 AC 618, [2006] 1 FLR 1186, the concept of achieving fairness between the parties was introduced.

31. As it relates to the particular issue of spousal maintenance, Baroness Hale delivered three guiding principles for a court to determine a reasonable level of periodical payments. Paragraph 144 of Baroness Hales' opinion succinctly set out these principles as follows:

"***THE ULTIMATE OBJECTIVE?***

[144]

Thus far, in common with my noble and learned friend, Lord Nicholls of Birkenhead, I have identified three principles which might guide the court in making an award: need (generously interpreted), compensation, and sharing. I agree that there cannot be a hard and fast rule about whether one starts with equal sharing and departs if need or compensation supply a reason to do so, or whether one starts with need and compensation and shares the balance. Much will depend upon how far future income is to be shared as well as current assets. In general, it can be assumed that the marital partnership does not stay alive for the purpose of sharing future resources unless this is justified by need or compensation. The ultimate objective is to give each party an equal start on the road to independent living." [Emphasis added]

32. In the relatively recent case of *AB* v *FC* [2016] EWHC 3285 (Fam), Roberts J helpfully surmised the case law supporting (inclusive of the application principles provided by *Miller v Miller; McFarlane v McFarlane*) the notion that periodical payments, save for in exceptional circumstances, should be based on the needs alone of the parties.

33. The facts of *AB* v *FC* are that the husband and wife were married for a short period of time and separated when the child of the family was just four months old. The parties accepted there was no marital acquest and the only matter for determination was the level of periodical payments for the benefit of the wife. The wife was the primary carer of the child and the husband had a substantial earning capacity. Roberts J stated as follows:

"*55. In this context, he reminds me of what Mostyn J said in relation to 'sharing' future income. In B v S (Financial Remedy: Marital Property Regime) [2012] EWHC 265 (Fam), [2012] 2 FLR 502, his lordship said this:*

"*[76] ..... A footballer who earns £100,000 per week earns that because he is on the pitch playing football. Certainly, the skills he was born with, and the development of those skills (which may well have happened during his marriage), are all reasons why he can command his salary, but he will not get paid it unless he plays football. The footballer has to fill the unforgiving minute with sixty seconds' worth of distance run after the marriage.*

.....

[79] In my judgment simplicity and clarity are just as much needed in this part of the field as in the part designated 'division of capital'. Simple and fair guidance is needed so that the majority of cases can be settled. Settlement is almost always better than adjudication for a divorcing couple. And the functioning of the family justice system depends on a high rate of settlement of these cases. Save in the exceptional kind of case exemplified in Miller v Miller; McFarlane v McFarlane a periodical payments claim (whether determined originally or on variation) should in my opinion be adjudged (or

settled), generally speaking, by reference to the principal of need alone. Of course needs are elastic in concept and there is much room for the exercise of discretion in their assessment. But to allow consideration of the concept of sharing to intrude in the assessment of a periodical payments award seems to me to be based on a doubtful principle, and is replete with problems of quantification by any sure standard. The sharing principle in relation to matrimonial property is simple enough: it is usually 50/50, because in the division of the marital acquest equity (or fairness) is (usually) equality. But if the concept of sharing is going to uplift above the assessment of need a periodical payments award which will be paid from post-separation earnings, how does a judge set about doing it ? Is it a third ? Or 40% ? Or 20% ? There are not even any signposts along the road to a fair award."

56. In the same vein, Mostyn J was subsequently to provide further guidance in the later case of SS v NS (Spousal Maintenance) [2014] EWHC 4183 (Fam), [2015] 2FLR 1124. In that case, his Lordship expressed a clear view that an award for maintenance should only be made by reference to needs save in a most exceptional case where the principles of sharing or compensation are headline pointers." [Emphasis added]

34. *SS* v *NS* [2015] 2 FLR, the principles of which were applied in *AB* v *FC*, set out detailed guidelines as what considerations should be made by the court in determining not only the level of spousal maintenance, but also in terms of the timeframe for which the said payments should be effective.

35. The facts of *SS* v *NS* are that the husband and wife were married for six years and there were three children of the family. The husband was a banker and the wife a full-time homemaker. As such, the wife and the children had been fully reliant on the husband's income. The husband earned an annual, gross base salary of £300,000 with an additional annual average bonus of £364,000. After separation, the wife had obtained part-time employment from which she earned an annual salary of £5,000 and was training to become a Pilate's instructor.

36. Mostyn J was most thorough in his judgment in dissecting the issues which should influence the court in terms of both quantum and timeframe for spousal maintenance orders:

"*[25] Although spousal maintenance (formerly known as alimony, but which now perhaps should now be known more accurately as ex-spousal maintenance) has been with us for generations, it is a strange fact that there is not much discussion in the jurisprudence of the moral or ethical question of why after the dissolution of a marriage the law permits the imposition on a party of the obligation to pay spousal maintenance potentially until the death of the payee….*

…

[29] …Unless undue hardship would likely be experienced the court ought to be thinking of providing an end date to a periodical payments order.

[30] In Miller v Miller; McFarlane v McFarlane [2006] UKHL 24, [2006] 2 AC 618, [2006] 1 FLR 1186, Baroness Hale of Richmond, at para [138], explained that the most common rationale for imposing the obligation to maintain into the future is to meet needs which the relationship has generated…

[31] …For my part I find it difficult to see why it is just and reasonable that an ex-husband should have to pay spousal maintenance or enhanced spousal maintenance by reference to factors which are not causally connected to the marriage, unless one is looking at the issue in a macro-economic utilitarian way and deciding that in such circumstances it is better that the ex-husband picks up the cost of the ex-wife's support rather than the hard-pressed taxpayer. This, again, is a matter of social policy. But I would suggest that in such a case spousal maintenance payments should only be awarded to alleviate significant hardship.

[32] Assuming that the marital choices have given rise to hard needs which have to be met by a spousal maintenance order, the next questions that arise are: how much and for how long?"

…

[46] <u>Pulling the threads together it seems to me that the relevant principles in play on an application for spousal maintenance are as follows:</u>

- *(i) A spousal maintenance award is properly made where the evidence shows that choices made during the marriage have generated hard future needs on the part of the claimant. Here the duration of the marriage and the presence of children are pivotal factors.*
- *(ii) An award should only be made by reference to needs, save in a most exceptional case where it can be said that the sharing or compensation principle applies.*
- *(iii) Where the needs in question are not causally connected to the marriage the award should generally be aimed at alleviating significant hardship.*
- *(iv) In every case the court must consider a termination of spousal maintenance with a transition to independence as soon as it is just and reasonable. A term should be considered unless the payee would be unable to adjust without undue hardship to the ending of payments. A degree of (not undue) hardship in making the transition to independence is acceptable.*
- *(v) If the choice between an extendable term and a joint lives order is finely balanced the statutory steer should militate in favour of the former.*
- *(vi) The marital standard of living is relevant to the quantum of spousal maintenance but is not decisive. That standard should be carefully weighed against the desired objective of eventual independence.*
- *(vii) The essential task of the judge is not merely to examine the individual items in the claimant's income budget but also to stand back and to look at the global total and to ask if it represent a fair*

proportion of the respondent's available income that should go to the support of the claimant.

(viii) Where the respondent's income comprises a base salary and a discretionary bonus the claimant's award may be equivalently partitioned, with needs of strict necessity being met from the base salary and additional, discretionary, items being met from the bonus on a capped percentage basis.

(ix) There is no criterion of exceptionality on an application to extend a term order. On such an application an examination should to be made of whether the implicit premise of the original order of the ability of the payee to achieve independence had been impossible to achieve and, if so, why.

(x) On an application to discharge a joint lives order an examination should be made of the original assumption that it was just too difficult to predict eventual independence.

(xi) 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." [Emphasis added]

37. For the avoidance of doubt, the Court also has a statutory obligation to have regard to the components set out in Section 29[1] of the Matrimonial Causes Act 1974 ("the Act") as its starting point. Section 29 of the Act is as follows:

> "***Matters to which court is to have regard in deciding how to exercise its powers under ss.27 and 28***
>
> *29 (1) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(a), (b) or (c) or 28 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters—*
>
> *(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 family before the breakdown of the marriage;*
>
> *(d) the age of each party to the marriage and the duration of the marriage;*

[1] The equivalent to Section 25 of the UK Matrimonial Causes Act 1973.

(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 practicable 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."

38. In the cases cited above where awards were granted for spousal payments to the wives, the circumstances were such that the wives were homemakers (thus no form of employment) and had the primary care of the child(ren) of the family. The husbands earned substantial wages (e.g. hundreds of thousands of dollars per annum) and were the sole sources of income for the family. The facts of the case can seemingly be distinguished from these.

39. In determining this application, the needs of the parties is the only relevant factor as there are exceptional no circumstances which attract the principles of compensation or sharing (*SS* v *NS* principle at paragraph 46 (ii) and confirmed by Roberts J in *AB* v *FC*). Additionally, the child of the family is no longer a dependent and as such his are not required to be accounted for in the current circumstances (*SS* v *NS* principle at paragraph 46 (i)).

40. At the time the parties entered into the Consent Order, the Respondent did earn more than the Petitioner. However, it was not the case that as a result of the marriage, the Petitioner's earning position had been negatively impacted which resulted in the disparity of their incomes. In my view, the difference in the parties' earning capacities should merely have been taken into account when agreeing a reasonable sum for the Respondent to pay the Petitioner for child maintenance.

41. Approximately seven years has passed since the parties agreed the terms of the Consent Order. This is a case which undoubtedly cries out for a clean break. In my view this should have been done at the time of agreeing the terms of the Consent Order. Understandably, parties in family matters before the Courts, generally, may be driven by emotive pressures which result in terms which to not reflect the position in law.

42. The Respondent is now earning considerably less than the Petitioner. The tables have indeed turned since 2011. It is indisputable the Respondent does not have any available

income to even be considered to be allocated to the Petitioner in terms of spousal maintenance (*SS* v *NS* at paragraph 46 (vii)). Both parties are approximately the same age and have a significant number of earning capacity years remaining prior to his and her respective retirements. The parties also have comparable monthly expenses, none of which the Petitioner has incurred as a result of the marriage (*SS* v *NS* at paragraph 46 (i)).

43. For the avoidance of any doubt, where I have not cited one of the principles set out by Mostyn J in paragraph 46 of his judgment for *SS* v *NS*, it is because I do not believe it is relevant for consideration given the facts of this case.

Conclusion

44. Taking into consideration all of the factors cited in Section 29 of the Act as well as the guidelines given by Mostyn J in *SS* v *NS*, I find it is not reasonable for the Respondent to continue to pay any level of spousal maintenance for the Petitioner.

45. It is unfortunate there was not a transition period provided for in the Consent Order (Indeed, which is one of the guidelines in *SS* v *NS* at paragraph 46 (iv)) in order to provide the Petitioner a timeframe for her expected financial independence from the Respondent. However, I do not find the Petitioner will suffer financial hardship from the cessation of these payments (*SS* v *NS* at paragraph 46 (iii) and (iv)); therefore, I cannot in these circumstances find any justification whatsoever for the order to continue any further.

46. Therefore, the Respondent's obligation under paragraph 5 of the Consent Order to pay periodical payments for the benefit of the Petitioner is hereby discharged. I have considered backdating this order; however, in order to eliminate any possibility of igniting unnecessary acrimony between the parties in terms of possible repayments, as well as taking into consideration the Respondent's willingness to merely reduce the monthly payment, I find it reasonable for the discharge not take effect until 1 August 2018.

47. I will make no order as to costs given both parties appeared in person.

20 July 2018

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ALEXANDRA WHEATLEY
ACTING REGISTRAR OF THE SUPREME COURT