

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHMT2012/0130

IN THE MATTER OF THE PETITION OF SUNITA GOMES NEE GHIR FOR THE DISSOLUTION OF
MARRIAGE

BETWEEN:

SUNITA GOMES NEE GHIR

JUDGMENT CREDITOR/PETITIONER

AND

STANTON REAGAN GOMES

JUDGMENT DEBTOR/RESPONDENT

Appearances:

Mrs. Zhinga Horne Edwards with Ms. Chelsea Alexander for the Petitioner

Ms. Ashelle Morgan for the Respondent

2021: March 24
April 30

ORAL DECISION

Byer, J.:

- [1] At the trial of this matter on 24 March 2021, counsel for the Respondent sought the leave of the court to produce written submissions on the application. The court granted such leave and the date of 6 April 2021 was given for such filing. On 31 March 2021, the Petitioner filed their submissions. On 9 April 2021 the La Soufriere volcano within this jurisdiction erupted and since that date operations in the state at the court office have come to a halt. To the time of the preparation of this oral decision the court nor counsel for the Petitioner have had sight of any submissions from the Respondent and the time for so doing had expired up to the disruption and closure of the court office.

- [2] This oral decision is therefore based on the submissions of the Petitioner and the evidence taken by this court at trial.
- [3] The Petitioner and the Respondent were married, during which time they had one child, who is now 15 years old and is presently in the fifth form of the St. Vincent Grammar School. The Petitioner petitioned for divorce in 2012 and the decree nisi of divorce was made absolute on 29 May 2013.
- [4] By a consent order dated 26 April 2013 and filed herein on 6 May 2013¹, it was ordered, *inter alia*:
- (i) That the Applicant and the Respondent shall have joint custody of the minor child of the family with care and control to the Applicant and reasonable access to the Respondent provided that reasonable notice is given to the Applicant;*
- ii) That the Respondent shall pay to the Applicant maintenance in respect of the minor child of the family in the sum of four hundred and thirty dollars (\$430.00) per month commencing from May 1 2013 and a contribution toward two months' rent being the sum of six hundred dollars (\$600.00) in two instalments of three hundred dollars (\$300.00) each commencing May 31 2013 and*
- iii) That the parties shall meet during the first week of August 2013 to discuss a revision of the maintenance and rent provisions of this order.*
- [5] Pursuant to clause 3 of the consent order, the parties met with their respective counsel to discuss a revision of the maintenance and rent provisions but no agreement was reached. Consequently, the Petitioner applied to the Court for an order amending the consent order to increase the monthly maintenance from \$430.00 to \$600.00, and to require the Respondent to contribute one-half of the costs of school books, school supplies and medical expenses and to assist with the Petitioner's costs of relocating from Union Island to mainland St. Vincent². The Variation Application was supported by an affidavit of the Petitioner in which she detailed her financial constraints, having relocated from Union Island to mainland St. Vincent with her son and her requested transfer to teach at a new school on the mainland not having been approved by the Ministry of Education at that point. The Respondent resisted the Petitioner's request for an increase in the monthly maintenance provisions on the basis that he could not afford anything over \$300.00
- [6] The consent order was varied by Order of Court dated 8 November 2013 ordering that the Respondent contribute one-half of the costs of school books, school supplies and the medical expenses of the child³.

¹ The Consent Order exhibited as "SG7" in the Petitioner's affidavit of 24 October 2019

² The Variation Application exhibited as "SG8" in the Petitioner's affidavit of 24 October 2019

³ The Variation Order exhibited as "SG9" in the Petitioner's affidavit of 24 October 2019

- [7] The Respondent became inconsistent in his payments of the monthly maintenance sum of \$430.00 as of 2016 up to the present time and has been sporadic in making his contribution toward the school and medical expenses. Consequently, on 24 October 2019 the Petitioner filed an application for the issue of a judgment debtor summons against the Respondent. The application was supported by an affidavit by the Petitioner filed on 24 October 2019 and a supplemental affidavit filed on 23 November 2020 in which she deposes as to the history of the Respondent's non-compliance with the Consent Order and the Variation Order. The application for the issue of a judgment summons was granted on 19 February 2021 and the trial of the matter took place on 24 March 2021.
- [8] The determination of this matter in this court's mind rests on who this court believes.
- [9] The court has had the benefit of seeing and hearing both parties as they gave evidence at the trial of this matter. From that evidence the court accepts on a balance of probabilities the following facts:
- a) That in April 2013 this Honorable court, differently constituted made a consent order in the following terms inter alia: *i) that the Applicant and the Respondent shall have joint custody of the minor child of the family with care and control to the Applicant and reasonable access to the Respondent provided that reasonable notice is given to the Applicant;*
ii) That the Respondent shall pay to the Applicant maintenance in respect of the minor child of the family in the sum of four hundred and thirty dollars (\$430.00) per month commencing from May 1 2013 and a contribution toward two months' rent being the sum of six hundred dollars (\$600.00) in two instalments of three hundred dollars (\$300.00) each commencing 31 May 2013 and
iii) That the parties shall meet during the first week of August 2013 to discuss a revision of the maintenance and rent provisions of this order.
 - b) That pursuant to the order of the court, the parties met and there being no consensual position reached the Petitioner filed an application for variation on 13th September 2013⁴.
 - c) That application sought a variation of the sum of \$430.00 to \$600.00 as maintenance and a contribution to be made by the Respondent to one half of the medical and educational expenses of the child of the family.
 - d) That at the hearing of the application for variation that the court varied the order of April 2013 and added the obligation of the Respondent to pay half the medical expenses and books and school supplies of the said child of the marriage.

⁴ Exhibit SG8 to the affidavit of the Petitioner filed on the 24/10/19

e) That the Respondent accepted that this was in fact an additional expense to the original order of \$430.00. The court is fortified in this view by the fact that the Respondent continued payment of the same even after the variation order, as sporadic though that payment soon became.

f) That the Respondent has failed since the making of the consent order and the variation of the same to fulfill his obligations to the child of the marriage contrary to his claim made in evidence on cross examination that "my son is my number 1 priority".

g) That the Respondent has deliberately withheld information from the court as to his financial position and expenses and that having done so, it was clear to the court that that was done with a view to hide the truth from the court.

h) That the Respondent was not a witness of truth but rather one who was evasive and less than forthcoming to the court in his evidence.

[10] Having therefore accepted those facts, this court finds that the Respondent has willfully failed to uphold his obligations under the combined effect of the orders of 26 April 2013 and 8 November 2013. It was indeed unfortunate in this court's opinion that the Respondent did not take the opportunity given to him in these proceedings to make full and frank disclosure of his finances to the court. Indeed, there was no supporting documentation to substantiate any of the financial obligations made mention in the affidavit in response and there was no information as to how his financial obligations had changed from 2013 to present. This court having accepted that the Respondent knew the extent of his obligations from the first time he made the payment, subsequent to the November 2013 variation then went on to make payments when he felt he could or would do so.

[11] This court will not countenance any attempt by a parent to renege from their court ordered duties and as such, I find that the Petitioner is entitled to the sum as claimed under the judgment summons in the sum of \$10,289.18 plus the sum now due for April 2021. The Respondent is therefore to pay this said sum representing arrears on or before 31 August 2021 and is to continue to pay the sum of \$430.00 per month for the said minor child. For clarification that payment is to continue until the child shall turn 16 or until 18 if he is in a full-time educational institution. The Respondent is also to pay to the Petitioner the sum of \$1,000.00 as costs on this application.

The order of the court is therefore as follows:

1. The Respondent is ordered to pay to the Petitioner the sum of \$10,289.18 plus the sum of \$430.00 representing the sum due for April 2021 the sum representing arrears to be paid by 31 August 2021.
2. The Respondent is to pay this sum of \$430.00 per month for the minor child until the age of 16 or 18 if he is in a full-time educational institution.
3. The Respondent is to pay the sum of \$1,000.00 as costs to the Petitioner.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar