

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA
IN THE HIGH COURT OF JUSTICE**

ANUHMT2020/0063

BETWEEN

Aidan Ryan McCauley

Petitioner

AND

Angela L. G Dickinson

Respondent

Appearances:

Mr. Andrew O’Kola for the Applicant/Respondent

Ms. E. Ann Henry appearing with Ms. Mandi Thomas for the Respondent/Petitioner

2021: July 21st

2021: Nov. 24th

Judgment

[1] **Robertson J.** Angela L. G. Dickinson, [the applicant] applied to this court seeking an occupation order, a freezing order, an order for consolidation, injunctive relief, and orders for disclosure. Specifically, the applicant sought that:

- a. The applicant be granted an occupation order requiring Aidan McCauley, [the respondent] to vacate Mollihawk House, Hospital Hill, English Harbour, St. Paul’s Antigua [Mollihawk House] so that the applicant and the minor child [hereinafter called S] could resume residence at that location until the determination of the ancillary proceedings or until such time as the Court orders.
- b. The respondent be prevented from selling or transferring or diminishing the value of any assets within this jurisdiction including the property at Mollihawk House.

- c. The respondent to provide details of interest the respondent has in any property, land, or buildings, not limited to the property at Mollihawk House.
- d. The respondent to provide details of all personal bank, building society and National Savings Accounts that the respondent holds or has held any time since April 2013 and which are or were in the name of the respondent or in which the respondent has or has had any interest. With respect to joint accounts that the respondent be required to provide the respondent's interest and the name of the other account holder. In circumstances where the account is overdrawn, that the figure is shown.
- e. The respondent to provide details of all personal bank, building society and National Savings Accounts that the respondent holds or has held since April 2013 and which are or were either in the name of the respondent or in which the respondent has any interest. This is to include any account in credit or in debit. In respect of joint accounts in which the respondent has interests, the respondent is to provide the name of the other account holder. If the account is overdrawn, the sum overdrawn.
- f. The respondent to provide details of all investments, including but not limited to shares, national savings, investments, cryptocurrency, bonds, stocks, unit trusts, investment trusts, gilts, and other quoted securities that the Respondent holds or has held interest.
- g. The respondent to provide details of all life insurance policies including endowment policies that the respondent holds or in which the respondent has interest.
- h. The respondent to provide details of all funds owed to the respondent.
- i. The respondent to provide details of cash held, by the respondent and state where and in what currency they are held.
- j. The respondent to provide details of personal belongings including but not limited to cars (gross value), collections, pictures and jewelry, furniture, and house contents.
- k. The respondent to provide details of any liabilities the Respondent has in respect of mortgages, overdrawn bank accounts, building society or National Savings accounts including money owed on credit cards held including those with a nil or positive balance. In circumstances where the liability is not solely in the name of the respondent, the respondent is to provide the name or names of the other account holder or holders and the amount of the respondent's real property or personal assets.

- l. The respondent to provide details of tax liabilities, if any taxes would be payable on the disposal of any of the respondent's real property or personal assets.
 - m. The respondent to provide details of all the respondent's business interests within and without the jurisdiction.
 - n. The respondent to provide the directorships the respondent holds or has held since April 2013.
 - o. The respondent to provide income received since April 2013 to 2021 and indicate whether this income was gross or net taxes.
 - p. The respondent to provide details of any other income not disclosed above including a pension (excluding State Pension), and Pension Protection Fund (PPF), compensation-from which income has been received during the period April 2013 -2021 (even if it has now ceased)- from which income is likely to be received during the next 12 months.
 - q. The Court stays the determination of the relevant ancillary relief proceedings, petition and cross-petition for divorce, division of matrimonial property proceedings and proprietary interest in property proceedings until the respondent provides the information requested in relation to paragraphs [1] e to j above.
 - r. The claims ANUHMT2020/0063 and ANUHMT2020/0379 be consolidated.
 - s. The Applicant be allowed, for the purpose of this application to rely on the affidavits filed in claims ANUHMT2020/0063 and ANUHMT2020/0379.
 - t. The costs of the application.
- [2] For convenience, the parties initially addressed the court on the application for occupation and freezing orders. The hearing of the other reliefs sought is listed for a subsequent hearing.

[3] **The Background.** The parties courted, later lived in two adjacent villas, and co-parented their child, S. The parties then moved to Grey House where they lived for approximately three years or until 2013. The parties were married in April 2013 and, until August 2013, lived in Grey House. The parties intended to, as a family, relocate to the United Kingdom sometime in the latter part of 2013. Prior to their departure unhappy difference arose between the parties and it appeared, to the applicant, that the parties could not cohabit because of specific actions of the respondent. Accordingly, the applicant continued to reside in Antigua while the respondent relocated to the United

Kingdom from September 2013 to August 2014. During this time the applicant resided at Villa Irena Auriel, Antigua while the respondent resided in Orchard House in the United Kingdom.

- [4] The property that is the subject of this occupation order is Mollihawk House. This property formerly comprised of two parcels of land with structures, Parcel 38 [Lion's Den] and Parcel 58 [Rodney's House]. The parties from August 2014 to December 2014, resided in Lion's Den. For the period December 2014 - December 2016 the respondent lived in Rodney's House while the applicant continued to live in Lion's Den. The applicant then moved into Rodney's House from December 2016 to April 2018. During the period that the parties lived in Rodney's House and/or Lion's Den renovations were being executed on Mollihawk House. Once the renovations were completed the parties moved into and began to reside in what is now called Mollihawk House.
- [5] Relatively early in S's life, S was diagnosed with Asperger's syndrome, and it was known that S would require specific as well as special needs. There is evidence that both parties are cognizant of the specific needs which accompany a child with Asperger's syndrome and have made attempts to address these needs.
- [6] The issues before this court at this time are:
- a. Whether there are grounds for the applicant to be granted occupation of Mollihawk House.
 - b. Whether there are grounds for this court to grant a freezing order or otherwise restrict the respondent's treatment of the assets which are in respondent's name and are within this jurisdiction.

The Law and Analysis.

- [7] The Divorce Act and the Matrimonial Causes Rules outline how a court must treat with matters relating to the divorce, custody and support applications for a spouse and/or support for children of the marriage whether the orders sought are interim orders or final orders. On its face, the application before the court is grounded on upon sections 7(2)(A), 13(2)(C) and 14(1) of the Divorce Act 1997, and Rule 2 of the Matrimonial Causes Rules 1937. These provisions correspond with provisions which treat with divorce, interim orders for spousal support and custodial orders. There are, in these proceedings, applications filed by the applicant seeking support orders and a custody order for S.

[8] The Married Woman's Property Act treats with, among other things, the rights of married woman to acquire, hold and dispose of real or personal property. The applicant claims under the principles of trust that the applicant has a beneficial interest in, among other properties held by the respondent, Mollihawk House. It is the applicant's contention that when this property was acquired and during its renovation, it was the common intention of the parties that that property was to be the matrimonial home. The applicant further contends that cognizant of there being a common intention regarding the proprietary of the Mollihawk House, the applicant took actions to her detriment. The respondent disputes that the property was intended to be the matrimonial home. There are proceedings relating to property settlement.

[9] Occupation orders may be sought under the provisions of the Domestic Violence Act¹. The High Court may assume jurisdiction as a court of competent jurisdiction. In accordance with section 2(1) of that Act, the Act applies in circumstances where the respondent engages in any controlling or abusive behaviour that harms the health, safety or well-being of the applicant or any child in the care of the applicant. This includes, but is not limited to, physical abuse or threats of physical abuse, sexual abuse or threats of sexual abuse, emotional, verbal or psychological abuse, economic abuse, intimidation, harassment, stalking, damage to or destruction of property or entry into the applicant's residence without consent where the parties do not share the same residence. Regarding economic abuse the legislation provides that such abuse includes actions which deprive or threaten to deprive the applicant of financial resources to which the applicant is entitled under the law or required out of necessity or the disposal or threatened disposal of household effects or other property in which the applicant has interest.

[10] A person in such circumstance as indicated above can apply to the court in the prescribed form for an order of protection on the ground that the respondent has engaged in domestic violence. Upon such application a court may, among other things, order a respondent to 'immediately vacate any

¹ No. 27 of 2015.

shared household for a specified period, whether or not the shared household is owned or leased by the respondent and the applicant, or solely owned or leased by the respondent of applicant”².

[11] The relief under Domestic Violence Act is not open to the applicant since, although counsel did refer to the Domestic Violence Act in his submissions in reply, counsel for the applicant did not in its application seek relief under the provisions of this legislation.

The Court and a Residual Jurisdiction

[12] The counsel for the respondent submitted to this court that this court has no jurisdiction to grant the specific reliefs receiving the attention of the court at this juncture since the applicant seeks interim relief in consideration of the provisions of the Civil Proceedings Rules [CPR] and that the CPR are not applicable to family proceedings. Counsel also noted that these proceedings were filed under the provisions of the Divorce Act. Counsel further contended that the court is not empowered under the provisions of the Divorce Act to grant the relief sought. Property settlement proceedings are civil proceedings.

[13] It is clear that the CPR does not apply to family proceedings [see CPR 2.2(3)]. An occupation order falls outside of the provisions of the Divorce Act and consequently this relief falls outside the Divorce Rules and the Matrimonial Causes Rules.

[14] However, this court deems it necessary to consider whether a court is empowered to make an occupation order in circumstances where the interest of a child has arisen as a matter of concern. Particularly, in circumstances where those concerns are expressed by the parent who exercises physical care and control over the child. The evidence of the applicant is that the present accommodation arrangements create an immediate likely risk of harm to S.

[15] It is to be noted that on matters which touch and concern a child a court holds a residual inherent jurisdiction as *parens patriae* and, as such, a court has an inherent jurisdiction to examine the welfare

²Section 7(2)(iii).

of the child to determine whether, after a consideration of all of the circumstances, an order from the court is required.

[16] This court recognizes that a child is entitled to security and every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development³. The court also recognizes that a primary responsibility of parents is to secure, within their abilities and financial capabilities, the conditions of living that are necessary for the child's development⁴. These matters as encapsulated, address the best interest of the child.

Analysis and Finding of the Court.

[17] The applicant contends that, in the present circumstance, the applicant and the minor are in immediate risk of harm and that this risk would persist until such time as the residential arrangements, maintenance and other financial relief arrangements are settled. The applicant submits that as a consequence of S's special needs, there is a requirement for special care which provides support, structure and stability. These elements permit S to continue to achieve meaningful and all-round development. The applicant also contends that there are financial changes to the resources of the applicant, security concerns in relation to the accommodation of the applicant and the minor, reduction in the status and comfort of the applicant and consequently the minor child all of which adversely affect the support structure and the required stability and structure.

[18] As it relates to the reduction in the financial resources, the applicant contends that the Covid-19 pandemic has had an adverse effect on the applicant in that her business is now operating at a loss. Consequently, there has been a reduction in her financial resources as the business is now unable to provide income beyond the amounts necessary to cover its rent and bills. In support of this submission, the applicant has produced a document authored by Derrick & Watt evidencing a reduction in profit for the years 2018 and 2019 and the net loss of the business in 2020.

[19] On the matter of the reduced income from the applicant's business this court notes that during the initial periods of the pandemic and some months thereafter there were restrictions imposed in the

³ See Article 27(1) of the Convention of the Rights of the Child.

⁴ See Article 27(2) of the Convention on the Right of the Child Article 27 (2).

operation of businesses in the applicant's industry. Additionally, there were periods when the businesses in the industry would not have been permitted to operate and later been required to operate with reduced hours and/or reduced services. Such circumstances are more likely than not to result in a reduction in the income earned by business owners.

[20] The applicant contends that the reduced income creates an inability to meet the needs of the applicant and the minor. One of the consequences of this is that there is uncertainty in the continued occupation of the rented accommodation. The applicant's evidence is that in the past she paid the rent for her living accommodation one year in advance and this has assisted with ensuring that she and the minor have stability in the living arrangement. The applicant has indicated that she has been unable to make a similar rental arrangement for the current period since she does not have the financial resources which would permit such an arrangement. In the applicant's view the current monthly arrangement creates such uncertainty that the applicant fears that the landlord/landlady may be willing to sell the accommodation or rent the accommodation to another person once a better offer is presented. In this court's view the concern that the landlady/lord would, upon short notice, deliver a notice to quit is not supported by evidence and is speculative.

[21] On the matter of securing the accommodation, this court notes that the evidence before this court is that the respondent pays a monthly sum to the applicant representing the cost of rent, maintenance, and a contribution to the bills of the household. Specifically, the applicant indicates that she receives the sum of Six Thousand and Fifty Dollars for support of the minor, Seven Thousand Two Hundred and Ninety Dollars Eastern Caribbean Currency (\$7,290.00) for rent and Two Thousand Three Hundred and One Dollars Eastern Caribbean Currency (\$2,301.00) as contribution for the household bills.

[22] There is no evidence before the court that these payments are not being consistently made or threaten to be disrupted and there is no evidence as to what is the shortfall in the household expenses that are not being met. In such circumstances it is difficult to find that the applicant's ability to remain in the accommodation or to sustain the household is in peril. This court notes that there is, in these proceedings, an application for interim support orders. The appropriate time to treat with the matter of interim support is upon the hearing of the evidence on that application.

Villa Irena Auriel.

[23] The applicant maintains that the villa which she currently occupies, Villa Irena Auriel, is not in a condition which matches the lifestyle to which the applicant and the minor would have become accustomed during the period of the union of the parties. In support of this the applicant notes that during the union the applicant flew first class and “had the best of everything, stayed in lavish hotels, rented USD\$20-million-dollar homes when we vacationed in style, Private (sic.) jet on our honeymoon”. This evidence is important as it paints a picture however, as it relates to the issue before the court these matters refer generally to temporary circumstances of the parties and do not specifically refer to the general living circumstance of the minor.

[24] In support of the applicant’s previous standard of living the applicant referred to previous accommodation and noted that, Grey House was purchased for USD\$900,000.00 and there were significant improvements done to that residence in preparation for their occupation, thus, that property would have appreciated in value. Similarly, the Orchard House was purchased for one million British pounds sterling and later refurbished thereby appreciating the value of Orchard House. This court notes that Orchard House in the United Kingdom was not occupied by the minor since the applicant resided in Antigua during the period that the respondent relocated to the United Kingdom.

[25] The respondent in his evidence, challenges the luxury lifestyle that the applicant alleges. The respondent indicates that the applicant would not have become accustomed to a luxurious lifestyle and points to the fact that the applicant on 30th January 2019 presented a counteroffer for the purchase the property in which she now resides for the sum of US\$750,000.00. The property was offered at US\$850,000.00. The respondent also indicated that the applicant resided in Villa Irena Auriel for approximately 10 months between the years 2013 and 2014 and resumed occupation in 2018 when the parties separated. The respondent further indicated that Grey House, a residence once occupied by the parties, was valued at \$700,000.00 and Lion’s Den was valued at US\$250,00.00. The contention of the respondent is that Villa Irena Auriel is on par with the standard in which the applicant resided during the course of the marriage.

[26] On this matter the court is not making a finding on the status of the living conditions of the parties during the union as this matter requires further consideration when the substantive matter regarding property settlement is considered. Additionally, the court is primarily concerned with the living circumstance of the minor.

[27] This court notes that Villa Irena Auriel was selected by the applicant as a residence for herself and the minor. The evidence before the court is that the applicant resided at this residence from September 2013 to August 2014 and later from the time of separation in 2018 to present. At the time of its selection, clearly the applicant would have considered the accommodation to be appropriate at least as an interim accommodation while the parties, as the applicant states, sought to address reconciliation or as has now arisen, until there is property settlement as a result of the dissolution of the marriage.

[28] **The present condition of the Villa Irena Auriel.** The evidence of the applicant is that, at present, Villa Irena Auriel requires repair. Specifically, the applicant has highlighted that “the washer is rusty and does not work properly, the microwave is non-functional, the toilets run continuously, the toilet and sink in the laundry are do not work, the screens fall off the windows, the handles for the screen are broken, the side deck of a bedroom is rotten, the outdoor furniture and patio furniture are weathered and in need of attention, the door locks malfunction, the kitchen sink backs up and cupboards are rotten, the generator and the air condition unit do not function, the garden is overgrown, bugs are in the house, roaches are in the kitchen”. An estimated repair cost of \$60,323.27 for most of the matters identified has been produced to the court. The matters raised by the applicant can inevitably create a stressful circumstance for an occupant which stress can be visited upon the minor. However, this court notes the matters to be addressed have been brought to the attention of the landlord/lady and there is no evidence that the matters are not being addressed.

[29] The applicant also contends that there are security concerns regarding the premises that she currently occupies. Specifically, the applicant indicates that the property is not in a gated community, is in a secluded and unsecured area. The applicant finds this situation to be “*unsettling but also risky given that I am a single mum running a business and the wife of someone who locals believe have a lot of money*”. The applicant contends that the minor is adversely affected by the circumstance.

The applicant contrasts the security at Villa Irena Auriel with the property of Mollihawk House which is close to her business place, is secure, fenced, gated and has the benefit of being complimented with security cameras and a personal bodyguard.

[30] Notwithstanding the fact that the applicant would have selected Villa Ilean Auriel as her residence and at the time of selection would have been aware of the security concerns, this court notes the evidence of the respondent that the requirement for a personal bodyguard arose as a result of an incident relating to the respondent's personal security. There must equally be a need for the personal security of the minor and the applicant to be urgently assessed and to receive the required urgent attention. In this court's view security concerns can be addressed without the granting of an occupation order.

[31] **The Welfare of the Minor.** The parties agree that the minor child requires special care. The minor performs, at least at the grade level in all subjects studied. The applicant expresses concerns that the minor's welfare may be in danger since the stability, support and structure which previously existed in the child's life will be disrupted without the court's intervention and the granting of an occupation order.

[32] On an academic level the respondent's evidence is that the special needs teacher recruited by the school was at the sole expense of the respondent. The respondent indicates that other financial support was provided in order to the benefit the minor's education. The applicant's evidence is that she is an involved parent at the school and invests both her time and financial resources for the benefit of the education of the minor. It is accepted that during the pandemic classes were often done remotely. This court accepts the applicant's evidence that she was integral in the general home-schooling of the minor and assisting S to navigate online school.

[33] The evidence of the applicant is that she provides the structure which creates the stability for S and while the applicant's contribution to the academic achievements of the minor cannot be understated this court does not accept that this stability is at risk of being undermined and that the situation would be stabilized by occupation in Mollilhawk. The applicant contends that "*what's best for S is for us to return to our home at Mollilhawk*". This court notes that S has been living with the applicant in Villa

Irena Auriel since the separation and therefore Villa Irena Auriel would be familiar place for S. Additionally, if there is an issue of cashflow, it is unclear how the applicant's occupation of Mallihawk House would create better stability since the applicant would continue to require the financial support regardless of where she resides.

[34] The applicant also indicates that "*There are lots of indicators that Sam is not as comfortable as he can be and there is a risk or likely risk of harm to him*". The applicant indicates that: "*Sam got expelled just last week from school. He refused to speak to the Respondent/Petitioner's girlfriend and speaks of his father at times very disrespectfully. Not am (sic.) happy with this and have never raised him to be like that. Whatever is happening with his father, and I am matter (sic.) we will deal with as adults with the help of the Court. But the lashing out we are presently observing from Sam is likely to be as a result of what is happening in our lives. He is old enough to see and understand what is happening, I think.*" However, there is no evidence that the granting of an occupation order would address the matter.

Whether there is a basis for the court to grant a freezing order or to restrict the respondent treating with his assets which are in the jurisdiction.

[35] The applicant has asked the court to restrict how the respondent treats with his assets which are within the jurisdiction. The applicant contends that there is a real risk that the respondent would dissipate assets for which the applicant may have a beneficial interest. The counsel for the applicant indicates that the court may freeze the respondent's assets or that the respondent be required to notify the applicant on the occasion that the respondent intends to relinquish an asset. In support of this contention the applicant demonstrated that the Malli Hawk House was placed in the hands of a real estate agent and advertised as being available for sale.

[36] On the matter of a freezing injunction, it is, as is the case with any other injunction, ancillary to a substantive claim. In **Fourie v Le Roux**⁵, Lord Bingham of Cornhill noted that "Mareva (or freezing) injunctions were from the beginning, and continue to be, granted for an important but limited purpose:

⁵ [2007] 1 W.L.R. 320.

to prevent a defendant dissipating his assets with the intention or effect of frustrating enforcement of a prospective judgment. They are not a proprietary remedy.”

[37] The matter before this court are divorce proceedings. There are also applications for support orders and for custody orders. These applications do not form a substantive claim upon which a freezing order in the nature sought can be granted. This court notes that there is an application before this court that certain matters be consolidated with these present proceedings. Thus, this matter ought properly to be considered upon the determination of the application for consolidation.

[38] Accordingly, and as a consequence of the foregoing the relief for an occupation order is not granted. The determination for the relief for the granting of a freezing order is stayed until the determination of the application for the proceedings to be consolidated.

Marissa Robertson
High Court Judge

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Registrar of High Court