IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT

A. D. 1992

(CIVIL)

DIVORCE SUIT NO. 19 OF 1991

BETWEEN:

CLEMENT RANDOLPH BOONE — Petitioner

and

SHIRLEY MELSAIDA BOONE — Respondent

Appearances: For Petitioner - Messrs E. Ferdinand and D. Kelsick
For Respondent - Dr. H. Browne and Mr. G. Hamilton

[1992: December 8, 14]

JUDGMENT

VELMA HYLTON, Q.C. J.

The Petitioner filed his petition for dissolution of the Marriage on 23rd August, 1991 and the Respondent filed her answer to the same on 2nd October, 1991.

On 6th March, 1992 on the application of the Respondent the Petitioner was ordered to pay to the Respondent interim monthly maintenance for the child of the marriage MARELVA SAMANTHA BOONE in the sum of $400.00 per month with effect from 15th March, 1992.

When the Suit came on for hearing on 23rd November, 1992 by consent of the parties the Petitioner's Prayer was withdrawn, the Respondent proceeded and a Decree Nisi on the grounds of the Petitioner's Cruelty was pronounced, custody of the child of the marriage was ordered to remain in the Respondent with reasonable access to the Petitioner, and maintenance adjourned to 8th December, 1992 for hearing in Open Court with costs to the Respondent to be agreed or taxed.

On 8th December, 1992 the issue of maintenance was heard.

The Respondent relied on her affidavit as to means in support of application for Ancillary Relief filed on 20th February, 1992 and gave additional evidence after which she was cross-examined. The Petitioner likewise relied on his affidavit in answer to application for maintenance pending suit filed on 19th June, 1992, gave evidence briefly and was cross-examined.

The Respondent gave evidence that her monthly net pay is $837, that she now lives alone with her daughter the child of the marriage and pays rent of $400.00 per month. In other respects she relied on paragraphs 7 and 8 regarding her current living expenses. These are:-

7	(a)	Food	= $800.00 per month
	(b)	Transportation	= $100.00 per month
	(c)	Clothing	= $170.00 per month
8	(b)	Electricity	= $100.00 per month
	(c)	Water	= $ 50.00 per month
	(d)	Telephone	= $100.00 per month
	(e)	Cable television	= $ 50.00 per month
	(f)	Cooking gas	= $ 50.00 per month
	(g)	Medical expenses	= $ 25.00 per month

This amounts to a total expenditure of One Thousand, Eight Hundred and Forty-five ($1,845.00 p.m.) including rent and the only income she has is her earnings of $837 monthly.

The Respondent testified that her brother assists her financially but no amount or estimate of this financial assistance was given. It would mean therefore, if the Respondent's evidence is accepted in its totality that she spends each month more than twice her earnings.

The Respondent further testified that during the marriage the Petitioner provided $125 - $130 weekly for food - but this was not sufficient and she had to make good the shortfall from her own earnings - again no details of the amount she had to contribute was given.

The Respondent in paragraph 6 of her affidavit deponed that her daughter's living expenses are as follows:-

(a)	School fees	=	$ 600.00 per year
(b)	School uniforms and School Shoes	=	$ 300.00 per year
(c)	School books	=	$ 400.00 per year
(d)	Transportation to and from School	=	$ 180.00 per year
(e)	Food	=	$3,600.00 per year
(f)	Clothing	=	$3,000.00 per year
(g)	Medical expenses	=	$1,200.00 per year
(h)	Miscellaneous expenses	=	$2,000.00 per year
	AVERAGE ANNUAL EXPENSES	=	$11,280.00

and further that $2,000 will be needed for braces. She said however that this will not become necessary until 1993. The Petitioner disputed this but neither one called expert evidence in this regard.

The Petitioner deponed in paragraph 4 of his affidavit that his monthly salary as Manager of Boonies Construction Co. Ltd. is $3,500, he maintained this in oral evidence and disagreed that he has other sources of income.

In paragraph 3 of his affidavit he specifically denied that he earned $15,200 per month as deponed to by the Respondent in her paragraph 3.

The Petitioner stated that he allows his sister to live in the former matrimonial home at a rent of $50 per month and there was other evidence pertaining to an unfinished building on the said property but this is discounted as the evidence pertaining to this property is unclear - not referred to in the pleadings and does not appear to be relevant to the instant proceedings.

On the Respondent's oral and affidavit evidence I find that his monthly expenses total over $5,727 i.e. the expense detailed in his affidavit as follows:-

(a)	Travelling expenses	$300.00
(b)	Maintenance for child not being a child of the marriage	$300.00
(c)	Maintenance of my mother	$400.00
(d)	Mortgage on lands bought jointly by Respondent and myself	$667.00
		$1667.00

Living Expenses:-

(a) Electricity	$200.00
(b) Water	$ 50.00
(c) Cable	$ 50.00
(d) Furniture and Appliance payments	$200.00
(e) Food	$600.00
(f) General household expenses	$250.00
Plus - Car payments	$990.00 per month
Hire purchase for furniture etc. (inaddition to $200.00 under paragraph 6(d) of his affidavit)	$800.00 per month
Local insurance premiums	$250.00 per month
Foreign Insurance premiums	$270.00 per month

Of this total monthly expenditure of $5,727 - $990.00 was recently incurred for a car and $667 will cease when payment on the land bought jointly by Petitioner and Respondent end in February, 1993.

In addition to expenditure which exceeds his stated income by $2,227.00 the Petitioner admits to having approximately $3,890 in Savings Accounts and $600.00 in a Current Account. If indeed the Petitioner's only income was $3,500.00 it would be totally impossible for him to meet his monthly commitments.

There was no sufficient evidence however to support the additional income of the Petitioner deponed to by the Respondent in Paragraph 3 of her affidavit.

On the evidence before the Court therefore I find that the Petitioner's income is at least $6,500 per month. For whatever reason, however, he is not covered under the Social Security Scheme and I hold that it is prudent for him to have insurance - I assess his net income after payment of Insurance premium at $6,000.00.

The Joint net Income of Petitioner and Respondent is therefore $6,837.00 per month.

Both Counsel for the Petitioner and Counsel for the Respondent relied on Attwood v Attwood (1968) 3 A.E.R. 385 and in particular on what Sir Jocelyn Simon P. referred to as the general considerations which should be borne in mind in this type of case and in particular the consideration that "where cohabitation has been disrupted by a Matrimonial Offence - - - - the wife's and children's maintenance should be so assessed that their standard of living does not suffer more than is inherent in the circumstances of the separation though the standard may be lower than theretofore (since the income or incomes may now have to support two households in place of the former one where household expenses were shared)". This is exactly the instant situation - two households in place of the former one.

Counsel for the Respondent also relied on the unreported Decision of Mr. Justice Lloyd Williams, Q.C. in Hanley v. Hanley Suit No. 16 Divorce of 1981 where the one-third (1/3) formula was used and a slightly higher award was made.

Counsel for the Petitioner relying on the Sixth Edition of Rayden on Divorce also observed that the Wife's Maintenance should be fixed at one-third (1/3) the joint incomes or according to the circumstance - i.e. less than one-third (1/3) or more than one-third (1/3) bearing in mind at all times the overriding interest of the child. I have also cosulted the Sixteenth Edition of Rayden on Divorce - page 1286 paragraph 24 entitled Matters to which the Court must have regard in exercising its powers -

(i) 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;

(ii) the financial obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(iii) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application.

The Petitioner testified that he is prepared to meet all the payments required for the maintenance and welfare of his daughter and indeed has been doing so. These expenses will of course increase each year - and with effect from 1993 will increase by $2,000.00 if the child indeed needs braces.

My computations, findings and Orders are therefore as follows:-

Net Joint Income of Petitioner and Respondent	$ 6,837.00
One-third (1|3) of Joint Income	$ 2,280.00 approximately

I take note of the fact that the Petitioner has allowed the Respondent to keep all the furniture she took from the Matrimonial home and bearing in mind that an application may be made to adjust the award upward or downward. I order as follows:

ORDER:

Petitioner to pay maintenance as follows in respect of child Samantha with effect from 15th December, 1992 until child reaches 18 years of age:-

1.	TO RESPONDENT $400.00 per month for Food and Medical expenses i.e.	$4800 per annum
2.	School fees	$ 600 per annum
3.	School Uniform and Shoes	$ 300 per annum
4.	School books etc.	$ 400 per annum
5.	Transport to and from School	$ 180 per annum
6.	Clothing as and when needed (not exceeding)	$3000 per annum
7.	Miscellaneous expenses e.g. holiday(not exceeding)	$2000 per annum
		$11,280
8.	Dental care as and when needed.	

In view of the fact that there are other proceedings pending relating to Real Property jointly owned by the parties and in view of the offer of the Petitioner to give his share of land jointly owned by himself and Respondent (and to which she has contributed about $7,000.00 of the amount due on the mortgage to be completed in February, 1993) to the Respondent and despite his lack of credibility as to his total earnings, I order that the Petitioner pay to the Respondent during their joint lives $1000 per month with effect from 15th December, 1992, unless she sooner remarries.

Liberty to apply.

Costs to the Respondent to be agreed or taxed.

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Velma Hylton, Q.C.
Puisne Judge

14th December, 1992