

EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

NEVHMT2020/0027

BETWEEN

ADOLCEEN THOMAS

PETITIONER

-AND-

RANDY THOMAS

RESPONDENT

Before: His Lordship Justice Ermin Moise

Appearances:

Ms. Marlene Uter Bent of counsel for the Petitioner

Mrs. Sherry-Ann Liburd-Charles of counsel for the Respondent

2020: October, 29th
December, 13th

JUDGMENT

[1] **Moise, J:** This is an application for ancillary relief after divorce proceedings. The petitioner had initially sought an order for spousal support as well as child maintenance. However, subsequent to the hearing on 29th October, 2021, she has discontinued her claim for spousal support. The sole issue for consideration is that of what is a reasonable figure to be paid by the respondent as his financial contribution to the financial needs of the minor child.

[2] In considering this sole remaining issue the starting point is to give consideration to the provisions of section 15(7) of the **Divorce Act** which states that, “[a]n order made under this section that provides for the support of a child of the marriage should recognise that the spouses have a joint financial obligation to maintain that child and apportion that obligation between the

spouses according to their relative abilities to contribute to the performance of the obligation.” In conducting this exercise, the court is to take into account “**the means, needs and other circumstances of each spouse and any child of the marriage for whom support is sought...**”¹

- [3] In the current case, there is no general dispute regarding Mr. Thomas’ duty to pay child support. The dispute between the parties centers on what amounts to a reasonable sum which Mr. Thomas is liable to pay. Reconciliation of that dispute would naturally involve an assessment of Mr. Thomas’ needs, when balanced against the needs of the child. However, in this case, the information regarding Mr. Thomas’ means is somewhat scant.
- [4] The evidence suggests that Mr. Thomas is a graphic designer by profession and that, at least during the course of the marriage, he engaged in private business and was self-employed. Mrs. Thomas insists that he earns a significant amount of money. However, it was his evidence that although he sometimes earned over \$6,000.00 monthly, that is not often the case. He places his income in the region of \$1,500.00 to \$2,000.00 monthly without providing much evidence of this. He does however state that his business is not doing as well as before and that this was exacerbated by the covid-19 pandemic. He also states that although he was engaged in the airbrushing business, this sector in particular has since been overtaken by printing. In short he claims to be of limited means with a duty to now pay rent on his own, since the marriage has now broken down and the parties no longer reside together.
- [5] Mrs. Thomas on the other hand is gainfully employed. At the time of their separation, she was a school teacher and earned a gross income of over \$5,000.00 monthly. She however retired from her job after the divorce and was given a benefits package of over \$100,000.00; much of which she states had gone into paying bills and other expenses which had been overdue. However, she is now reemployed, albeit on a limited term contract. She now earns a net monthly salary of \$4,831.20 as a school teacher.

¹ see section 15(4) of the Divorce Act

[6] She has listed a total of her monthly expenses. This list did not seek to generally itemize the actual expenses of the minor child. Counsel for Mr. Thomas has submitted that after assessing the monthly expenses a 50% apportionment to the child would be as follows:

(a) Rent - \$200.00

(b) Food Expenses \$350.00

(c) electricity \$35.00

(d) water - \$20.00

(e) snacks \$200.00

[7] Counsel goes on to argue that the sum of \$200.00 monthly for snacks is imprudent and unnecessary. I do not find that to be the case. This amounts to \$50 per week for a child who is at school. If this expense alone is to be apportioned between the parties it would mean that Mr. Thomas would be bearing responsibility for \$25 per week. The term "snacks" may not seem like a necessity. However, given the age of the child and the fact that he is in school I do not find this to be an unreasonable expense. There is no reason to single this out for any form of criticism.

[8] I also observe that Mrs. Thomas' affidavit has generally not included a number of items which would normally be associated with the maintenance of the minor child. The expenses highlighted by Mrs. Liburd-Charles do not include clothing and other basic needs. When balanced against the rather scant evidence provided by Mr. Thomas of his own income, it is somewhat difficult to conduct as efficient an assessment as is needed in order to protect the interest of the minor child. However, to my mind, \$85 per week is insufficient and Mr. Thomas cannot simply remain out of work and rely on the poor performance of his business, while providing very little evidence to the court. If it is his duty to take care of his child, then he needs to re-assess his employment status and make an effort to find stable income to meet this obligation. The burden cannot simply be placed on the ex-wife.

[9] On the other hand Mrs. Thomas is gainfully employed and has, quite rightly, abandoned her claim for spousal support. The parties can certainly do better to communicate with each other and ensure that the needs of the child are adequately provided for. Given the limited nature of his income and the information presented regarding the needs of the child, I would consider the sum of \$120.00 per

week to be adequate and would order that he pays the sum of \$480.00 monthly towards child maintenance commencing December, 2021. In addition to that Mr. Thomas should meet half of the educational and health expenses of the child as these expenses arise.

[10] Counsel for Mr. Thomas requests that the court makes an order regarding the custody of the minor child. However, although this was somewhat mentioned in Mr. Thomas' affidavit, it was not an issue which was adequately canvassed before me and I am not in a position to impose such an order on the parties. Given the nature of the case before me, I believe that counsel may be better placed, working together with the parties, to assist in adopting an amicable arrangement which may then be presented to the court for its endorsement if that is required.

[11] In the circumstances it is ordered that Mr. Thomas pay the sum of \$480.00 monthly as maintenance for the minor child commencing December, 2021. He is to also meet half the child's educational and healthcare expenses. The parties are to discuss and attempt to agree on the issue of costs with liberty for an application to be filed on that issue within 21 days from the date of the issuing of this order.

**Ermin Moise
High Court Judge**

By the Court

Registrar