

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(DIVORCE)**

CLAIM NO: ANUHMT 2009/0110

BETWEEN:

IRA LOOBY

Petitioner

and

SONIA TAVERNIER-LOOBY

Respondent

Appearances:

Mrs. Shahida Ali-Schneider for the Petitioner
Mr. Peyton Knight for the Respondent

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2009: November 17
2010: April 16
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JUDGMENT

- [1] **MICHEL, J.:** The Petitioner, Ira Looby, and the Respondent, Sonia Tavernier-Looby, were married to each other on 5th August 2000 and are the parents of two children – Raphael Nick Looby, born on 26th May 2001, and Rahshon Solone Looby, born on 15th July 2002.

- [2] On 11th August 2009 the Petitioner filed a petition for divorce and an application for ancillary relief concerning the custody and maintenance of the children of the marriage. The application for ancillary relief was accompanied by an affidavit in support setting out the income and expenses of the Petitioner.
- [3] On 10th September 2009 the Respondent filed an affidavit in reply to the Petitioner's application and affidavit. On 23rd September the Petitioner filed an affidavit in response thereto, while on 15th October the Respondent filed an affidavit in reply to the affidavit of 23rd September.
- [4] The matter came up in Chambers on 22nd October 2009 whereupon, by agreement of Counsel for the parties, the Court established the following:
1. That the Respondent is not seeking spousal support but seeks maintenance for the children, including for their educational, medical and accommodation requirements.
 2. That the Petitioner indicates that he has been providing, is providing and will continue until order of the Court to provide the sum of \$800 monthly to the Respondent towards the maintenance of the children.
 3. That the parties are to have a discussion between themselves and their Counsel with a view to arriving at an amicable settlement of the matter.
 4. That the hearing of the matter is adjourned to 12th November 2009 at which date, if there is no settlement of the matter, the parties will be cross examined on their affidavits.
- [5] On 12th November 2009, there being no settlement of the matter, each of the parties was cross examined by opposing Counsel on the two affidavits filed by each of them.

- [6] The evidence of the Petitioner, based on his two affidavits and his testimony in Court, is that he earns a gross monthly income of \$5,459 from his employment with West Indies Oil Company and earns a further \$600 monthly from the rental of a dwelling house at Paynters owned by him. That his average monthly expenses (including a maintenance payment of \$800, school fees of \$533 and medical insurance of \$456.61 for the two children of the marriage) total \$5,816.94. That the Respondent earns approximately \$3,153 monthly from her employment as a nurse and earns additional income from providing private nursing care and nursing sessions when called in by the hospital.
- [7] The Petitioner's application is for joint custody of the children, with the Respondent being given primary care, control and custody of them and with him being given liberal access to them and with monthly periodic payments of \$800 being made by him to the Respondent for the maintenance of the children, together with the payment by him of \$1,000 per term towards the cost of the children's primary education and thereafter half of the cost of their secondary and tertiary school fees, until the children shall attain the age of 18 years or complete full time education, and together also with his continued provision of medical insurance coverage for the benefit of the children until they attain the age of 18 years. The Petitioner had also alternatively proposed that he would give to the Respondent a licence to live rent free in his house at Paynters until both children attain the age of 18 years and, in addition, he would pay the monthly sum of \$500 for the maintenance of the children, the sum of \$1,600 per term for their primary education and half of the cost of their secondary and tertiary education.
- [8] The evidence of the Respondent, based on her two affidavits and her testimony in Court, is that her net monthly income as a nurse with the Ministry of Health is \$2,898.80, while her average monthly expenses total \$3,607.30, including \$1,832.30 for servicing a car loan and purchasing fuel for the car. The Respondent raised questions about the validity or veracity of some of the alleged expenses of the Petitioner and rejected his proposals for maintenance and support of the children of the marriage. The Respondent asked that the Petitioner pays to her the sum of \$1,200 monthly for the maintenance of the children and half of the tuition for the children throughout their schooling. She also asked that the

Petitioner transfers the house at Paynters to her outright or that she finds alternative accommodation and she and the Petitioner split the rent in half and that he contributes to the utility bills. Given current costs, she proposed that the Petitioner contributes \$800 for rent and \$200 for utilities, totalling \$1,000. The Respondent also proposed that the children's medical expenses be shared equally between the Petitioner and herself.

- [9] Under cross examination, the Respondent stated that she agrees to and is prepared to pay half of all expenses in relation to the children of the marriage.
- [10] Starting from this position of the Respondent, of her agreement and preparedness to pay half of all expenses in relation to the children of the marriage, the Court can arrive at an appropriate award to be made in this case.
- [11] The Respondent alleged that her expenses for food and clothing were \$1,200 and \$300 respectively and that two thirds of these expenses were referable to the children, so that the Respondent's estimate for food and clothing for the children of the marriage is \$1,000. Since the Respondent is agreeable and prepared to meet 50% of these costs, the Petitioner can therefore be ordered to pay the other 50%, amounting to \$500 per month, which is consistent with an offer made by him.
- [12] Both parties have expressed a willingness to meet 50% of the school fees to be paid for the children and each will accordingly be ordered to do so.
- [13] The Petitioner has offered to pay the medical expenses for the children until their 18th birthdays by means of a policy of insurance he holds, he will be ordered to meet these costs, only that he will have to provide them up front and seek reimbursement for himself from the insurance company.
- [14] The Petitioner has offered to give a licence to the Respondent to occupy a dwelling house at Paynters (owned by him) as a residence for herself and the children of the marriage, he will be ordered to give this license in writing, together with an undertaking to keep the

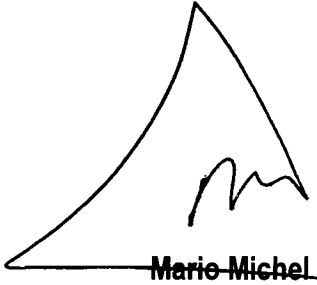
house in tenantable repair. The Court is not partial to the Respondent's desire for a clean break, which language is referable to orders for spousal maintenance and not to orders for maintenance and support of children. The Court does not wish parents to have a clean or any break from their minor children, whose care and welfare must always remain in the forefront of their parents' lives. If the Respondent maintains her opposition to the Petitioner's offer of a licence on the house at Paynters, then the Petitioner will pay to her the proceeds derived from the rental of the house as a contribution towards the accommodation costs of the children of the marriage.

[15] The Court accordingly makes the following orders:

1. The Petitioner and the Respondent shall have joint legal custody of the two children of the marriage, with the Respondent having physical custody, care and control of the children until their majority and with liberal access to the Respondent.
2. The Petitioner shall pay to the Respondent the sum of \$500 per month towards the maintenance and support of the two children of the marriage until the children shall have attained the age of 18 years or completed primary and secondary education.
3. The Petitioner and the Respondent shall each pay 50% of the school fees or other tuition fees for each of the children of the marriage throughout his or her attendance at primary and secondary school.
4. The Petitioner shall pay all medical expenses in respect of the two children of the marriage until the children shall attain the age of 18 years, for which expenses the Petitioner shall seek reimbursement from the insurance company with which he maintains a policy of medical insurance covering the aforesaid children.
5. The Petitioner shall grant to the Respondent a licence in writing permitting her to occupy, for the benefit of herself and the children of the marriage, a two-bedroom

dwelling house at Paynters in the Parish of St. Peter's owned by the Petitioner from the 1st day of June 2010 to the 15th day of July 2020 or from or to such other date as may be agreed between the Petitioner and the Respondent, which dwelling house shall be maintained by the Petitioner in a state of tenantable repair during the currency of the licence.

6. Each party shall bear his or her own costs.



Mario Michel
High Court Judge