

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHMT 2012/0101

IN THE MATTER OF AN APPLICATION

PURSUANT TO SECTION 13 OF THE DIVORCE ACT 1997

BETWEEN:

JOSETTE O'GARRO

Claimant

And

BRENDAN O'GARRO

Defendant

Appearances:

Dr. David Dorsette and Mr. Jared Hewlett for the Applicant
Ms. Ann Henry Q.C. for the Respondent

2015: March 17

DECISION

- [1] **HENRY, J.:** This is an application for spousal support. The parties were married on the 19th December 2009. They separated in early July 2012. By application filed 19th July 2012, the wife applied for spousal support pursuant to section 13 of the Divorce Act 1997 (hereinafter the Act). By an interim Order dated 23rd November 2012, the court ordered the husband to pay to the wife the sum of \$500.00 monthly. The matter is now before the court for a final order

- [2] The application is supported by an affidavit in support. The grounds of the application are that the parties have cohabited for ten years. During the period of cohabitation, the wife has depended entirely on the husband for financial support. She has, for the period, performed the functions of a housewife.
- [3] In her affidavit in support, the wife states that the husband works as a Seaman for the West Indies Oil Company. Prior to that employment he was enlisted with the Antigua and Barbuda Defence Force. She states his monthly income as \$6,500.00.
- [4] According to the evidence, sometime in 2010, she suffered a fall which caused continuing lower back pain with attendant left thigh and leg pain. Starting in November 2011 through 7th July 2012 she was attended by Dr Allred Ward at the Allred Chiropractic Wellness Clinic. Visits to Dr Ward cost \$80.00 every 2 weeks in addition to transportation cost. As a result of her medical circumstances she asserts that she is unable to gain employment outside of the home. In 2012 her monthly financial needs were as follows:

Item	\$
1. Rent	\$1,200.00
2. Food	\$1,600.00
3. Electricity	\$ 225.00
4. Water	\$ 25.00
5. Phone	\$ 60.00
6. Doctor	\$ 160.00
7. Mobile internet service	\$ 80.00
8. Transportation for medical visits	\$ 120.00
9. Clothing and Shoes	\$ 325.00
10. Cosmetics	\$ 200.00
11. Cable	\$ 126.50
Total	\$4,121.50

- [5] She seeks monthly support sufficient to cover her medical expenses.
- [6] The husband was granted liberty to file additional affidavit evidence and the matter was adjourned to a contested chamber date. Both parties were ordered to attend for cross-examination.
- [7] On cross-examination the wife was asked about her efforts to secure employment. Her evidence is that she had recently made application to a betting company on Old Parham Road, but had received no response. She also clarified the issue of her present residence. After the husband left, at the end of July 2012 she too left the former matrimonial home and went to reside with her mother. She no longer resides there, but has now taken up residence with an Aunt.

- [8] With regard to the medical treatment by Dr. Allred, her evidence is that Dr. Allred died sometime in mid 2014. The last time she visited him was a couple months before his death. She has not sought consultation with another therapist, nor has she submitted a quotation from another doctor.
- [9] With regard to her listed expenses, her evidence is that the figures refer to expenses incurred when she resided with her husband. She accepts that she has never paid rent while residing with her mother or her aunt. She also accepts that she does not now pay \$1600.00 for food and that that sum refers to what she spent on food before the parties separated. Her evidence is however, that she does assist with some of the household bills. She pays \$60.00 for electricity and contributes \$40.00 to cable and \$30.00 to telephone bills. She does not pay for water or internet. Her final evidence is that she does not have money for food or to continue her needed therapy for her hip injury.
- [10] In his Amended Affidavit in Opposition, the husband contested the accuracy of the items of expenses listed in the wife's affidavit, except for the amounts allegedly paid to Dr. Allred.
- [11] He lists his own expenses as follows:

Items	\$
1. Rent:	\$1,000.00
2. Groceries:	\$ 800.00
3. Car loan	\$1,000.00
4. Electricity	\$ 200.00
5. Water	\$ 100.00
6. Cell phones	\$ 200.00
7. Internet	\$ 67.00
8. Gasoline	\$ 600.00
9. Medical expenses for mother, Lydia Henry-Burke	\$ 600.00
Total	\$ 4,567.00

- [12] He states his average net pay per fortnight at \$1,646.79. He admits that he is also in receipt of a monthly pension of \$1,333.88 from the Antigua and Barbuda Defence Force, for a total income of \$2,980.67
- [13] At the close of the hearing, the husband was granted leave to file and serve a supplemental affidavit exhibiting a copy of a letter recently received from his employer. The letter indicates that due to ongoing repairs to the vessel on which the husband had been engaged as a Seaman, his employer has taken the decision to lay off the husband for three months in the first instance as of November 5, 2014 until February 4, 2015.
- [14] Nonetheless, Counsel for the wife states that the wife is entitled to support and submits that an award of \$2,750.00 per/month, which he says corresponds to one half of the husband's income, is appropriate.

[15] Counsel for the husband points out that the wife has, since 2012 received no therapy in respect of the alleged injury. She asks the court to conclude that this is because the wife has recovered from whatever injury she had sustained. There is no evidence, it is submitted, before the court that the wife is now in need of therapy. Secondly, it is clear from the evidence that the wife considers herself capable of work, since she made an application for a job. Thirdly, the husband is no longer employed at West Indies Oil. He has been laid off with no resumption of employment. In light of the fact that the wife has presented no evidence of current disability, she asks the court to terminate the interim order and make an order that any outstanding arrears be paid up.

[16] 13 (2) of the Divorce Act gives this court jurisdiction on application by either or both spouses, to 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 the other spouse.

Section 13 (2), (5) and (7) provide:

“13. (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.

(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 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.”

(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 spouse 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.

[17] Counsel for the wife refers the court to the Canadian case of **Moge v Moge**.¹ He submits that section 17 (7) of the Canadian Divorce Act is on all fours with section 13 (7) of Antigua's Divorce Act. Counsel specifically refers the court to pages 813 to 814 where it states that all four objectives defined in section 17 (7) must be taken in to account when spousal support is claimed. No single objective is paramount.

[18] The parties cohabited for approximately 10 years. During the marriage the wife functioned as a housewife. When the marriage ended, the wife was not in a position to be self supporting. Understandable, the absence from the job market for 10 years meant that the wife had no funds of her own to fall back on. In addition, about 6 months before the breakdown of the marriage, the wife sustained an injury to her hip in a fall. She was under the care of Dr. Allred a Chiropractor from 18th November 2011 to 4th July 2012. The wife was granted leave to submit a further medical report of Dr. Nicholas Fuller who examined her on 7th November 2014. The medical report consists of one sentence. It reads, "This is to certify that this pleasant lady needs physio-therapy for a lower back injury following a fall in 2010."

[19] In the courts view the wife's unemployment has placed her in the position where she has had to reside with relatives – first her mother, then an aunt. The Interim payments for maintenance pursuant to the court's order have assisted in defraying her expenses. The court finds that her adjusted monthly expenses, exclusive of clothing, cosmetics and medicals, are:

Food	\$400.00
Cable	40.00
Electricity	60.00
Phone	30.00

¹ [1992]3 R.C.S. 813

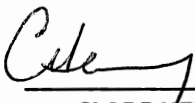
Total

\$530.00

- [20] Looking at the situation in the round, the wife is in need of assistance to help meet her expenses. In addition, the report of Dr. Fuller does indicate that, in his opinion, she is still in need of therapy. Even though the report is extremely brief, and fails to set out the findings of the examination upon which the opinion is based, it is the only medical evidence before the court. The court notes that no evidence was provided of the current cost of therapy, the court is left with the chiropractic cost paid by the wife in 2012.
- [21] The court must balance the needs of the wife against the evidence before the court that the husband has been laid off from his job at West Indies Oil Company. This leaves him with a monthly income of \$1,333.88 from which he must also meet his own living expenses.
- [22] Having balanced all the factors, including the provision of section 13 (7) (d), the court makes the following order:

It is ordered that:

- (1) The husband do continue to pay as maintenance in respect of the wife the sum of \$500.00 per/month for a period of 1 year.
- (2) the husband do pay all outstanding arrears within 60 days;
- (3) Liberty to apply
- (4) Cost to the wife in the sum \$500.00


CLARE HENRY
High Court Judge
Antigua & Barbuda