

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

CIVIL

CLAIM NO. DOMHCV 2014/0330

BETWEEN:

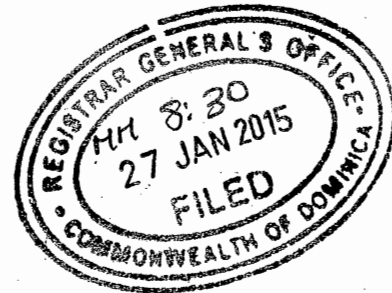
CLARA MUNRO

Applicant

AND

CLAYTON MUNRO

Respondent



Appearances:

Mrs. Singoalla Blomqvist- Williams of the Chambers of Williams and Williams for the Applicant.

Mrs. Dawn Yearwood- Stewart of Dawn Yearwood Chambers for the Respondent.

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2014: November 21st

2015: January 27th
.....

DECISION

[1] **THOMAS, J (Ag):** Before the court is an application by Clara Munro, the applicant, who claims against Clayton Munro, the respondent, reasonable maintenance for herself and costs.

[2] In her affidavit in support the applicant deposes that during the first years of marriage she and the respondent had a good relationship, but because she suffered a stroke in March 2007 resulting in renal failure requiring her to undergo dialysis at the Princess Margaret Hospital three times per week. She deposes further that on account of her condition she is unable to work and is required to visit her doctor once every three months to have blood tests done so as to monitor her illness.

- [3] With respect to the respondent, the applicant says that he is a qualified Accountant and does work for divers persons. Additionally, the applicant deposes that the respondent, as far as she knows, has no debts, owns his own vehicle, owns the matrimonial home and incurs expenses supporting an extra marital affair.
- [4] It is the applicant's further evidence that she caused a letter to be written to the defendant requesting maintenance, and as a result the respondent said he could only contribute \$300.00 per month.
- [5] As far as her income and expenditure are concerned, the applicant says that she receives \$1600.00 per month from Dominica Social Security while her expenditure amounts to \$3880.00. She also says that she has medical bills at hospital that amount to \$8,900.00.

Applicant's Supplementary Affidavit.

- [6] In her supplementary affidavit the applicant maintains the reason for the break up of the marriage and she goes further to detail items purchased which were not delivered to the matrimonial home, but to the home of the respondent's mistress. According to her the total value of items is \$5,048.93 and the fact that a down payment of \$1000.00 was made.
- [7] With respect to the visits to the eye doctor and the dentist, the applicant explains this is as a result of the non-functioning kidneys which may cause her organs to deteriorate.

Affidavit in Reply

- [8] The respondent in his affidavit in reply admits the applicant's illness, but also says that the marriage has deteriorated to the extent that he lives in the upstairs section of the house while the applicant lives in the lower section with her son. The respondent also says that there are separate electrical meters.

[9] The respondent denies knowledge of the applicant's Social Security income or her expenses detailed at paragraphs 11(a) and (b) of her affidavit¹. Also denied is the hospital bills amounting to \$8,900.00.

[10] With respect to the matter of maintenance, the respondent contends that he is unable to pay the sum of \$1700.00 monthly. Instead, he says that since July 2014 he has been giving the applicant \$500.00 monthly towards her personal expenses as he is unable to give more.

[11] The respondent deposes that his total income for 2013 was \$12,297.60 plus \$14,400.00 plus \$11,700.00 which gives a total of \$38,397.60 and monthly income of \$3198.13. On the other hand, the respondent says that his monthly expenditure is \$1997.00 with a surplus of \$252.30. Further, he says that his yearly expenses amount to \$13,597.06 with a surplus of \$3027.54.

[12] The respondent contends that despite the strained relationship, he transports the applicant to her medical appointments, to the market and to the hospital for her dialysis treatment.

Respondent's Supplementary Affidavit

[13] In his supplementary affidavit the respondent seek to expand on the details of his income and expenditure. In the premises the respondent denies that he has failed to provide reasonable maintenance for the applicant as alleged.

Cross- Examination

[14] Mrs. Clara Munro, the applicant under cross-examination gave details of money given to her for various expenses. Mention was made of \$200.00 on 28th May, 2014 to assist with medical bills and that he gave her \$500.00 per month after her attorney wrote to him.

[15] The applicant was cross-examined extensively on the medical, matrimonial and other expenses. She said that the Social Security benefit is \$1600.00 per month and the epogene injection is \$1020.00 per shot.

¹ The expenses listed at paragraph 11 (a) and (b) of the applicant's affidavit are: (a) dialysis \$1800.00; and (b) epogene \$1620.00 (injection)

[16] The applicant also gave evidence as to her husband's extra-marital friend and went on to say that the items purchased were neither upstairs or downstairs there matrimonial home and assumed they were for his woman.

[17] The applicant ended her cross-examination by saying that she wanted her husband to help her with an additional \$1200.00 or per month in order to pay for her medical expenses.

Re-examination

[18] In re-examination the applicant said that on 28th May, 2014 her husband gave her \$2000 to help with medical expenses. She added that she cooks for her husband as she does not have a maid. The applicant added that the \$500 is not enough as things are expensive.

Cross Examination of the Respondent

[19] Under cross-examination the respondent said that his 1997 CRV vehicle is valued at \$10,000.00 and the matrimonial home is on 4750 sq ft of land but he did not know the value.

[20] With respect to the household items mentioned by the applicant in her evidence, the respondent said that he is required to pay \$169.00 per month but he will not pay and the items will be re-possessed. He admitted that he understood a hire purchase agreement. And he also admitted that the items were delivered to Jimmit to the home of Laurina Noel.

[21] As far as the applicant's medical expenses are concerned, the respondent agreed that the \$8900.00 should be paid and that he would assist if he can afford it.

[22] When the respondent was cross-examined on the life insurances, he explained that the beneficiaries are his son and daughter who are aged 37 and 34 respectively.

[23] The respondent was further cross-examined on the money spent on house insurance, and food and he went on to testify that he does not ask his wife for gasoline money.

[24] It is the respondent's evidence that he advised his wife to go to the Red Clinic for assistance and in this regard he prepared an appropriate letter explaining income and expenditure. This was refused according to the respondent. And in terms of a loan to help the applicant; the respondent said he could not afford it. He went on to explain that Courts accepted his Social Security letter.

[25] In re-examination the respondent testified that the goods were taken on behalf of someone who intends to pay. He added that the hire purchase is in his name but if the goods are not paid for they will be re-possessed.

Issues

[26] The issues for determination are:

- 1) Whether the applicant is entitled to reasonable maintenance from the respondent?
- 2) Who is liable in costs?

Issue No.1

Whether the applicant is entitled to reasonable costs.

Submissions

[27] Learned counsel for the applicant, Mrs. Singoalla Blomqvist- Williams, in her submissions begins with a mention of the lack of intimacy between the parties, the applicant's inability to work and her inability to meet the expenses attached to her medical bills. The submissions go on to say that the applicant's monthly income is \$1632.00 while her expenses amount to \$3880.00 with an outstanding medical bill of \$8900.00. According to learned counsel the immediate monthly shortfall is \$2248.00.

[28] After an analysis of the respondent's annual income and expenditures, goes on to question the necessity for a car² and the submission on this proposition and beyond continue thus:

"By selling the car the Respondent would have \$10,000.00 which is the value of the car added to his disposable income further, he would save on gas in the sum of \$320.00 monthly and on insurance of the vehicle in the sum of \$108.50. We therefore submit further that he is able to pay the sum of \$1700.00 by trimming the non essential payments such as:

- a) \$167.00 owed to courts for the hire purchase
- b) \$628.77 policies and gazettes

² For this proposition the case of Clark v Clark [1979] 9 Fam Law 15 as quoted in Bromley Family Law (7th ed.) at p. 618 is relied on

- c) \$320.00 gas for vehicle
- d) \$108.50 insurance for car
- e) \$500.00 presently being paid to Applicant by the Respondent.
\$1724.27"

[29] The submissions end in this way:

"We submit that the court ought to consider the reasonable requirements of the Applicant, she is not asking for luxurious items but the right to live a dignified life.

In relation to an application on ground of failure to provide reasonable maintenance for the Applicant, Section 25 MCA 1973 has the effect as if for the reference therefore to the breakdown of the marriage there is substituted reference to the failure to provide reasonable maintenance."

[30] In submissions on behalf of the respondent, learned counsel, Mrs. Dawn Yearwood-Stewart, contends that all the wife's necessities are being met and therefore the court should have no difficulty in finding that the husband has not failed to provide reasonable maintenance for his wife. The submissions continue thus:

- "11. The husband accepts that he is responsible for the maintenance and upkeep of his wife and he does this by providing a roof over her head, food on the table for her and her adult unemployed son, purchases her toiletries, pays all of the utilities which she and her son [enjoy] and transports her to and from her medical appointments and entertains her every Friday night. This we submit is reasonable maintenance.
- 12. As it relates to the purchases from Courts (Dominica) Ltd, the wife states that the husband has additional monies which he uses to support an extra marital affair. However the husband has clearly indicated that he hired the items for his friend and that she is expected to pay for the said items. He further stated that if she fails to pay for the said items they would be repossessed as it was not his responsibility to pay for them."

[31] With reliance placed on a proposition contained in on **Rayden and Jackson on Divorce and Family Matters** that an application for reasonable maintenance is to be treated as an application for ancillary relief requiring both parties to make full disclosure of property the following submission is made:

"...In accordance with the abovementioned the husband has done so but, the wife has failed to disclose her property... The husband also made full disclosure of all his weekly, monthly and yearly expenses and supported them all with documentary proof. The wife has not done so. She failed to make full and frank disclosure in her affidavit of the benefits she derives from the husband's financial contribution to her welfare and wellbeing, nor has she provided proof of her expenses as deposed. This was elicited under cross examination. The wife whose maiden name was Clara Toussaint is the owner of land at Trafalgar. (Attached please find a copy of her certificate of title in the name of the wife)."

[32] After an analysis of the matters which the Court must take into account in this context, plus the powers of the court, learned counsel reaches the conclusion that the applicant has failed to satisfy the court that her husband has failed to provide reasonable maintenance for her. Additionally, the applicant has failed to account for her total monthly income of \$2050.00.

Reasoning

[33] Section 25 of the **Matrimonial Causes Act 1973** prescribes certain matters which must be considered in making a determination. In brief, these relate to income, earning capacity, property and other financial resources; financial needs, standard of living enjoyed, ages, physical or mental disability and the contributions of each party to the welfare of the family.

[34] Learned counsel on both sides have analyzed the content and implications of section 25 of the **Matrimonial Causes Act** against the backdrop of the evidence. And since there is no dispute as to the evidence regarding the income and property, except for the matter of a parcel of land said to be owned by the applicant; the court accepts and adopts the detailed analysis advanced by learned counsel for the respondent.

[35] Before preceding on that path the court must address the matter of a parcel of land situate at Lily Valley Housing Scheme, in the parish of St. George. The point here is that this parcel of land was not part of the respondent's case and the rule is that a party cannot seek to expand its case by way of submissions becomes operative.

[36] The following constitutes the analysis of section 25 (a) to (f) of the Act together with the evidence identified which is adopted by the court:

- a) **The income earning capacity property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future.** (Here the husband's income as an accountant is not fixed.

However he makes sufficient monies to meet his expenses. The wife has fixed social security income of \$816.00 per fortnight and will be receiving a pension at the age of 60 years old.)

- b) **The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.**
The husband meets all the financial needs, obligation and responsibilities of the home and his wife. The wife has additional financial needs which are being met by the husband's contribution of \$500.00 monthly.
- c) **The standard of living enjoyed by the family before the breakdown of the marriage.**

The standard of living has not changed between the parties.

- d) **The age of each party to the marriage and the duration of the marriage.**
Husband 63 years old and wife 58 years old
- e) **Physical or mental disability of either of the parties to the marriage.**
The wife suffers from renal failure following a stroke on 2007.
- f) **Contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home and caring for the family....**
The husband pays all utilities and provides all necessities for the home. The wife cooks.

[37] There is hardly any doubt concerning the applicant's illness and the attendant costs of the medical treatment. Significantly, the dialysis treatment is three times per week at a cost of \$1,020.00 per treatment for the rest of the applicant's life unless she receives a kidney transplant which naturally involves further costs.

[38] But how are the immediate medical costs and living expenses subsumed under reasonable maintenance, to be met? This comes down to the respondent's income. Learned counsel for the respondent contends that the respondent's income cannot meet the additional money sought by the applicant given what he does for the family and the matrimonial home. On the other hand, learned counsel for the applicant advances the proposition that by cutting out certain expenses by, for example, selling the motor vehicle is the way that the money can be realized.

[39] In the view of the court, selling the respondent's vehicle will do more harm than good for the following reasons: it is very unlikely that the vehicle will fetch \$10,000.00 on the open market as this value is the insured value; if this is done the applicant may suffer great inconveniences of having to use public transportation in order to attend her medical appointments at the hospital or the doctor or dentist's office; the absence of the vehicle also raises the prospect of dealing with

emergencies on both sides, especially in the case of the applicant, the savings on gasoline and insurance are minimal and do not outweigh the use of a private vehicle in this context.

[40] Learned counsel for the applicant points the court to the case of **Clarke v Clarke**, but this case does not support her case as this case goes the other way.

[41] Other expenditures identified for discontinuance include: \$167.00 to Courts Ltd, \$628.77 for policies and gazettes, \$320.00 for gasoline and \$108.50 for insurance for the vehicle.

[42] The Court has addressed the latter two items, but with regard to the insurance policies, this cannot be just or reasonable, as for example, the importance of insurance in many facets of life plus the implication of the respondent's two children being the named beneficiaries under his policies. In any event, to surrender may result in a total loss of premiums paid, depending on the terms of the policies.

[43] With respect to the gazette this again is minimal. The court takes judicial notice of the fact that this publication is central to the Government's activity including: all government notices, the publication of the laws, appointments in the public service or in the executive notice ordered to be published by the High Court and decisions of the High Court.

[44] Against the foregoing must be annexed the respondent's profession of Accountant and by implication his desire to be informed of matters relating to the Government's activity as a citizen of the Commonwealth of Dominica. The court, therefore, cannot agree on this discontinuance.

[45] Regarding the hire purchase payment of \$167.00 per month, the respondent testified that he has no intention of paying same for his friend, and if this is not done the company will take appropriate action regarding the items.

[46] It is common ground that the legislation seeks to ensure that either party's position is not altered positively at the expense of the other.

[47] In this context of an application based on a failure to provide reasonable maintenance, it has been suggested that the court should ask the following hypothetical question:

"...assuming that a ground for applying for an order existed, what order should we make? If the provision in fact being made by the Respondent is lower__ or at least significantly lower __ than this, then he must be failing to provide reasonable

maintenance. The word "failure" implies culpability only insofar as it suggests that the Respondent has the means to make the provision, and as his resources must be taken into account in deciding what sum to order, the Court must *ex hypothesi* be satisfied that he has the capacity to make the payments."³

[48] The answer must lie in or be constituted by the following: the court accepts the respondent's income and expenditures, the respondent provides substantially for the family, including the applicant's adult son, except for the hire purchase issue there is no evidence of questionable or "extravagant" expenditure by the respondent, in any event the expenditure of \$167.00 on the hire purchase items, which the respondent has addressed and the court accepts.

Conclusion

[49] It is the determination of the court that the applicant is entitled to reasonable maintenance from the respondent but the respondent is unable to so provide further maintenance based on his personal income and that of the foreseeable future given his age of 63 and his present earnings, and as such the application is denied.

Issue No. 2

Who is liable in costs?

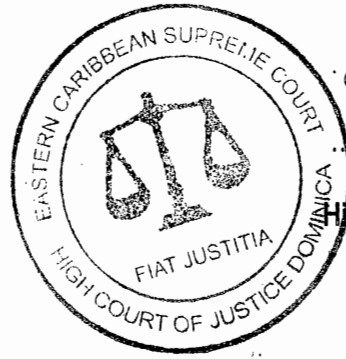
[50] In the circumstances of this case there will be no order as to costs.

ORDER

[51] IT IS HEREBY ORDERED as follows:

- 1) The applicant is entitled to reasonable maintenance from the respondent, but the respondent is unable to so provide further maintenance based on his present income and that of the foreseeable future given his age of 63 and present earnings and as such the application is denied.
- 2) There is no order as to costs.

³ See: Bromley's Family Law (6th ed.) at page 516



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Errol L. Thomas
High Court Judge (Ag.)