

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

Antigua and Barbuda

Claim No: ANUHMT 2019/0052

BETWEEN:

CINZIA GABBANI-BRIGGS

Petitioner/Applicant

and

WROLLY BRIGGS

Respondent

BEFORE:

The Honourable Justice Jan Drysdale

APPEARANCES:

C. Debra Burnette of counsel for the Petitioner/Applicant

Pete Semaj McKnight of counsel for the Respondent

2021: December 6th

2022: December 23rd

DECISION

- [1] **Drysdale, J:** This is a claim for ancillary relief for maintenance of the minor children namely Wronique Briggs and Shannay Gabbani.
- [2] On 18th October 2019 the Applicant filed an application for ancillary relief seeking an order that the Respondent make monthly periodic payments of \$1,950.00 to the Petitioner/Applicant for the maintenance of the said children of the marriage, until they attain the age of 18 or until they complete full-time education, whichever is later.

THE EVIDENCE

- [3] The Applicant deposed that there two minor children of the marriage namely Shannay Marizia Mahoney Gabbani, born the 26th day of June, 2007 and Wronique Francshesca Bianca Briggs, born on the 25th day of August, 2011. The said children currently reside at Saint's Village, in the

Parish of Saint Paul, Antigua with the Applicant and she is the sole provider for them as the Respondent has failed to provide any maintenance for the children since the breakdown of the marriage in 2018.

[4] The Applicant further deposes that she is a part-time sales associate at the Sunglass Hut and earns a gross salary of approximately \$3,408.22 and an average net salary of \$3,050.53 per month which is dependent on the number of hours worked. That she is also entitled to a commission whenever the store achieves its goal.

[5] The Applicant detailed her average monthly expenses as follows:

Groceries	\$2,000.00
Rent	\$1,000.00
Internet	\$160.00
Electricity	\$400.00
Water	\$88.00
Phone	\$250.00
Cooking Gas	\$70.00
Transportation	\$400.00
Vehicle Maintenance	\$375.00
Loans (courts)	\$70.00
Clothing for Children	\$135.00
Personal Clothing	\$67.50
School Fees	\$450.00
Extra Curricular Activities	\$180.00
After School Classes	\$380.00
After School Care	\$400.00
School Supplies, Uniforms, Shoes, Books	\$184.00
Birthdays/Entertainment	\$400.00
Travel Expenses	\$663.50
Total	\$8,545.02

[6] The Applicant deposes that the Respondent is employed as a Chef at The Larder and Cecelia's Restaurant and earns a salary of \$4,000.00 monthly plus tips. That during the currency of the marriage the Respondent, was always the higher income earner and met most of the expenses of the family. Specifically, he paid the school fees for both children, paid the bills and would provide her with additional funds to manage the household. However they would both purchase groceries for the household.

[7] Without the Respondent's contribution, that she is put at an economic disadvantage and is struggling to meet the expenses of the family. For that reason, she has had to rely on contributions from her family to meet some of the basic expenses of the children of the marriage and herself. The Applicant therefore asks that the Respondent be ordered to pay the sum of \$1,900.00 for the maintenance of both children of the marriage.

[8] On cross examination, the Applicant submitted that the Respondent is in arrears of payment of the school fees for their biological daughter Wronique in the sum of \$9,450.00 and the interim

order of the Court dated 20th February 2020 in the sum of \$6,450.00. She agreed that recently the Respondent had made some payments pursuant the interim order but that generally payments made by the Respondent were less than that ordered by the court. She also agreed that the Respondent had sent the sum of \$200.00 after they separated for Wronique's birthday.

- [9] She denied that Shanny's father contributed to her maintenance and insisted that the Respondent paid for the school fees for both children. Regarding her expenses the Applicant submitted that she spent a minimum of \$2,000.00 on groceries. Initially she expressed that she spent the sum of \$1,500.00 monthly on Wronique alone for her maintenance. Subsequently however she indicated that this was not a monthly sum. She however suggested that she spent a minimum of \$850.00 on Wronique.
- [10] She admitted that she had not made any application for custody and or access as it related to the Respondent and Shannay. Further that she had provided no affidavit evidence to rebut the assertions of the Respondent that he never maintained Shannay. She also stated that whilst she had not provided receipts that specifically the school fees for Shannay and or the children were paid that she had provided overall general receipts.
- [11] The Respondent deposed that he is the father of Wronique Briggs. He asserted that he is willing to make all payments, as his means will allow, towards the maintenance and upkeep of his daughter, which said payments include her school fees, school supplies, school activities and school uniforms and medical needs. However, he rejects any obligation to the child, Shannay Gabbani. The Respondent asserts that he never had any responsibility towards the maintenance and upkeep of Shannay. That in fact, prior to their marriage the Applicant advised him that her sister, Cleopatra had adopted Shannay and that had always cared for and will continue to care for her. Additionally Shannay's biological Father also contributes to her upkeep and she has a relationship with him and his family whereby she visits with them at their family home.
- [12] That he has never been involved in any decision making as it concerns Shannay. He and Shannay did not bond, and he believes this is the reason why the Applicant has not suggested that he be given access to Shannay. Furthermore after their separation, the Applicant made it clear that his responsibility was in relation to their daughter only as she and her family would continue to see to Shannay's needs.
- [13] He further deposed that he is employed as a Sous Chef and earns monthly sum of \$3,500.00. He therefore reasons that it is not even practicable for him to pay the sums requested by the Applicant respect of Child Maintenance. In any event the Respondent suggests that the Applicant earns more than him. In addition to working at the Sun Glasses Hut she also works at Smoking Aces Night Club in the evenings at which job she makes about \$600 in tips alone each night.
- [14] The Respondent admits that he has always been the only one paying for school fees and every need of his daughter. He therefore denies the Applicant's assertion that she wholly maintains their child.
- [15] The Respondent claims to be alarmed at the Applicant's tabulated expenses. He suggests that during their marriage he for the most part paid the bills and that the monthly shopping bills have never come up to \$2,000.00. The Respondent also refutes the Applicant's clothing for the

children and states that all the clothes for Wronique were purchased by him. Further he is not aware that Wronique has any new clothing.

[16] Concerning the after-school expenses claimed, the Respondent asserts that the children are taken to a relative and are not in any after school care program. The Respondent challenged the Applicant's annual travel expenses stating that she has not travelled since 2015 when she went to Italy on vacation with her daughter Shannay and he went to Guyana with his daughter Wronique.

[17] In relation to his expenses the Respondent deposed that his basic monthly expenses are as follows:

Rent	\$800.00
Electricity	\$150.00
Courts Antigua	\$600.00
Groceries	\$300.00
Petrol	\$800.00
Propane	\$130.00
Telephone	\$100.00
TOTAL	\$2,880.00

[18] In addition to the above basic monthly expenses that he incurs certain quarterly expenses being:

Serving of Vehicle	\$200.00
Dental Care	\$260.00
Work Clothes	\$970.00
Total	\$1,360.00

[19] Furthermore, that biannually he has medical expenses related to his employment which cost \$300.00 per visit. That annually, he is required to license and insure his vehicle at a cost of \$1,400.00 which is due on the 28th day of February. That he also purchases tyres each year at a cost of \$1,200.00. Thus, the combined defect of all the expenses reduces his disposable income to the sum of \$540.00. The Respondent explained that these expenses are basic expenses and do not consider clothing and his personal care and upkeep.

[20] The Respondent maintained that he will not shirk his responsibility to Wronique and remained determined see to all of her needs. He proposed to be responsible for the payment of Wronique's school fees and her medical and educational expenses. In that vein he suggested the sum of \$600.00 monthly as being fair and reasonable for the contribution of Wronique's maintenance and upkeep particularly as he has expressed the desire to meet all other expenses related to her care.

[21] On cross examination the Respondent continued to distance himself in any obligation to Shannay though he admits that she started living with him and his wife since she was 3 years old, and she would partake in the benefits of the household. He however denied paying school fees for Shannay but admitted to paying the corresponding school fees for Wronique.

- [22] The Respondent asserted that during the currency of their marriage that he paid all the bills and would occasionally give the Applicant some monies for personal expenses. The Respondent admitted that the Applicant was unemployed when they met and soon after she became pregnant. The Applicant started to work after the birth of Wronique but he remained responsible for the payment of the bills which he personally paid. They also both bought the food for the household.
- [23] The Respondent indicated that since the pandemic that he has experienced some financial difficulties. He explained that his contract with his former employer ended in February 2020 just before the Covid 19 pandemic hit. Therefore, he was unemployed for about 20 months which resulted in him falling into arrears of the interim order for payment concerning Wronique. However he now works at C&C Wines 4-5 days a week and earns \$13.00 per hour working. He denied being employed at a second job.
- [24] The Respondent disclosed that he now has a young baby with his partner who he supports financially. He explained that he personally paid the bills of the household and gave his partner approximately \$200.00 every two weeks. He also indicated that he relies on support of his partner's father.
- [25] The Respondent denied sending only \$200.00 for Wronique's maintenance when they first separated and stated that whilst working in Montserrat he sent a minimum of \$450.00 every month. He stated that he was aware that the school for Wronique was in arrears of about \$4,000.00 in July, 2020. He admits that he has not paid the school fees. Regarding the interim order for maintenance for Wronique he admitted that he was in arrears of the same.

THE SUBMISSIONS

- [26] The Applicant argues that Shannay is a child of the marriage having lived with the parties since she was 3 years of age. That further the Respondent stood in the place of parent of Shanny in providing for her basic needs until the parties separated. Accordingly, the Applicant asserts that the Respondent should be ordered to pay maintenance for both children in the sum of \$1,950.00. This sum includes the school fees for Wronique and the maintenance of both children in the sum of \$750.00. each. She also asks that the Respondent pay the arrears of school fees.
- [27] The Respondent whilst accepting his obligation towards Wronique disputed that Shannay was a child of the marriage. The Respondent argues that he neither legally adopted nor bonded with the Shannay. He never participated in any graduation, collected any report, or played active role and or participated in any decision making about Shannay's upbringing and welfare. Further that there is no evidence of any formal or verbal agreement between the parties and or any part performance on behalf of the Respondent that he was responsible for the overall welfare of Shannay. Therefore, on the balance of probabilities it can be deduced that he has no parental responsibility for Shannay.
- [28] Regarding the issue of maintenance, the Respondent argues that the status quo has changed significantly. His income was adversely affected by the pandemic and currently he has a young daughter with his new partner which he also has a responsibility to maintain.

- [29] That as it relates to the payment of school fees, it was agreed by the parties that he was solely responsible for the school fees of his daughter, when he was able to do so while he was employed, steadily. However, this previous arrangement in all the circumstances, is now untenable. Accordingly, moving forward the parties should jointly be responsible for the school fees of Wronique.

THE ISSUES

- i. Whether Shannay is a child of the marriage?
- ii. What is a reasonable sum for maintenance for any child/children of the marriage?

ANALYSIS

Whether Shannay is a child of the marriage

- [30] The Divorce Act makes provision for maintenance for a child of marriage by the former spouses to a marriage. Section 2(2) of the Divorce Act defines a child of the marriage as:
- (a) any child for whom they both stand in the place of parents;
 - (b) any child of whom one is the parent and for whom the other stands in the place of a parent.
- [31] From the above it is pellucid that a child of the marriage is not limited to the biological or legally adopted child but may also include a non-biological child of one of the spouses.
- [32] In the instant case a determination must be made on whether the Respondent stood in the shoes of parent for Shanny and treated her as his own. There are no pre-determined factors set out by the Divorce Act¹ for consideration of this issue. However Ormrod LJ in the case of **D v D (Child of the Family)**² established that the question of whether or not a child has been treated as a child of the family is essentially a question of fact to be judged by an objective test. He sated '[t]he independent outside observer has to look at the situation and say: Does the evidence show that the child was treated as a member of the family?'
- [33] Thus, this issue can only reasonably be determined by dispassionately looking at the totality of the situation. The evidence is that the parties met in 2010. Although the Applicant had a young daughter namely Shannay at that time Shannay lived in Barbuda with relatives. Sometime later in that year the Applicant became pregnant with Wronique. After the birth of Wronique, Shannay who was 3 years old came to spend the August summer vacation with the parties. She never returned and started school in September 2011. Shannay lived with the parties from then until 2018 when they separated. She now lives, as does Wronique, with the Applicant.
- [34] When the parties met the Applicant was unemployed and received assistance from her family. The parties started cohabiting after the Applicant became pregnant and the Respondent paid all

¹ No 10 of 1997

² (1981) 2 **FLR** 93, CA at para 97

the bills of the household and also bought the majority of the groceries for the household. I accept the evidence of the Applicant that the Respondent also gave her additional funds to manage the household, the children and herself. This is also consistent with the Respondent's evidence that regarding his current relationship that although he pays the bills that he provides his partner with money every two weeks for inter alia her needs.

- [35] Much ado has been made of the suggestion that the Applicant receives funds from her family to maintain Shannay. However, as the case of **Carron v Carron**³ found, financial support for the child from others did not necessarily disqualify that child as a child of the marriage. When looked at in the round, the fact that Shannay without distinction benefited from all the perks of the household for which the Respondent was primary income earner and responsible party for the same, coupled with the fact that Shannay lived with the parties prior to and during the marriage until the parties separated which period spanned at least 7 years, renders her as a child of the marriage.

What is a reasonable sum for maintenance for any child/children of the marriage?

- [36] Section 13 of the Divorce Act outlines the principles which gives the Court jurisdiction to make a support order for the maintenance of children of the family. Specifically, section 13(5) and 13(8) provides as follows:

'(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by the spouse during the cohabitation: and
- (c) any order, agreement or arrangement relating to support of the spouse or child.

(8) An order made under this section that provides for the support of a child of the marriage should

- (a) Recognize that the spouses have a joint financial obligation to maintain the child; and
- (b) Apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.'

- [37] The undisputed evidence reveals that the parties began living together as a complete family unit with Shannay, when Wronique was born which was in August, 2011 and they did so until 2018 when they separated, a period of almost 7 years. During the marriage the Respondent paid the school fees for Wronique, purchased groceries, paid the utilities and the rent. The Applicant also

³ [1984] FLR 805

purchased groceries, and with the assistance of the Respondent otherwise managed the household. Further pursuant to a previous interim order the Respondent is mandated to pay in the interim the sum of \$750.00 for the support of Wronique.

- [38] The parties are both gainfully employed. The Applicant from her evidence indicates that her gross income is \$3,408.22 and her net income is the sum of \$3,050.53. She also deposed that she sometimes earns a commission which sum varies depending on the hours worked. The Respondent's gross income is marginally higher than the Applicant being the sum of \$3,500.00.
- [39] Just prior to the pandemic the Respondent's contract as a Chef terminated due to effluxion of time. Due to the nature of the industry engaged in by the Respondent, the pandemic had a significant adverse effect on him. I accept that the Respondent was unemployed for more than 18 months. During this time his arrears continued. However, the Respondent was able to obtain employment until just before the hearing of this matter and has been attempting to make some payments towards the arrears. He is however in significant arrears of the interim order and his then agreed responsibility to pay the school fees for Wronique. As a result, the Applicant has for the past few terms paid the entirety of the school fees for Wronique.
- [40] The Applicant suggests that her expenses are in the excess of the sum of \$8,000.00 whereas her income is at a minimum just over \$2,000.00 plus commissions. Whether a minimum of \$2,000.00 as suggested on cross examination or circa \$3,000.00 as indicated in her evidence in chief, the disparity between the income and expenses of the Applicant gives rise to the question of how in the circumstances could the Applicant continue to maintain this lifestyle especially considering the admission that the Respondent has been in arrears since their separation. In any event any payment by the Respondent would not have brought the expenses quoted by the Applicant within a reasonable sum given her stated income. A closer look at the evidence provided by the Applicant also reveals that she has claimed that she spends a minimum of \$2,000.00 on groceries. However, the Applicant's receipts for groceries span several months and do not amount or even closely resemble the sum claimed. The Applicant also admitted on cross examination that some of the expenses claimed are not monthly expenses. I note that notwithstanding the Applicant's claim, that there is a paucity of evidence concerning the expenses of children. I do accept that some evidence of general familial expenses and after school expenses were provided. However no receipts were provided for inter alia school uniforms and supplies, extra-curricular activities and travel. The Applicant also failed to disclose that she receives one uniform from the Government in her evidence in chief. Further the Applicant was noted to have changed her responses to some questions on cross examination leaving the impression that she was not being forthright with this Court. Thus, given the state of the evidence and after having carefully considering the same, I am of the considered belief that the Applicant has inflated her expenses. If I am wrong in this analysis, then clearly the Applicant has another source of income and therefore earns more than she has disclosed.
- [41] The Respondent has since the separation had another child with his new partner. He admittedly pays for the running of that household and gives his partner at least \$400.00 every month for her personal needs. Clearly if as the Respondent suggest that this new family is reliant on the father of his partner to survive then the Respondent to my mind would not be in a position of being able to provide this money to his partner for her personal needs.

- [42] The Respondent asks the Court to take in consideration his obligation to his new baby and I have considered the same. However, whilst the Respondent has in effect a new family including a new child, he has an obligation to the two children of the marriage as well. Just like his new baby these children have needs which must be met for their continued welfare and survival.
- [43] Having regard to the income of the parties and their joint responsibility to maintain the children as well as all the evidence herein, I am of the considered belief that the Respondent should pay the sum of \$1,100.00 for the maintenance of the children of the marriage. As it relates to the school fees for Wronique, I note that the parties appear to have similar levels of income. Thus I believe that they should equally share the responsibilities of the school fees for Wronique.
- [44] Concerning the arrears, the Respondent stopped making meaningful payments upon the parties separation whilst he was gainfully employed. The arrears accumulated over the period of several years. Even though the Respondent suggests that during the pandemic that he was adversely affected no application has been made to vary the interim court order for maintenance as it related to Wronique. Thus, the Respondent is liable to pay all accumulated arrears.

ORDER:-

1. That Shannay Gabbani is deemed to be a child of the marriage.
2. That commencing on the last business day of January 31, 2023 and continuing on the last business day of each month, the Respondent shall pay the Applicant the sum of \$1,100.00 for the maintenance of the children of the marriage until they attain the age of 18 or until they complete full-time education, whichever is later.
3. The parties shall equally bear the cost of the school fees of Wronique Briggs.
4. The Respondent do pay the arrears on the interim order in the sum of \$6,450.00.
5. The Respondent do pay the arrears of school fees for Wronique Briggs in the sum of \$9,450.00.
6. Costs to the Applicant in the sum of \$1,000.00

Jan Drysdale

High Court Judge

By The Court

Registrar