

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHMT2017/0073

**IN THE MATTER OF an Application for Spousal Maintenance Pursuant to section 13 of the Divorce
Act1997**

BETWEEN:

ANESTERCIA DAVIS

Petitioner/Applicant

And

ZENWORTH DAVIS

Respondent

Appearances:

Mr. Jared Hewlett of Watt, Dorsett & Co for the Petitioner/Applicant

Mr. Loy Weste and Mrs Lisa John-Weste of Thomas, John & Co for the Respondent

.....
2018: February 9

April 13

May 23

2019: January 28
.....

DECISION

- [1] **HENRY, J.:** The parties were married on 11th September 2004. Differences arose and they separated in April 2010. The wife filed a Petition for Divorce on 15th June 2017 by Application filed 4th October 2017 the petitioner (wife) seeks an Order pursuant to section 13 of the Divorce Act that the Respondent (husband) pay to the wife periodic monthly payments of \$3,000.00 for her support and that the husband pay the costs of the application.

[2] The grounds of the application are:

1. The applicant is at an economic disadvantage as a result of the breakdown of the marriage;
2. The order for support is necessary for the applicant to meet her medical and other expenses; and
3. The husband is in a better financial position than the wife and has the means to support the wife.

[4] In her Affidavit in Support, the wife asserts that the husband is a contractor and businessman and has been in business since 2002. At the time of their marriage she was an executive secretary earning a monthly salary of approximately \$4,500.00. She retired in April 2016. At the time of her retirement she was earning a monthly salary of \$5,329.18. Since her retirement, her income consists of a monthly pension of \$3,165.35. She sets out her monthly expenses as:

Car loan	\$500.00
Credit Union Loan	517.00
Post Office Box rental	8.33 (\$100.00 annually)
Courts Loan	164.00
Property tax	4.92 (\$59.00 annually)
Electricity	280.00
Water	22.00
Internet/telephone	317.00
Landscaping	75.00 (\$150.00 every two months)
Cooking gas	38.75 (\$155.00 every four months)
Car insurance	130.51
Car licensing fee	56.83
Car servicing fee	128.76
Dog food	20.00
Food	600.00
Total	\$2,863.10

[5] The wife also asserts that in November 2009, she was diagnosed with an eye ailment which requires her to travel to Puerto Rico twice yearly for check-ups, thereby incurring additional costs for travel, doctor's fees and accommodation.

[6] According to the wife, during the marriage and up to March 2018, the husband provided assistance to her by providing fuel for her car and paying her Cable bill, together totally \$532.25. In addition he had assisted her when needed. He has contributed \$2,000.00 toward her medical expenses when she was required to undergo surgery. Further, she submits that he is a successful contractor; that he owns various real property and is financially able to contribute to her maintenance.

[7] The husband opposes the application. He states that when the parties married the petitioner was 47 years old and he was 52 years old. At that age they had both acquired assets and savings and they were fully self-sufficient. They each had their own homes and throughout the marriage, they spent periods of time at each other's home. They maintained separate homes, separate bank

accounts and separate lifestyles. He asserts that at this juncture, he is unable to provide financial support for the wife's maintenance and medical bills, since he is also undergoing costs in regard to his own medical bills and the cost of his mother's medical care and maintenance.

[8] He denies that he operates a lucrative business. He states that the business is struggling and that the last time he received his weekly salary of EC\$2,000.00 was in November 2017. The company, he says, operates at a loss for many months of the year. He asserts that he is now 65 years and he is also experiencing issues with his eyes. He too is required to travel to Puerto Rico for treatment. He also has a dislocated disc in his back which requires four therapy sessions per year at a cost of \$495.00. He also takes care of his mother who is 86 years old.

[9] According to him he has assisted the wife at times, but he is unable to do so to a greater extent that he is currently assisting her. He admits that he bears the cost for fuel for her vehicle and that he pays her Cable/internet bill. He lists total monthly income of \$8,769.45 and total expenses of \$10,094.78.

[10] The Statement of the husband's Assets filed herein indicates that he owns the following assets:

Motor Vehicles

- A 1999 Isuzu truck
- A 1996 Nissan Pickup

Company Shares

60% of the shares in the company Davis & Davis Builders Ltd.

Real Property

Registration Section: Central; Block: 14 2090B; Parcel 256 (16 acre) located at Herberts.

This is the location where the husband resides and it is also the location for the company office of Davis & Davis

Registration Section: Five Islands; Block: 54 1491A; Parcel: 116 (0.16 acre) located at Cooks and consists of a parcel of land, purchased in 1995

Properties owned jointly with other Persons:

- 1) Reg. Sec.: Central; Block 14 2090B Parcel No 285 (0,12 acre) Herberts
Owners: Zenworth Davis and Nicole Browne
Asserts that Ms Browne is the mother of his nieces. He assisted her in obtaining funds to purchase the property when she was experiencing financial difficulties
- 2) Reg. Sec Jennings; Block No: 53 1287A; Parcel: 156 (0,15 acres) Jennings

Owners: Zenworth Davis and Negus Davis

Asserts that the land belongs to his son, Negus. That his name appears on the Register as joint owner with his son because his son is about to commence building on the land and the husband intends to assist him.

3) Property located in Seatons:

Owners: Irene Davis and Zenworth Davis as Personal Representatives of the Estate of Arthur Josiah Davis

A part of his father's estate and is for the benefit of his mother and his father's ten children.

4) Two parcels located in Five Islands

Owners: Zenworth Davis and David Mahijah Davis and Rosana Davis: Properties purchased with his son and daughter. His son currently resides on one parcel, the other parcel has no building and is vacant.

[11] The matter was referred to mediation. However the Notice of Outcome of Mediation filed herein, indicates that the parties did not settle. The matter was thereafter restored to the Hearing List.

[12] The application is made pursuant to Section 13 (2) of the Divorce Act which provides:

(2) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums as the court thinks reasonable for the support of

(a) the other spouse;

(b) any or all children of the marriage; or

(c) the other spouse and any or all children of the marriage.

[13] Further, Sections 13 (5) and (7) provide;

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including (a) the length of time the spouses cohabited; (b) the functions performed by the spouse during the cohabitation: and (c) any order, agreement or arrangement relating to support of the spouse or child.

(6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(7) An order made under this section that provides for the support of a spouse should –

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8);

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable amount of time.

- [14] The husband submits that the wife has failed to show that she has suffered economic hardship arising from the breakdown of the marriage in April 2010. He submits that the parties have always lived separate financial lives and from since 2010 to 2018, eight years of living separate and apart, the parties continued to live separate financial lives, save for the husband's monthly payment of EC\$532.25 to the wife. The husband also points out that he also receives a pension. His expenses outweigh his income and he also has the burden of caring for his aging mother. He therefore concludes that he is not in any better financial position than his wife. The husband refers the court to Halsbury Laws of England¹ where it states:

“There is no doubt a recognition that once a marriage has ended either spouse should be able to move on with his or her life and start afresh, without having to be permanently financially dependent on the other spouse. It is clear however that the economic self-sufficiency of one spouse cannot and should not be achieved either at the expense of the other spouse or to his or her detriment. The purpose of the powers conferred on the Court in proceedings for financial relief is to enable the court to make fair financial arrangements on or after divorce.”

- [15] From the evidence presented by the wife, her monthly pension income exceeds her monthly expenses by about \$300.00. Her application for maintenance is essentially made on two planks: (1) the husband has been assisting her financially with the payment of fuel for her car and payment of her CTV bill both totalling \$532.25; and (2) Her monthly expenses, as submitted, do not include the cost of her recurrent medical expenses. These consist of the cost of travel to Puerto Rico and accommodation plus the cost of her medication for glaucoma and hypertension for which she will need assistance.
- [16] The husband has admitted to assisting the wife to the extent of \$532.25 and has indicated his willingness to continue to do so for a reasonable time. But his position is that he cannot increase his contribution to her.
- [17] With regard to her medical expenses, glaucoma and hypertension are both disorders listed on the Medical Benefits Scheme for which financial assistance is available. Medications for these disorders are usually available at the Medical Benefits Pharmacy. During the hearing, the wife

¹ (5th Edition, Vol 73, page 62, paragraph 591)

indicated that she has made no attempt to access the medication from the scheme although she qualifies to do so. In her closing submissions, the wife admits that the medication is covered by Medical Benefits and accordingly has withdrawn that part of her claim.

- [18] With regard to the cost of travel to Puerto Rico, the wife submits that the cost of a round-trip ticket is approximately \$EC1303.00. Twice per year would amount to \$2,606.00. The cost of accommodation would amount to an additional \$1216.14 per year. Together with the doctor fees, the annual sum is \$4,335.82 or \$361.31 monthly. Needless to say, the wife has not submitted evidence to justify her claim for \$3,000.00 monthly. Counsel for the wife now submits that the court ought to make an order for the husband to pay the sum of \$895.00 monthly.
- [19] During the hearing of the matter, the court reminded Counsel of the Court's mandate in section 13 (7) (d), that any order made by the court, so far as practicable should promote economic self-sufficiency of each spouse within a reasonable time. The court had therefore indicated that the court was unlikely to make an order for the payment of any sum for an indefinite period. The wife has submitted that whatever sum the court orders to be paid should be paid for a period of 5 years or in lieu thereof a lump sum be paid. The husband declares vehemently, his inability to pay a lump sum.
- [20] The court finds that the husband has during the marriage assisted the wife with her medical and other expenses. Because of the breakdown of the marriage, she is now in a disadvantaged position and in need of financial assistance. The court also finds that the husband is in a position to continue to provide that assistance for a reasonable period of time, in order to enable the wife to attain self-sufficiency.
- [21] The court has examined the Bank statements of the husband. His bank accounts show no major savings from which a lump sum could be paid. The court has also examined the husband's list of assets. The only real property he owns outright is the property where he lives and in which the company Davis & Davis operates and a vacant plot located in Cooks measuring 0.1 acre. The other properties are owned jointly with other persons, mostly his adult children.
- [22] The court has also noted that of the first four items listed on the wife's list of expenses, three are loans from various institutions with total monthly payments of \$1,181.00. Once these loans are paid off the wife will be in a position to be totally self-sufficient.
- [23] Having considered all the circumstances, including the means of the husband, the court will make an order that the husband pay to the wife maintenance in the sum of \$800.00 for four (4) years from the date of this judgment.

[24] Accordingly, the application is granted as follows:

1. An Order that the husband Zenworth Davis pay to the wife Anastacia Davis, as maintenance, the sum of \$800.00 monthly commencing on 31st day of January 2019 and continuing on the last business day of each consecutive month for the next four years.
2. Cost to the Applicant in the sum of \$1,200.00.

Clare Henry
High Court Judge

By the Court

Registrar