

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHMT2015/0105

BETWEEN:

CYKIE ADDELLE WILLIAMS-PETERS

Applicant/Petitioner

and

BRYAN ERNEST PETERS

Respondent

Appearances:

Mr. Lawrence Daniels for the Applicant/Petitioner

Ms. Gail Christian for the Respondent

2016: April 13; July 7; 22;

2017: June 27

JUDGMENT

Introductory

[1] **LANNS, J [AG]:** By notice of application filed on the 7th September 2015, the Applicant Cykie Addelle Williams-Peters (the Applicant) applies to the court for spousal support in the sum of \$200.00 weekly.

[2] The grounds of the application are stated to be:

- (a) The applicant is the lawful wife of the respondent
- (b) The applicant is entitled to spousal support.
- (c) The applicant swore to and filed an affidavit in support of the application.
- (d) The respondent has abandoned the applicant since 17th October 2014.
- (e) The respondent committed adultery with another woman and had a child by her born on the 25th October 2014 during the course of the marriage.
- (f) The respondent has failed to make any provision for the maintenance of his wife,

[3] The application is vigorously opposed by the respondent Bryan Ernest Peters (the respondent) who filed a replying affidavit on the 17th November 2015.

Brief Background

[4] The applicant and the respondent became married to each other on the 20th May 2010. The marriage apparently broke down in 2014, after the applicant discovered that the respondent was expecting a child from another woman. The applicant, on the 17th September 2015, filed a petition for divorce. The petition has not yet been heard, so the parties are still legally married.

[5] The applicant is employed as a clerk with the Government of Antigua and Barbuda. The respondent is employed at Bryden & Sons (Antigua) Ltd as a sales representative.

The evidence

[6] The evidence of the applicant is contained in her affidavit in support of the application filed on the 7th September 2015, and the documents exhibited thereto; as well as her further affidavit filed on the 22nd October 2015.

[7] The evidence of the respondent is contained in his affidavit in reply filed on the 17th November 2015, and the documents exhibited thereto.

[8] I also heard oral testimony from both parties.

[9] In her supporting affidavit, the applicant repeated the averments set out in the grounds of the application, and she produced the certificate of birth of the child born to her husband outside of the marriage. The respondent is recorded as the father of the child. In addition to the repeated grounds of her application, the applicant stated: that there are no living children of the marriage; that she was a true, kind and virtuous wife to her husband; that she and her husband worked during the course of their marriage; that since her husband moved out of the matrimonial home, he has made no provision for her maintenance and support; that her husband caused the cable to the matrimonial home transferred to the residence of the mother of his child.

[10] In her second affidavit, the applicant gave her net income as \$1809.68, which she substantiated by documentary evidence

[11] The applicant listed her monthly expenses, and she exhibited_ documents to substantiate such expenses:

(a) Gas	\$ 250.00
(b) Utilities	\$ 300.00
(c) Groceries	\$ 500.00
(d) Cable	\$ 86.50
(e) Loan payment (Royal Bank of Canada)	\$ 354.00
(f) Car payment	\$ <u>500.00</u>
Total	\$1990.50

[12] The applicant states that she has no savings, no life insurance, and she is surviving with assistance from her parents from time to time. The applicant was subject to vigorous and lengthy cross examination by learned counsel for the respondent (Ms. Christian).

[13] Under cross examination, the applicant admitted that she bore certain expenses associated with the marriage. She stated that she travelled twice annually and that on those occasions she would purchase clothes for the respondent and habitually assisted him in meeting the expenses that were his responsibility. The applicant acknowledged that the respondent took care of the loans that were incurred consequent upon the marriage, and a single car loan that existed prior to the marriage. During cross examination, the applicant also admitted that she contributed to the upkeep of the matrimonial home and that she took care of utilities.

[14] As to the loan at Royal Bank of Canada, the applicant testified that the amount borrowed was \$7000.00, and that at the time of hearing, one half of it was repaid. According to the applicant, payments are expected to be completed by March 2017.

[15] As regards the car loan,¹ the applicant gave evidence that this loan was obtained in January 2015. As at 13th April 2016, there was a balance of \$9000.00 remaining to be paid.

[16] In relation to utilities, it emerged during cross-examination that there was a reduction from \$300.00 to \$200.00², and groceries were approximately \$311.05, with the result that the expenses of the applicant amounted to \$1690.00, with a surplus of a mere \$120.00.

[17] In his affidavit in reply, the respondent agreed that the marriage had broken down but he denied that it broke down for the reasons put forward by the applicant. He states that the applicant was pregnant at the time of the marriage but the child died at birth plunging the applicant in a state of depression. It was soon after that, things began to deteriorate. He says the applicant stopped going to church; that she removed her consortium from him, long before he removed himself from the matrimonial home. Eventually they drifted apart.

[18] The respondent states that he earns a basic pay of \$3,325.00, plus travel allowance of \$700.00 monthly. When promotions are available, he earns at least \$89.00 and at the greatest \$356.40.³ His monthly expenses are stated as:

(a) Rent (Two bedroom apartment) \$ 800.00

1 Car loan made by Builders Merchant Limited (Affordable Auto & Equipment)

2 Electricity had been reduced to \$250 monthly and water to \$50.

3 All of the salary slips exhibited by the respondent show a promotion payment of \$356.40

(b) Utilities	\$ 186.50
(c) Cable	\$ 92.00
(d) Groceries	\$ 300.00
(d) Child support (\$100.00 weekly)	\$ 400.00
Total	\$1778.50

[19] The respondent gave evidence that they managed their affairs in such a way that the applicant was responsible for purchasing groceries and assisting with payment of utilities, while he took care of vehicle payments, credit card payments, and the loan associated with furnishing of the matrimonial home. He stated further that he not only cleared the credit card debts but he also cleared the amounts owed to Town House, Courts and Furniture Gallery. The respondent states that he has a one-year-old son to support and in addition to the weekly \$100.00 which he pays for child maintenance, he also incur expenses to Bryden & Sons for supplies for the child. The respondent deposes that he has no savings; that he cannot afford another charge as his expenses exceed his income.

[20] During cross examination, the respondent admitted he got a child from another woman during the course of the marriage. He also admitted that his salary is greater than that of the applicant; that he usually transports the applicant to and from work, and she did not have to incur any expense for transportation. He agreed that the applicant will have to incur expenses for her own maintenance, and that he is expected to provide adequate maintenance for his wife. He admitted that since he moved out of the matrimonial home, he had not supported the applicant. He posits that while he and his wife were living together, his wife would have been entitled to support, but she is not entitled to support from him while they are living separate and apart.

Issue

[21] The main issue for determination is whether the applicant is entitled to spousal support and what amount, if any should be awarded. For the reasons which follow, I have determined that the applicant has established an entitlement to spousal support and I propose to make an appropriate award.

The Law

[22] Applications for spousal support are governed by Section 13 (2) of the Divorce Act of Antigua and Barbuda (the Act). In deciding whether to make an order for spousal support, the court has to consider the condition, means, needs and other circumstances of each spouse 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 (Section 13 (5)) of the Act.

[23] Additionally; the court has to - (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.(Section 13 (7)) of the Act.

[24] All factors under Section 13 (5) of the Act must be carefully considered by the court in light of the objectives of spousal support listed in Section 13 (7). The objectives must be balanced in the context of the facts of the case. The Court must exercise its discretion in order to relieve the adverse consequences and economic hardship that results from marriage or its breakdown. No single objective, including economic self-sufficiency, is paramount.

Discussion

[25] This is a 7-year marriage, with a period of cohabitation for about 4 years. Both parties shared household responsibilities. The respondent was, and remains the higher income earner. Both parties continue their employment with their respective employers. Mrs. Peters has been looking after her needs, albeit on a tight budget with the assistance of her parents. However, I do not find her to be self-sufficient. As regards agreement for spousal support referred to in the Act, I do not find any implied or expressed agreement whereby Mr. Peters promised that he would provide Mrs. Peters with spousal support. But that is not the only consideration.

[26] Mr. Peters is 36 years old. Mrs. Hodge is 35. At the time of trial, Mr. Peters had child care responsibilities; Mrs. Peters had none, the only child of the marriage, having died at childbirth.

[27] They have both listed their financial expenses to which I have already alluded. Suffice it to say, during cohabitation; Mrs. Peters earned a gross salary of \$1925.00 with a net of about \$1808.68 per month. Mr. Peters during cohabitation earned \$4025.00 (sometimes \$4381.40) with

a net of \$3325.00. Given their respective age, it is highly likely that their earning capacity would be enhanced in the future.

[28] Learned counsel Ms. Christian argues that the period of cohabitation was of short duration and thus did not afford any deep financial ties to take root. I do not think that the short duration of cohabitation is of great significance in this case. The case of **Cumbers v Cumbers** [1975] 1 All ER is authority for the view that the short duration of marriage does not necessarily debar a wife from benefitting from a lump-sum order if she had played a part in the marriage which deserved compensation: In **Cumbers v Cumbers**, the marriage was very short, the parties having separated about eighteen months after their marriage. The husband had acquired a house on mortgage shortly before the marriage, and was paying the installments on it during the marriage. The wife had one child and the court found that she helped the family by going out to work. After the break-up of the marriage, the husband sold the house for a net sum of \$1600.00 and the Court of Appeal ordered that the wife be awarded \$500.00 despite the short duration of the marriage because of her contribution to the welfare of the family.

[29] In the instant case, the parties are still legally married, albeit Mrs. Peters has filed a petition for divorce on the grounds of separation from 17th. October 2014 and adultery. Undoubtedly, the applicant contributed to the marriage and welfare of the family by going out to work. It is apparent that the applicant provided a home for her and the respondent prior to the breakup.⁴ She says that since the breakdown of the marriage, the roof leaked and she had to repair it. Additionally, because of the breakdown of the marriage, she was deprived of the advantage of being transported by her husband to and from work, and thus, she has had to incur expenses for the purchase of car which she did not have to do during the period of cohabitation. The respondent himself admitted during cross examination that he used to drive the applicant to and from work. Therefore, as I see it, the deprivation of transportation to and from work, must of necessity be an instance of economic hardship and deprivation experienced by the applicant as a result of the breakdown of the marriage.

[30] The applicant says she is being assisted with her monthly expenses by her parents. believe her.

[31] One of the grounds of the application put forward by the applicant is that the respondent has committed adultery. It has been said that marital fault is not a consideration in determining spousal support, but the functions performed and not performed by the spouses during cohabitation is a very relevant consideration⁵. Mrs. Peters stated that during the period of cohabitation, she was a dutiful wife. Mr. Peters has not challenged this assertion. And there is nothing in the evidence to suggest that she was not a dutiful wife, or that she was an extravagant wife. Indeed, I think she has established a need for spousal support to compensate for, among other things, her deprivation of transportation, and her acquisition of a motor vehicle, for which she has been paying, and on which stands a balance of \$9000.00 at the time of trial. It matters not if the loan in relation thereto has been repaid.

[32] I take account of the fact that since the breakup, Mr. Peters has had to pay rental accommodation for himself, and he has had to pay child support. Nevertheless, he has not convinced me that he cannot afford the extra charge of spousal support.

[33] Accordingly, having regard to the needs of the wife particularly in respect of her car loan, and the lifestyle she enjoyed prior to the breakdown of the marriage, the part she played in

4 It is uncertain as to how Mrs Peters came by the house

5 Per Michel Jin Jeremy v Jeremy Claim No. ANU HMT2011/0064

the marriage, and having regard to the totality of the evidence, I think that it will be fair to order Mr. Peters to pay Mrs. Peters \$500.00 per month for the next two and one half years commencing from the 15th July 2017. This will go towards payment of the balance on her vehicle as at the date of trial, and at the same time compensate Mrs. Peters for being a dutiful wife. I think Mr Peters' income could facilitate this award, and this will also aid in promoting economic self-sufficiency of Mrs. Peters.

Conclusion

[34] The court's orders are as follows:

[1] The respondent Bryan Ernest Peters shall pay to the applicant Cykie Addelle Williams-Peters the monthly sum of \$500.00 from the 31st day of July 2017 and continuing for the next two and one half years unless the applicant remarries or sooner dies.

[2] The respondent shall pay the applicant's costs of the application in the sum of \$1000.00.

[35] Learned counsel Ms. Christian has helpfully provided me with written submissions. I am grateful for her assistance.

Pearletta E. Lanns

High Court Judge [Ag]