

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHMT 2011/0117

BETWEEN:

MICHELE D. ANGMOR

Petitioner

and

SAMUEL T. ANGMOR

Respondent

Appearances:

Mr. John fuller for the Petitioner

Mr. Cosbert Cumberbatch for the Respondent

2013: July 26
August 29

JUDGMENT

- [1] **Remy J:** The Petitioner Michele Angmor and the Respondent Samuel Angmor are husband and wife. They were married to each other on the 20th day of May 2005 . There are three (3) children of the marriage namely :(a) Ade Sholah Irene Asolita Selah Williams, born on the 5th October 2001, (b)Emmanuel Nehemiah Tetley Williams-Angmor, born on the 18th May 2006; and (c) Sophia Naki Williams – Angmor, born on the 9th July 2009.
- [2] On the 21st day of October 2011 , Mrs. Angmor filed a Petition seeking dissolution of her marriage on the ground that the marriage has broken down by virtue of the fact that the spouses have lived separate and apart since August 2010. The Petition for divorce has not yet been heard, and as a consequence, no decree of divorce has been pronounced in her favour.

- [3] On 21 March 2013, Mrs. Angmor filed an application for an order for Ancillary Relief pursuant to Section 13 of the Divorce Act.
- [4] In her Affidavit in Support of Application, filed on March 21st, 2013, Mrs. Angmor deposed that the Respondent and herself met and married in New York on May 20th, 2005. When they met she had a one year old child Ade Sholah. The Respondent took Ade Sholah as his own and has always treated her as if she is his own child. They later had 2 biological children, Sophia and Emmanuel. During the marriage the Respondent was the primary breadwinner and took care of all the household expenses as well as giving her an allowance of \$3000-\$4000 a month. In or about August 2010 the Respondent was violent towards her and as a result the marriage broke down and she and her children moved to her mother's house in Fitches Creek. Since the breakdown of the marriage the Respondent has stopped paying the school fees and activity fees for the eldest child or giving her any allowance. He has been giving her \$1000.00 a week which is "not nearly sufficient". He has refused to increase the amount.
- [5] Mrs. Angmor further deposed that the Respondent has met with herself and her lawyer but has refused to assist her and will continue to do so without the intervention of the court. She denies that she receives support from Ade Sholah's biological father, as alleged by the Respondent. She states that she is a primary school teacher and earns a monthly salary of \$3,067.54. Her monthly expenses are \$14,236.00. Without the support of the Respondent she will suffer severe financial hardship. She states that the Respondent is in a far better financial position than she is. She is asking the Court for a monthly allowance of \$3000.00 as well as \$3,500 per month in respect of each of the children.
- [6] On May 10th, 2013 Mr. Angmor filed an Affidavit in Response in which he stated the following:- Before his wife and himself started dating, she verbally confirmed that she made financial support arrangements with the father of Ade Sholah. She has always kept the extent of the support a secret. He never adopted the child and never authorized the use of his name as her surname. He never gave Mrs. Angmor an allowance of \$3000.00 per month. He would give her \$750 - \$1000 a week to run the house. He earns a salary of \$5000 per month. He is not in a position to pay her a monthly allowance of \$3000.00 and \$3500.00 for each child. The two older children go to Island Academy with fees of \$4,800 per term per child. The younger child has school fees of \$ 1,900.00 per term.

- [7] Mr. Angmor states that Mrs. Angmor lives in a six bedroom house where she rents rooms to foreign students to earn additional income. She also sells books. Her income is far more than she states in her Affidavit. He denies ever being violent towards Mrs. Angmor. He states that, on the contrary, she has been violent towards him and he has had to call the police and seek medical treatment as a result. According to Mr. Angmor, Mrs. Angmor's expenses are exaggerated; the sums claimed are unrealistic and she does not pay school fees. He states that his monthly expenses are \$5,717. He is offering to pay \$500 per month for the children and is also offering to pay half of the school fees and half of all medical expenses.
- [8] On May 15th 2013, Mrs. Angmor filed an Affidavit in Reply in which she re-iterated that the Respondent did give her a monthly allowance of approximately \$3000. He withheld money when they were not "on good terms". She states that she needs money to maintain the standard to which they are accustomed. The children eat a lot and have medical expenses. The Respondent chose Island Academy for the children and committed to pay the fees. She was making \$5600 U.S. when she met the Respondent, but he maintained that it was his duty to support the family.
- [9] Mrs. Angmor states that the house she lives in is not her house. Her uncle allows her to live there in exchange for paying the insurance. She has written books but makes no money from this venture. She states that she is not in a financial position to pay half of anything. She has suffered financial hardship due to the marriage. She is not in a position to return to the USA as a single parent. She states that the children should not be disadvantaged because of a decision she has made.
- [10] The Respondent filed an Affidavit in Response on July 11th, 2013. In it he re-iterates that he is not in a position to afford what the Applicant is asking for. He is unable to pay the school fees at Island Academy and suggests that the children go to a different school. He maintains that the Applicant has a significant income and is the beneficial owner of the house in which she and her children live. He wishes for her to stop minimizing her income and pay her fair share of the expenses.
- [11] In Mr. Angmor's Affidavit of Means filed on July 23, 2013 pursuant to an Order of the Court made on the 18th day of July 2013, he averred that he has three bank accounts at the following banks:-

- (a) Caribbean Union Bank where he has 2 accounts. The balance as at 23rd July, 2013 was \$2,004.63 and \$ 3,070.21.
 - (b) The Bank of Nova Scotia. The balance on 23rd July, 2013: was \$79.64
 - (c) His account at Eastern Caribbean Amalgamated Bank has been closed for some years.
- [12] Mr. Angmor states that his wife is a beneficiary of an estate worth more than a million dollars; the estate comprises a house at Fitches Creek and land at Bendals and Grays Farm. He owns two vehicles valued at \$17,000 in total. He owns no real property. He owes Inland Revenue severance of \$30,000 to workers; \$4,002.76 to Caribbean Water Treatment and he owes \$14,054.11 on his credit card.
- [13] Mrs. Angmor filed a Final Affidavit in Reply on July 23rd, 2013. In it she deposed as follows: She is currently completing graduate work at Columbia University in New York; doing her thesis abroad. Her salary as a school teacher at Sunnyside School is \$ 3,100.00 per month. She reaffirms the contents of her two previous affidavits. She is doing a pro bono project for the school system as well as updating her workbooks. The cost to produce them is the same as the remuneration received. This totally preoccupies her time. The Respondent has provided no assistance in caring for the children and has spent little or no time with them, therefore her efforts are being derailed. She desperately needs a domestic helper and a carer for the children. The children are scheduled to go to camp for 6 weeks at a cost of \$3550. She is facing a catastrophe and desperately needs help.
- [14] Mrs. Angmor states that the interim order of \$1725 does not meet even half of the family's expenses and is less than half of what the Respondent has been paying for the last three years. She states that she has provided her bank records to show the level of support received from the Respondent in the past. She adds that Mr. Angmor can afford to pay \$4000 a month which is "the minimum she would require to feed the children." She states that the family needs electricity, water among other things, as well as a domestic helper and a carer. The last two requirements will cost a minimum of \$1000 a week and are a year round requirement.
- [15] Mrs. Angmor adds that the Respondent has paid nearly \$10,000 for a ticket to Africa. She has provided her bank statements as well as invoices for the publication of her books as well as the children's camp. She made a profit of approximately \$4000 from her last books. She is not the

beneficiary of her mother's estate. Her mother died intestate but left verbal instructions that the house should go to her daughter Ade Shola upon her majority. The rent for the part rental of the house is collected by her uncle and used to pay off her mother's debts. According to Mrs. Angmor, the Respondent's refusal to maintain her and the children is based on his desire to punish her. She has been economically disadvantaged as a result of the breakdown of the marriage as she has sacrificed her ability to earn more in order to care for the children. She accepts that she has a joint obligation to maintain the children but states that the Respondent has far more ability to earn than she does.

[16] In perusing the evidence and the submissions of Counsel for the parties, I make the following findings of fact:-

- (a) The Respondent pays the school fees for the children of the marriage; he also pays for their medical expenses.
- (b) The Respondent has been responsible for payment of the household expenses with almost no contribution by the Petitioner.
- (c) By virtue of the intestate succession of her deceased mother Stephanie Morris, the Petitioner is legally entitled to a one-third share in and to the following properties:- a large dwelling house at Fitches Creek situate on a parcel of land comprising a half acre of land; a parcel of land situate at Bendals; and a small parcel of land situate at Gray's Farm.
- (d) The Respondent owns no real property.
- (e) The airline ticket to Africa in the sum of \$10,000.00 purchased by Mr. Angmor was for the purpose of travelling to Africa for his father's funeral. The sum was donated by his close friends.

THE RELEVANT LEGAL PROVISIONS

[17] Section 10 (1) (b) of the Divorce Act (the Act) states that in a divorce proceeding, it is the duty of the court,

- (b) " to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, and , if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made;"

[18] In the absence of a Deed of Family Arrangement executed by the parties, the Court must therefore make an Order for the maintenance of the said children. Accordingly, this Judgment will focus on the issue of the support for the children of the marriage.

[19] Section 13 (2) of the Divorce Act provides:-

“ 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.”

[20] Section 13(3) states:-

“Where an application is made under subsection (2), the court may, on application by either or both spouses, make an interim order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and period 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,
- pending determination of the application under subsection (2).”

[21] Section 13 (5) states:-

“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.

- [22] On the basis of Sections 13 (2) and (3) above, the Court made an Interim Order on the 16th May 2013 ; that Order stated , inter alia, that the Respondent Mr. Angmor make to the Petitioner an interim payment of \$1725.00 per month; further that he continue to pay the medical and educational expenses for the three (3) children of the marriage. The Court granted leave to the parties to file further Affidavits and the matter was adjourned to a date to be fixed by the Court office. The matter was set down for hearing on the 26th July 2013.
- [23] On the 26th July 2013, the parties were cross-examined on their Affidavits. At the close of the cross-examination, the Court ordered Counsel for the parties to file written submissions on or before the 9th August 2013.

SUBMISSIONS OF COUNSEL

- [24] In his Submissions filed on the 12th August 2013, Learned Counsel for the Petitioner Michelle Angmor, Mr. John Fuller contends as follows:-
- (a) The child Sholah has become a child of the marriage by virtue of Sections 2 (2) (a) and (b) of the Divorce Act 1997 (the Divorce Act), and for the purposes of this application, the Respondent Samuel Angmor is her father.
 - (b) The conduct of the parties is irrelevant to this application.
 - (c) The provisions of Section 13 of the Divorce Act apply to the instant application and subsections (5), (7) and (8) direct the Court as to what shall be considered in making an order for support for the spouse and the children.
 - (d) It is recognized that both parties have a joint financial obligation to maintain the children and that the Court must apportion the relative contributions by the parties to the support of the children based on their relative abilities to contribute to that obligation.
- [25] It is the submission of Learned Counsel Mr. Fuller that Mrs. Angmor has no domestic assistance and that the burden placed on her is causing her severe mental stress and anxiety. He contends that the Interim Order which states inter alia that Mr. Angmor pay \$1,750.00 per month for Mrs. Angmor and the children is “clearly insufficient to allow Michele (Mrs. Angmor) and the children to survive.” Learned Counsel asks the Court to note that Mr. Angmor has been paying all of the children’s school fees. He adds that Mr. Angmor “ is well able to afford a minimum of \$4,000.00 per month for the maintenance of the Applicant (Mrs. Angmor) and their children.”

- [26] Learned Counsel for the Respondent Mr. Angmor, Mr. Cosbert Cumberbatch, submits that the level of support being sought by Mrs. Angmor is "significant."
- [27] Mr. Cumberbatch refers the Court to Section 13 (5) (a) of the Divorce Act, which stipulates that "in the making of an order requiring one spouse to secure payments to the other the duration of time the parties cohabited is a factor to be considered." He contends that in the instant case, the parties got married in 2005, separated in 2006, got back together in 2007 and separated again in 2010. They have not resumed cohabitation. Mr. Cumberbatch contends that, since the parties have lived together in all for only four (4) years, "this is clearly a marriage of short duration." It is the further contention of Mr. Cumberbatch that not only is this a short marriage, but that Mrs. Angmor has failed to show that she has contributed anything to the marriage economically or that she suffered any economic loss. Further, that she has not contributed to any economic asset owned by the parties, nor has she shown any "loss of income or opportunity" as she deposes.
- [28] Mr. Cumberbatch submits that: - "The Respondent offers to pay half of the present school fees with the commitment that the children are transferred to another more affordable school as soon as that is possible and this option should be explored immediately. The Applicant should be ordered to contribute a reasonable portion of the school fees and the medical bills in the meantime."
- [29] I have perused the Affidavits of the parties and considered the submissions of Learned Counsel.
- [30] According to Mrs. Angmor, her monthly salary / income is \$3,067.54, while her monthly expenses along with the children's monthly expenses total \$14,236.00 made up as follows:-

EXPENSES	\$ per month
Groceries	3,200.00
Health Insurance	330.00 approx
Life Insurance	250.00 approx
Home Insurance	1,000.00 approx
Electricity	600.00
Water	300.00
Telephone Landline (local)	115.00
Overseas telephone	100.00
Exterminator	100.00
Lawn Maintenance	160.00
Internet Bill	120.00

Mobile	130.00
Cooking gas	120.00
Entertainment	200.00
Drinking Water	105.00
Vitamins for children	150.00
Lotions for children	140.00
Transportation (school)	500.00
Maintenance of vehicle	1,000.00
Student Loan	1,000.00
Clothing	700.00
Ameri-Care (Health Insurance)	330.00 USD
School Fees & related expenses	<u>3,025.00</u>
TOTAL	\$14,236.00

- [31] Mrs. Angmor has not broken down the expenses into those for herself and those for the children. The Court notes however, that the expenses itemized include expenses for :- Home Insurance , student loan, maintenance of vehicle , entertainment, mobile, and Ameri-Care (health insurance). These are expenses related to Mrs. Angmor and not the children. The Court also notes that while the last item (school fees and related expenses) are included on the list of monthly expenses, that it is the Respondent who has always paid for the children's school fees and not Mrs. Angmor.
- [32] In her Affidavit in Support of the Application for Ancillary Relief, Mrs. Angmor states that she is asking the Court to order the Respondent to pay her support in the amount of \$3,000.00 per month; she says that this is the sum which the Respondent "consistently gave her throughout the marriage and to which she has become accustomed." She deposes in her various Affidavits that the Respondent used to give her between \$3000.00 and \$4000.00 per month for her personal allowance. Mrs. Angmor also asks the Court to order the Respondent to pay \$3500.00 per month in respect of each of the three children of the marriage.
- [33] Mrs. Angmor is therefore asking the Court to order the Respondent to pay to her the sum of \$10,500.00 per month for the support of the children of the family. This sum is not inclusive of the educational and medical expenses for the said children which Mrs. Angmor wishes Mr. Angmor to pay for. Mr. Angmor pays school fees for the three children as follows:- the two older children attend the Island Academy; they each pay school fees of \$4,800.00 per term; the youngest child pays \$1,900.00 per term. One of the children who pays \$4,800.00 per term obtains

a deduction of 50% of the fees. Mrs. Angmor intends to send the youngest child to the Island Academy to join her other siblings. In his Submissions, Learned Counsel Mr. Cumberbatch contends “ even with the discount of the 50% for the one child, the total school fees for the two older children stand at \$9,100.00 per term. This sum would increase to about \$11,500.00 per term if and when the third child joins the other two at the school in question.”

[34] Mr. Angmor states that he is in no position to pay the above sums of money as this would cripple him financially. He denies that he gave Mrs. Angmor \$3,000.00 for herself during the marriage. His evidence is that he paid Mrs. Angmor between \$750.00 and \$1,000.00 a week to run the house, depending on how his income fluctuated. He further deposes that his income is not fixed but depends on how his business (the water treatment business) does. He states that the business is going through difficult times and he has had to lay off workers. He owes \$30,000.00 as severance pay to several workers and he is also indebted to the Inland Revenue Department.

[35] Section 13(8) of the Divorce Act states :-

“An order made under this section that provides for the support of a child of the marriage should:-

- (a) Recognize that the spouses have a joint financial obligation to maintain the child; and
- (b) Apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

[36] The law imposes a financial obligation to maintain the children of the family on both parents, in accordance with their needs. Although Mrs. Angmor is gainfully employed, she deposes in her Affidavit dated 15th May 2013, that “ she is not in a financial position to pay half of anything.” The Court is left to infer from this statement , that Mrs. Angmor is of the view that the full financial responsibility and obligation for providing for the children of the family should fall squarely on the shoulders of Mr. Angmor, with no contribution from herself.

[37] Mrs. Angmor contends that she is not a beneficiary of any real property; she states that the house at Fitches Creek was promised to her daughter Ade Sholah by her deceased mother, and that she has no interest in the said property. The Court has made a finding that , notwithstanding what Mrs. Angmor contends, that she is legally entitled to a one-third share of

this property, since her mother died intestate and she has two other siblings. Mrs. Angmor acknowledges that the house at Fitches Creek, in which she resides, has rented apartments, but she denies that she receives any of the rental income. She states that her uncle (another beneficiary of her mother's estate) collects the rent and utilizes the said rent to pay off her mother's debts. Significantly, however, Mrs. Angmor has not produced any evidence of either the fact or the quantum of the alleged debts of her mother; nor has she produced any evidence that she is not a recipient of the rental or any part thereof.

[38] Mrs. Angmor seeks monthly maintenance of \$3,500.00 for each of the three children of the family. This is exclusive of the educational and medical expenses. The Court is of the view that this amount of \$3,500.00 per child is excessive and is unreasonable. Mrs. Angmor has not provided any evidence to the Court to justify such an amount. Mrs. Angmor has outlined her monthly expenses. She deposes that she earns \$3,100.00 per month, but that her monthly expenses are \$14,000.00. I digress at this point to state that I find it quite perplexing that a person who earns \$3,100.00 per month can have monthly expenses of \$14,000.00. There is a total disconnect here.

[39] The Court must make an Order which is fair, just and equitable to the parties. It must take into consideration the means and circumstances of the Petitioner and the Respondent and also the condition, means, needs and other circumstances of the children of the family. In the instant case, the children are aged 11, 7, and 4 years of age. The Court is of the view that, given the ages of the children as well as the evidence before the Court, the monthly sum of \$1,600.00 is adequate for the maintenance of each of the children of the family. The Court must bear in mind that both parties have a joint financial obligation to maintain the children and that the Court must apportion the relative contributions by the parties according to their relative abilities. The Court apportions Mrs. Angmor's contribution to be a quarter share and that of Mr. Angmor to be a three-quarter share. This means that the Respondent is to pay to Mrs. Angmor the sum of \$1,200.00 per month towards the maintenance of each of the children. Mrs. Angmor's contribution would therefore be \$400.00 per month per child.

[40] The Court will now address the educational expenses of the children. As stated above, Mr. Angmor is presently responsible for payment of school fees for all the children. The two older children presently attend the Island Academy. Mrs. Angmor herself is a primary school teacher at

the Sunnyside Tutorial School, where she teaches Information Technology. The evidence before the Court discloses that the school fees at Island Academy are much greater than those at Sunnyside Tutorial School; in fact, Mrs. Angmor acknowledged during cross-examination that the school fees at Island Academy are the highest or among the highest in Antigua and Barbuda.

[41] Learned Counsel for the Petitioner, Mr. Fuller, submits that it is of “paramount importance” for the children to remain at Island Academy and that they remain together. With the greatest respect, the Court is not persuaded that it is of “paramount importance” for the children to remain at Island Academy. No evidence has been produced or presented to the Court that the children will be advantaged academically or otherwise by attending that school. Mrs. Angmor says that the children “are American children”; presumably, that accounts for her insistence that the children should attend school there.

[42] Learned Counsel Mr. Fuller also submits that: - “Bursaries are available to all three children and it is envisaged that the total per term of school fees for the three children after deduction of the bursaries will be approximately \$3,000.00. This will happen only if Samuel applies to the school for the bursaries and if the balance owing on the last school term is paid by Samuel.”

[43] Apart from the fact that the fees at Sunnyside School seem to be considerably less than those at the Island Academy, in the view of the Court, there are several factors which would lead to a conclusion that it would be in the interest of the parties that the children attend that school. In the first place, Mrs. Angmor works and teaches at Sunnyside; she will therefore have greater access to the children and will have the advantage of being able to keep an eye on them, if and when necessary. In her items of expenditure, Mrs. Angmor includes school transportation for the children; when questioned about that item during cross-examination, Mrs. Angmor stated that this sum was for paying someone to transport the children to school. If the children attended Sunnyside, this would be one less expense, as the children would travel to and from school with their mother, since she owns and drives a vehicle. The Court, however, cannot dictate to the parties where their children should attend school.

[44] The Court is of the view that, in the circumstances of the instant case, Mr. Angmor and Mrs. Angmor should contribute equally to the school fees and related educational expenses of the children of the family.

[45] With respect to the medical expenses of the children, the Court is of the view that a prudent course of action would be for a medical policy of insurance to be taken out for each of the said children. Given the ages of the children, the monthly premiums would be relatively affordable. The Court is of the further view that Mr. Angmor should be responsible for paying the insurance premiums and that the medical expenses not covered by the insurance policy should be paid by Mr. Angmor and Mrs. Angmor equally. Further, that Mr. Angmor and Mrs. Angmor should be responsible for paying the medical expenses incurred pending the obtaining of the medical policy.

[46] In light of all the circumstances of the instant application, my Order is as follows:-

IT IS HEREBY ORDERED AS FOLLOWS:-

1. The Respondent shall pay monthly maintenance to the Petitioner in the sum of \$ 1200.00 for each of the children of the marriage, namely (a) Ade Sholah Irene Asolita Selah Williams, (b) Emmanuel Nehemiah Tettey Williams-Angmor, (c) Sophia Naki Williams-Angmor until each child attains the age of 18 years, or completes tertiary education, whichever is the later, or until further Order of the Court.
2. The Respondent shall take out a medical policy of insurance for the said children and shall be responsible for payment of the premiums. The Petitioner and the Respondent shall each pay one half of the medical expenses not covered by the said insurance policy. Additionally, the Petitioner and the Respondent shall each pay one half of the medical expenses incurred pending the obtaining of the said medical policy.
3. The Respondent shall pay one half of the school fees and educational expenses of the said children.
4. In the exercise of my discretion, I order that each party bear his or her own costs.
5. Liberty to apply.

**Jennifer A. Remy
High Court Judge**