

THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHMT2017/0018

BETWEEN:

Janice Yvette Glasgow-Freeman

Petitioner

and

Earl Randolph Freeman

Respondent

Appearances:-

Ms. Kurlyn Merchant for the Petitioner.

Ms. Midge Morton for the Respondent.

2017: November 24

JUDGMENT

- [1] **WILLIAMS, J.:** Mrs. Janice Yvette Glasgow-Freeman and Mr. Earl Randolph Freeman were married on the 3rd January 2014. There are no children of the marriage. The parties are not divorced, although a Petition for Divorce has been filed by the Petitioner on the 22nd day of March 2017.
- [2] On the 28th March 2017, the Petitioner filed an application for Ancillary Relief seeking an order requiring the Respondent to secure or pay such lump sum or periodic sums reasonable for the support of the Petitioner/Applicant. An Affidavit in support of the application for Ancillary Relief accompanied the Application.

[3] On the 13th April 2017 Mr. Freeman filed an Affidavit in response to the Petitioner's application for Ancillary relief and on the 4th May 2017 the Petitioner filed an Affidavit in response to the Affidavit of the Respondent.

[4] The present application before this Court is an application for Ancillary relief filed by the Petitioner on the 28th March 2017 seeking an order that the Respondent make monthly payments of \$1000.00 to her for her support.

[5] The grounds of the application are as follows:

1. That the application is made pursuant to Section 15 of the Divorce Act Cap. 12:03 which sets out that a Court may make an order requiring one spouse to secure or pay or to secure and pay such lump sum or periodic sums as the Court thinks reasonable for the support of the other spouse.
2. That prior to the marriage, the Petitioner resided in Ohio, U.S.A. and retired from her place of employment and migrated in 2014 to Nevis to reside with the Respondent at his home in Prospect.
3. That the Petitioner does not own property in Nevis, and her sole purpose of migrating to Nevis was to reside with the Respondent.
4. That the Petitioner has been dependent on the Respondent for a place to reside.
5. That the Respondent has constantly insisted that the Petitioner vacate the matrimonial home and has made threats against the life of the Petitioner due to her continued occupancy of the matrimonial home.
6. That the Respondent has removed the door to the room occupied by the Petitioner so as to make it unbearable and uncomfortable for the Petitioner to continue to reside in the said home.
7. That the Petitioner requires reasonable payment from the Respondent for her support.

- [6] The Notice of Application was supported by an Affidavit of the Petitioner filed on the 28th March 2017, where the Petitioner repeated and affirmed the information contained in her Application of the 28th March 2017.
- [7] The Respondent also filed an Affidavit in response dated 13th April 2017 in which he deposed to inter alia that when the Petitioner relocated to Nevis in December 2014, the Respondent enjoyed her company for about one month. Thereafter the Petitioner informed him that she would no longer perform wifely duties, inclusive of cooking, cleaning and laundry. According to the Respondent, after the Petitioner abdicated her wifely duties he ceased giving her any monies to assist with purchasing food and any items for the household.
- [8] The Respondent also avers that as a result of the Petitioner's actions he had to engage the services of a cleaner and a caterer to prepare meals for him.
- [9] The Respondent also states that the Petitioner is self-employed and has at all material times engaged in the buying and selling of clothing and personal effects from the U.S.A. to Nevis.
- [10] The Respondent further deposed that the Petitioner was not destitute as she was making out to be and that since she was making out to be and that since she relocated to Nevis, she had stayed at her relatives' home. Further the Respondent contends that the Petitioner is a registered proprietor of lands in Low Ground Estate.
- [11] When the matter came up for hearing on the 27th September 2017, the parties were cross-examined on their respective Affidavit evidence before the Court.
- [12] At the conclusion of the cross-examination by Counsel for both parties, the Court ordered that closing arguments by way of written submissions be filed and reserved its decision on the Application.

The Statutory Framework

- [13] In relation to this application the relevant statutory framework is the Divorce Act Cap: 12:03 of the Laws of St. Christopher and Nevis.

Section 15 of the Act provides the Court with the requisite authority to make an order for spousal support. It states as follows:

“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 and 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
- c) The other spouse and any or all children of the marriage.”

[14] Under Section 15 (4) of the Act, 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
- c) Any order, agreement or arrangement relating to support of the spouse or child.

[15] The Court is required to treat every case on its own special facts, and will review several factors and the circumstances of the case and make a determination of what will achieve a just and fair result.

[16] In making an order for spousal support, the means and needs of each spouse are among “the circumstances” which the Court must take into account.

[17] It is the common understanding that prior to their marriage and their cohabitation, the parties in this instant case were persons of independent means.

[18] According to the evidence of the Petitioner at the time of the marriage she resided in Ohio and was a bus driver there and was entitled to basic benefits and to the monetary equivalent of 800 hours.

- [19] The Petitioner states that it was agreed that she would migrate to Nevis in 2014 and take up residence with the Respondent at his home in Prospect and before relocating she had filed for voluntary bankruptcy of her property in Ohio and therefore could not maintain herself in Nevis.
- [20] The Court must take into account the “needs” of the parties. The needs must be the reasonable needs or reasonable requirements of the spouses but in defining what is “reasonable” depends upon the circumstances of the case.
- [21] According to the learned authors of the Halsbury Laws of England 5th Edition ¹
- “In most cases, where the parties are of limited means their needs will be a central feature of the case. In particular the housing needs of the parties and of the children will often be focal. In assessing financial needs the Court will have regard to a person’s age, health and accustomed standard of living.”
- [22] With respect to the ages of the parties the Court notes that the Petitioner is presently 58 years of age and the Respondent is 62 years. There is no evidence before the Court that either party suffers from any physical or mental disability, nor is there any evidence that either party is incapacitated or is suffering from a disabling illness.
- [23] Learned Counsel for the Petitioner Ms. Kurlyn Merchant submits that the Petitioner is passed the age of retirement and cannot find full time employment on the Island of Nevis.
- [24] Further and according to the Petitioner’s evidence, it was agreed by the parties that a small shed would be converted into a small shop on the Respondent’s property where the Petitioner would be able to sell a variety of items, and this would be the Petitioner’s way of generating income. The Petitioner also states that sales are not regular or even non-existent.
- [25] Under cross-examination by learned Counsel for the Respondent Ms. Midge Morton, the Petitioner Mrs. Freeman stated that she worked for the city of Ohio,

¹ Vol. 73, page 77, paragraph 610

first at a nursing home at a Hospital from 1986-1994 and then as a Bus Driver for 18 years.

[26] Mrs. Freeman also stated that she drove in Nevis and bought a Toyota Rav4 from a police auction in 2015. She had paid \$3400.00 for the vehicle and had also purchased a battery from Island Tyres for the vehicle costing \$450.00.

[27] In relation to the shop "DJ's variety shop" the Petitioner stated that the said shop had no opening hours and it was closed when she was not around. Mrs. Freeman also stated that she paid \$200 per month for the shop premises and \$12.00 for electricity for the said shop. She had rented an apartment for \$800.00 per month, for which she paid an Electricity bill of \$180.00. She spent about \$130.00-\$155.00 for food. The Petitioner also told the Court that she had paid \$800.00 per month from March 2017 to the present time for the Apartment she had rented.

[28] From the evidence of the Respondent under cross-examination he stated as follows;

- i. That he first met the Petitioner in 2013 when she came to Nevis on vacation. They established a long distance relationship for about one year.
- ii. That they decided to get married on the 7th January 2014 which they did, but he did not encourage her to elope; it was her idea to migrate back to Nevis to reside with him at his Residence.
- iii. That he gave the Petitioner money to do the shopping, but she did not contribute to the mortgage or pay any bills.
- iv. That for a short period of time she did the cooking and washing but it was her decision to stop performing any wifely duties.
- v. That they discussed the selling of goods that she would buy from the United States in various places; however apart from the shop he assisted the Petitioner/Applicant physically and financially.

- vi. That the Petitioner stopped selling goods in the shed in the yard of his house and moved out to Cherry Gardens to a property that she has to pay rent for.
- vii. That the Respondent had purchased the shed for \$3000.00 while the Petitioner/Applicant bought two windows and put in a countertop and painted the shop.
- viii. That he eventually sold the shed for \$5000.00 but did not give any money to the Petitioner.
- ix. That he the Respondent asked the Petitioner/Applicant to leave his home.
- x. That he was aware that the Petitioner/Applicant was the owner of land in Prospect and that he had paid to clean the land and fence it.
- xi. The Respondent also stated that he raised and sold pigs and piglets which he would sell at \$100.00 each.

[29] At paragraph 19 of his affidavit the Respondent states that he is living above his means and provided a breakdown of his living expenses as follows;

- i. Average monthly income from trucking business \$1300.00-\$2500.00
- ii. Monthly mortgage payments- \$2000.00
- iii. Utility Bills- Cable- \$150.00
- iv. Utility Bills (NEVLEC)- \$100.00
- v. Utility Bills (Water)- \$80.00
- vi. Housekeeper- \$500.00
- vii. Food caterer- \$1200.00

[30] The Respondent also submits that he is 62 years of age and cannot afford any maintenance payments. The Petitioner/Applicant is younger than him and is able to provide for herself. The Respondent contends that the Petitioner was never

dependent on him during their brief marriage and had an established way of life and standard of living.

- [31] The Petitioner in her affidavit filed on 4th May 2017 stated that her decision to migrate to Nevis was based on her marriage to the Respondent and that while she has tried to support herself, she has now found herself in the unfortunate situation where she has to find alternative accommodation and unable to provide for herself fully.
- [32] The Petitioner submits that she was forced to rent an apartment for \$800.00 since the Respondent has asked her to leave his house; and that his actions has caused her serious economic hardship where she now has to borrow money to maintain herself financially, while the Respondent's means and standard of living have not been affected by it.
- [33] The lifestyle enjoyed by the parties is only a factor to be considered by the Court in determining the reasonable requirements or needs of the parties.
- [34] The Court must also take into account the length of time the spouses have cohabited.
- [35] The marriage of Mr. and Mrs. Freeman was of very short duration. The parties were married in 2014 and according to the Respondent in his Affidavit filed on the 13th April 2017 he asked the Petitioner Mrs. Freeman to leave his home at the commencement of 2015. The Petitioner states that date as April 2016.
- [36] Under cross-examination, the Petitioner testified that she moved out of the Respondent's home in March 2017 and went to live in an apartment paying a monthly rental of \$800.00 and utilities of electricity and water.
- [37] Notwithstanding the discrepancy in the dates of duration of the marriage the conclusion of this Court is that the parties did not spend much time together during the course of their marriage.
- [38] The Court must also give regard not only to the period of cohabitation between the parties, but also to the contribution made to the marriage by the respective parties

during the period of marriage. In the instant case and based on the evidence before the Court, little weight is attached to the Petitioner's contribution to the marriage which the Court considers negligible.

- [39] The Court is required in this process to seek in any order that it makes to recognize any economic advantage or disadvantage to the Petitioner arising from the marriage or its breakdown.
- [40] According to the Respondent, the Petitioner when she moved into his house after the marriage did not contribute to the mortgage or pay any bills for the household. The Respondent further states that he gave the Petitioner money to do the shopping. They had discussed the construction of a shed where she could sell items from the United States and he assisted her in setting up the shop physically and financially. The Respondent states further that he provided the Petitioner with financial assistance whenever she needed it. The Petitioner had stopped selling in the shed and moved to Cherry Gardens on her own. She moved out of his house and into a property that she paid rent for.
- [41] This Court agrees with the fact that the Respondent having paid all the major expenses of the marriage this will now give rise to some economic disadvantage to the Petitioner following the divorce. She will now have to pay these expenses for herself and no longer have the benefit of someone else providing or paying for her accommodation.

Law and Analysis

- [42] In the case of **Lilouti Gooroodat vs Imtiazul Tallim**² Michel J. (as he then was) held that the Petitioner would be entitled to some spousal support from the Respondent for a period of time. The quantum of which spousal support should be equivalent to the amount that she says is paid for rental of the apartment which she considers is adequate for the Respondent, his daughter and mother of \$750.00-\$800.00 per month, together with the total amount claimed by her for payment of utilities.

² ANUHCv2011/0093

- [43] Section 15 (6) (d) of the Divorce Act states that an order made under this section that provides for the support of a spouse shall in so far as practicable promote the economic self-sufficiency of each spouse within a reasonable time.
- [44] The learned authors of Halsbury Laws of England³ cited by Remy J in the case of Frey vs Frey⁴ stated as follows;
- “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.”
- [45] The Petitioner’s evidence is that there was an agreement with the Respondent that on migrating to Nevis from Ohio U.S.A., she would have a place to reside at the Respondent’s home. She stated further that her source of income would be from the sale of items from the shop in the Respondent’s yard.
- [46] On the other hand, I have not heard any evidence that the Respondent will suffer any or any significant economic hardship following the breakdown of the marriage. I am of the considered opinion that the Respondent has not suffered any severe hardship following the breakdown of the marriage and in fact earns more than he claims to, in his affidavit. However I am cognizant of the evidence from the Respondent that the Credit Union obtained a judgment of \$54,052.00 plus costs against him and that he has paid \$8000.00 to the Credit Union.
- [47] Therefore the Court must recognize some economic hardship caused to the Petitioner as a result of the breakdown of the marriage. 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 the divorce.

³ 5th Edition Vol. 73 pg. 62 paragraph 591

⁴ ANUHMT2012/0019

[48] Therefore the Court's order will be of limited, but reasonable duration to promote the economic self-sufficiency of the Petitioner.

[49] I am also of the opinion that the Petitioner is in a position to partially support herself but the Court will attempt to relieve any economic hardship that may have arisen as a result of the breakdown of the brief marriage, since she had to move out of the matrimonial home at the Respondent's request.

[50] In the circumstances and on the totality of the evidence. I will order that the Respondent pay the Petitioner a monthly sum of \$800.00 per month towards her support and maintenance.

[51] This order is to last for a period of twelve months, after which the order shall expire. If the Petitioner remarries, the order will terminate forthwith.

Conclusion

[52] When dealing with applications for spousal support, the Court's objective is to arrive at an outcome which is just and fair.

In arriving at a determination of the application, regard has been given by the Court to all the facts and circumstances which I am mandated to consider. I have considered the age of the parties, the duration of the marriage and the length of time the parties have cohabited, and the economic advantages or disadvantages arising from the breakdown of the marriage.

I am of the considered opinion that the justice of the case requires me to make an order in the following terms:

Order

- a) That the Respondent Mr. Freeman pay the Applicant/Petitioner as spousal support the sum of \$800.00 per month commencing on the 1st December 2017 and shall thereafter be paid on the 1st day of each month until the 1st December 2018 after which time the order will expire.

If the Petitioner remarries during that period, the order will terminate forthwith.

b) That each party shall bear their own costs in the matter.

[54] I wish to thank counsel on both sides for their assistance and helpful submissions.

Lorraine Williams
High Court Judge

By the Court

Registrar