

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHMT2018/0117

BETWEEN

Trevor Charles

Petitioner/Respondent

AND

Kanter Charles nee Rawlins

Respondent/Applicant

Appearances

Mrs. Cort-Thibou for the Petitioner/Respondent

Ms. C. Debra Burnette for the Respondent/Applicant

2021 Nov. 11th

2022 Jan. 19th

Feb 9th

Sep 1st

Judgment

- [1] **Robertson J.:** Kanter Charles filed an application seeking an order for the custody of the minor of the marriage and for maintenance payments in the monthly sum of EC\$3,500.00. The applicant also seeks retroactive payments so that she is reimbursed for certain outstanding bills and expenses incurred by the applicant in relation to the minor. These expenses included equipping the minor to attend school. The applicant estimated in the application filed that a lump sum payment of EC\$9,607.00 would be sufficient to place the applicant in the position that the applicant would have been if the respondent had been contributing regularly to the maintenance of the minor. The respondent challenged the application and proposed an order that the respondent pay to the applicant the sum of EC\$800.00 per month towards the maintenance of the minor and to cover the

minor's school fees, school expenses, medical insurance and other health expenses not covered by insurance. The respondent also challenged the request that the applicant should be granted custody of the minor.

[2] An interim consent order was made on 22nd April 2021 in which the respondent, commencing 31st April 2021, was required to pay maintenance in the sum of EC\$800.00.

[3] The attempts to arrive at a mediated settlement on the matter of custody and maintenance were unsuccessful and this application was listed for trial. At the hearing, the applicant and the respondent gave evidence and were cross-examined on the evidence provided.

The Evidence.

[4] The parties were married in April 2009. The marriage broke down and the parties were separated in 2017. The applicant later sought and obtained on 19th October 2018 an exclusion order under the provisions of the Domestic Violence Act 2015. This order excluded the respondent from the matrimonial home. The applicant continued to live in the matrimonial home with the child of the marriage.

[5] The only child of the family was born in June 2011. He was born with a medical condition and the evidence before the court is that as a result of this condition, the minor experiences severe pain and requires special medical attention. The evidence of the applicant is that as a result of this condition the minor is also required to be closely supervised. The applicant also indicates that since the birth of the minor the applicant was the primary caregiver and has been trained to deal with minor's medical condition.

[6] It is noted that the medical condition of the minor and the nature of care required were not supported by evidence from a medical practitioner. However, the veracity of the matters relating to the health of the minor has not been challenged by the respondent.

[7] **Financial Strength of the Applicant.** The monthly salary of the applicant is EC\$4,206.47 (net) and EC\$4,738.00 (gross). The applicant indicates that her total recurring monthly expenses are more than EC\$10,894.09. The applicant indicated that during these proceedings the property insurance

increased from EC\$500.00 to EC\$705.00 and that she was now paying an increased mortgage payment of EC\$1,586.71. The increase in the mortgage payment resulted from a vehicle loan being consolidated with the mortgage.

[8] The evidence of the applicant is that she intended to convert an area on the matrimonial property into a rentable dwelling space to enable her to obtain additional income in the form of rental income. Initially, the space was to be rented via the Airbnb platform and it was anticipated that this rental would, depending on the tourism season, earn approximately EC\$2,300.00 per month. However, as a result of the Covid-19 pandemic the space was used to rent to local tenants. At present the applicant has been able to rent the accommodation and earns approximately US\$600.00 (approximately EC\$1600.00) per month. The applicant contends that the space requires additional work but notes that it would be possible to obtain a rental income of between US\$800.00 to US\$900.00 (approximately EC\$2100.00 to EC\$2400.00) per month. The possibility of obtaining a higher rental income arises since the property is in an area where there is a demand, at least among foreign students, for the rental of dwelling properties.

[9] The evidence of the applicant is that while the parties lived as husband and wife the respondent was responsible for paying the utilities, the maintenance of the property, and paying school fees, insurance premiums and the medical expenses for the applicant and the minor. The applicant was responsible for the mortgage payments and paid grocery expenses and other incidentals. The mortgage payments were deducted directly from the applicant's salary.

[10] Regarding the applicant's overall expenses, the applicant noted that she does not pay the medical insurance which she previously quantified as EC\$175.15. During oral evidence the applicant indicated that she would like to have the respondent continue paying the insurance under the group insurance policy. The applicant noted that if she were to institute a medical insurance policy, she would be required to pay a monthly sum of EC\$258.50 for the applicant and EC\$407.00, for the applicant and the minor.

[11] This court will not consider the matter of payment of the insurance policy for the benefit of the applicant since the application before the court specifically relates to the minor. However, it is noted

that the respondent indicated in evidence that the applicant has not been removed as a beneficiary on the respondent's medical insurance policy.

[12] **The Financial Strength of the Respondent.** The evidence of the respondent is that he is employed as Complex Coordinator at a company and earns a monthly salary of EC\$4,859.18. The respondent is also able to perform electrical work and private jobs in the field of information technology (IT jobs). The evidence of the respondent is that he no longer performs electrical work but that he, from time to time, engages in private IT jobs. The respondent estimates that his average income for these IT jobs is approximately, EC\$1,750.00 per month. Thus, the respondent's net income is approximately EC\$6,609.18¹.

[13] The evidence of the respondent is that his expenses are approximately EC\$10,379.07. This sum included the rental payment for his accommodation in the sum of EC\$1,800.00. At the time of the hearing of this matter the respondent no longer paid rent but moved into an accommodation that he owned, and he constructed with the assistance of a friend and a relative.

[14] The respondent also indicated that after the parties separated the respondent gave money to the respondent's mother and later deposited funds into the account of the applicant for the benefit of the minor. The respondent also paid the school fees for the minor although the fees were not promptly paid.

The Law, Analysis and Finding

Custody

[15] Custody generally refers to the rights and duties associated with raising the child. It also includes the "power to control the child's education, his religious upbringing and the management of his property until the child attains the age of majority². The matters for consideration of the court on the issue of custody have been expressed in the provisions of the Divorce Act 1997. Section 14(8) of the Act provides that in making an order for the custody of, or the access to a child of the marriage, the court shall take into consideration "*only the best interests of the child of the marriage as determined by*

² Kodilyne, Lysra, The Judicial Approach to Child Custody Issues in the Commonwealth Caribbean. P. 223.

reference to the condition, means, needs and other circumstances of the child". Section 14(9) provides that "*in making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that persons to act as a parent of a child*". In the circumstances of this case the respondent was subject to an exclusion order under the provisions of the Domestic Violence Act. However, there is no evidence before the court that the respondent presents a physical danger to the minor.

[16] Considering the needs and other circumstances of the minor this court notes that all minors must be afforded circumstances which would meet the minor's physical needs, emotional needs, spiritual needs and which would provide the minor with a sense of belonging and a safe space to flourish. In the circumstances of this case specific consideration must be given to the medical condition of this minor. The evidence of the applicant is that the minor requires careful supervision and that she has been trained to deal with the minor's condition. The applicant also indicates that she has been the primary caregiver for the minor since his birth.

[17] Although this court accepts that the applicant, as the primary caregiver, is able to 'manage' the medical condition of the minor, there is no evidence before the court regarding the nature and extent of the medical training which the applicant would have received. It is also noted that there is no evidence of the nature of medical training, if any, received by the respondent to care for the minor.

[18] Relationship between the Respondent and the Minor. It is clear from the evidence that the relationship between the respondent and the minor is strained, and that the respondent must make a concerted effort to build a healthy father-son relationship. The applicant, while giving evidence provided examples when the minor was disappointed and possibly disillusioned by the conduct of the respondent. This court accepts the evidence that there were instances when the minor's expectations may not have been met by the respondent. This court notes that it is conceivable that repeated conduct which holds out promises or expectations towards a minor but remains unfulfilled undermines the relationship between the minor and the parent extending the promise.

[19] Finding of the Court on Custody. The courts in treating with custody and access arrangements recognise the importance of the minor engaging in healthy relationships with both parents. In the circumstances of this case the applicant is clearly better prepared to continue to be the primary

caregiver to the minor. She has been trained to treat the minor's illness and she has a healthy relationship with the minor.

[20] This court notes that the respondent demonstrates a genuine interest in the minor but that the respondent requires support on effective parenting. This court has determined that there should be an interim order regarding custody. This interim order would grant custody to the applicant with access afforded to the respondent. An order for final custody is to be made on a date indicated hereunder. In the intervening period the respondent would be required to attend programmes relating to effective parenting.

Support Orders

[21] It is common for financial challenges to arise upon the separation of a household. The financial challenges arise particularly when the household expenses were shared expenses prior to the separation. In this regard when a household moves from one- two income household to two-two income households, financial burdens are often felt by one or both parties. Financial matters are further complicated when parties reorganize finances and/or obtain additional financial responsibilities.

[22] In an application for support of the minor the court is concerned with the condition, means, needs and other circumstances of each spouse and of the minor. The court considers the length of cohabitation, the functions performed by the spouses and any order or arrangement relating to the support of the child. Additionally, the court is careful to ensure that it recognizes that the spouses have a joint financial obligation to maintain the child and apportion the obligations between the spouses according to their relative abilities to contribute to the performance of the obligation³.

[23] The evidence of the applicant as it relates to the expenses of the minor is indicated hereunder.

a. Clothing	\$339.61
b. Medical expenses	\$109.63
c. School fees	\$225.00
d. School supplies	\$161.00
e. Music lessons	\$100.00

³ Section 13(7) and 13(8) of Divorce Act.

f. Junior educational savings	\$50.00
Total	\$985.24

[24] There are expenses of the applicant from which the minor would derive obvious benefits. These expenses include:

a. Groceries	\$2000.00
b. Mortgage	\$1586.71.
c. Yard and Pool Maintenance	\$693.96
d. Domestic Help	\$400.00
e. Electricity	\$359.60
f. Water	\$72.56
g. Telephone	\$34.50
h. Internet	\$228.99
i. Cable	\$18.11
j. Cooking gas	\$32.00
k. Transportation	\$585.50
Total	\$6,011.93

[25] The court is tasked with apportioning the financial responsibilities for the minor according to the relative abilities of the parties. The applicant and the respondent both contend that their expenses exceed their income.

[26] The evidence before the court is that the applicant earns the monthly sum of EC\$4,206.47 and through the renovation work done to the matrimonial home the applicant earns an additional sum of EC\$1,600.00 in rental income. The total income of the applicant is approximately, EC\$5,806.47.

[27] At present the applicant has chosen to have domestic rental accommodation as the applicant is of the view that this choice would better isolate the applicant and the minor from the Covid-19 virus. On this matter it is expected that applicant's position would evolve with the evolution of the protocols relating to the management of the Covid-19 virus. Accordingly, after the completion of any required upgrades, it is possible for the applicant's rental income to increase to approximately EC\$2,300.00.

[28]The respondent is employed as a complex coordinator and engages in private jobs. The respondent earns approximately EC\$6,609.18. This sum includes the amount which the respondent indicates that he usually earns from engaging in private jobs.

[29]Arising from the evidence there are three matters which should be specifically noted regarding the income of the parties. Firstly, the difference in the income of the parties is approximately EC\$802.71 per month. The respondent receiving the higher monthly income. Secondly, the supplemental income sources for both the applicant and the respondent offer a certain level of uncertainty. The applicant must have the accommodation let while the respondent must ensure that he has customers to whom his services can be offered. Thirdly, the supplemental incomes of the parties can be increased. The applicant's rental income can be increased when the improvements are made to the property and the respondent's income can be increased through the increase in the quantity and/or the frequency of his IT jobs. The path to an increase in the supplemental income by the applicant would require some financial investments and therefore the realization of the increase would be comparatively more challenging.

[30] **The Finding.** The respondent has undertaken to pay monthly maintenance in the sum of EC\$800.00 and to pay the minor's medical insurance, medical expenses and the school fees of the minor. This court is of the view that the sum of EC\$800.00 would be inadequate and has determined the issue of maintenance in the manner indicated hereunder.

[31]In this court's view it is reasonable that the respondent pays the sum of EC\$1300.00 per month, and that the respondent be required to continue making payments for the school fees, school supplies, extracurricular expenses of minor during primary school education. Thereafter, the education costs are to be shared: applicant 45% to respondent 55%. The respondent is required to pay the costs of medical insurance coverage for the minor. The medical, expenses of the minor after insurance considerations are to be shared between the applicant and the respondent 45% to 55%. On this specific matter this court has considered the insurance premiums which are to be paid by the respondent.

[32]On the matter of arrears payment this court is satisfied that while the respondent did provide funds for the maintenance of the minor the funds were not consistently provided. Accordingly, this court

will make an order for the respondent to make a lump sum payment in the nature sought by the applicant.

[33]It is ordered that:

- a. There be interim custody order awarded to the applicant and the respondent to is granted access to the minor on alternate weekends.
- b. Final determination on custody and access to be made on 11th November 2022 after consideration of the assessment reports by the Ministry of Social Transformation.
- c. The respondent to pay:
 - i. maintenance in the sum of EC\$1,300.00 per month.
 - ii. medical insurance for the minor.
 - iii. school fees, school expenses and extra-curriculum expenses during primary education.
- d. The medical expenses to be shared between the applicant and the respondent 45% to 55%.
- e. The respondent to pay the dental and optical expenses.
- f. Post primary education and school expenses to be shared between the applicant and the respondent in the proportion of 45: 55.
- g. The respondent to attend parenting sessions offered by the Ministry of Social Transformation. The Ministry of Social Transformation to provide a full report and evaluation on the respondent's parenting sessions on or before 24th October 2022.
- h. The parties to attend co-parenting sessions (including effective communications) offered by the Ministry of Social Transformation. The Ministry of Social Transformation to be served with the order dated 19th October 2018.
- i. A report and evaluation on the co-parenting sessions to be provided on or before 24th October 2022.
- j. The respondent to make a lump sum payment in the sum of EC\$9,607.00 to cover the past maintenance of the minor.

Marissa Robertson
High Court Judge

By The Court

Registrar