

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(DIVORCE)**

CLAIM No: BVIHMT 2015/0014

BETWEEN:

FP

Applicant

and

HP

Respondent

Appearances:

The Applicant and Respondent both appeared in person

2021 November 19
November 29

JUDGMENT

- [1] **JACK, J [Ag.]:** This is the latest chapter in litigation between a former wife and husband which commenced in 2015. The financial arrangements as between the wife and the husband were agreed and incorporated in a consent order of 24th September 2015. The agreement provided for the husband to pay maintenance of \$1,800 per month in respect of the parties' four children. After Hurricane Irma struck Tortola in 2017 the father ceased to pay maintenance.
- [2] By an application of 3rd May 2021 the mother sought payment of the arrears of maintenance from the father. That application came before Wallbank J who after a number of hearings held in a written judgment of 29th July 2021 that the mother's claim for arrears of maintenance was limited to one year's arrears. The total due as at 30th July 2021 from the father to the mother, including further arrears, interest and

costs, under the judgment of Wallbank J is agreed at \$29,557.56. The mother indicated to me that she intended to make an application for leave to enforce the arrears which had accrued prior to 3rd May 2020 (one year before she brought her application), but to date she has not done so.

- [3] Before me is an application by the father for time to pay the arrears ordered to be paid by Wallbank J. The mother opposes this and asks that the father be ordered to pay the monies as a lump sum immediately. In addition, the father seeks an order that the children be repatriated to this Territory from Florida where they have been living since the end of 2016.
- [4] Before I deal with applications, let me emphasise to the parties that the Court's concern is as to the best interests of the children. It was apparent from the parties' presentation to the Court that there was still a high degree of tension in the relationship between them. That is not in the best interests of the children. As I told them both, the Court is primarily forward looking. It is not a useful exercise to explore historical matters such as the reasons for the father's falling into substantial arrears or for the mother's removal of the children to Florida. Rather the parties should be looking to improve matters going forward. In particular, it is usually in a child's best interests that he or she have a continuing relationship with both parents.
- [5] I turn to the father's application for an order that the mother repatriate the children to this Territory. This is in my judgment not realistic. The children have been living in the United States for nearly five years. The eldest is now seventeen years old. The Court will not make orders of this type in respect of children of that age. They are old enough to decide for themselves where they wish to live. In respect of the three younger children, they are well-settled. There are no welfare concerns, so far as appears from the papers. In these circumstances, I refuse to make an order for repatriation.
- [6] That is not to say that the Court should not make some order to allow the relationship between father and child to improve. The father has not seen any school reports or

account of the children's medical conditions. In my judgment it is appropriate that the mother scan copies of the most recent school reports for the children and send the scan to the father and details of their most medical treatment. The mother complains that that puts an administrative burden on her. I do not accept that the burden is excessive. She is clearly a successful professional woman who is well able to scan documents.

- [7] Once the initial school reports have been sent, I agree that it is desirable that the father contact the schools direct so that the school authorities can send him copies of the school reports direct. However, if for some reason the schools refuse to give copies to the father directly, then the mother should continue to send the school reports to the father. She accepts that it is not realistic to expect the father to obtain medical information on the children direct from the medical providers, so I will order that she gives him a report quarterly (the first report by 17th December 2021 and thereafter every three months) of the children's medical history and that she promptly inform him of any serious medical condition which occurs in any of the children.
- [8] In addition, the mother accepted that the father should be able to have reasonable contact with the children. However, she said that, if he wanted telephone contact, the father should provide the children with mobile phones. That in my judgment is reasonable. Face to face contact will involve the father travelling to Florida. However, the father complains that the children have in fact visited Tortola without his being told. I agree with him that the mother should inform him of any visits by the children and that he should have reasonable contact with them whilst they are here.
- [9] As to the arrears of maintenance, the father's proposal is that he should pay \$1,800 per month in on-going maintenance and \$500 per month in respect of the arrears until mid-2022 when he will have paid off a loan and be able from August 2022 to pay \$1,000 per month towards the arrears. The mother says that he should pay the arrears as a lump sum. In my judgment that is unrealistic. Although the mother

makes a number of points on the documentation produced by the father, the overall picture does not in my judgment point to the father have large sums of concealed assets. I accept the father's proposals for clearing the arrears.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar