



SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996

Suit No. D57 of 1994

BETWEEN:

MEREDITH VICTOR

Petitioner

v.

CHRISTOPHER VICTOR

Respondent

Mr. M. Gordon for Petitioner
Respondent served. Did not appear.
Taken Ex Parte

1996: January 24;
February 9.

J U D G M E N T

MATTHEW J. (In Chambers).

The Petitioner is 36 years old and the Respondent is one year older. They were married at the Seventh Day Adventist Church on July 12, 1981. There are two children of the family namely:

Khrishna born on January 21, 1983; and

Krystal born on October 1, 1987.

On April 12, 1995 the Petitioner obtained a decree nisi for divorce on the ground that the marriage had broken down irretrievably owing to the fact that the Respondent had committed adultery with Veronica Denis and the Petitioner found it intolerable to live with him. At the hearing the Respondent was not present and was not represented by Counsel.

On November 8, 1995 the Petitioner filed a notice of application for ancillary relief seeking the following:

- (a) custody of the children with access to the Respondent;
- (b) maintenance;
- (c) property order; and

(d) costs.

On the same day she filed an affidavit of means which showed how she spent \$1,600 out of her monthly salary as a teacher amounting to \$1,717.00 after deduction of income tax.

The Respondent was served with the notice on November 23, 1995 but he did not appear at the hearing. Only the Petitioner gave evidence at the hearing. In answer to the Court the Petitioner stated that the Respondent is a welder, upholster and joiner who has no fixed income.

I shall proceed to deal with the Petitioner's applications making reference to the notes of evidence as appropriate.

CUSTODY AND ACCESS

The children are girls aged 13 and 8. They live with their mother who takes care of them. They go to school and their mother is also a teacher. I grant custody of the children to the Petitioner with reasonable access to the Respondent.

The Petitioner stated in respect of access that it should be restricted to the daytime since the Respondent has no stable relationship and she would not like the Respondent to have the children overnight as she feared he could leave them on their own. I agree that this should be so for the time being and that access should be restricted to the daytime.

MAINTENANCE

The Petitioner asked that an order should be made for the Respondent to pay her for the maintenance of the children \$50.00 per week per child because that is what the law says. Neither she nor her Counsel pointed out that particular law to me. In answer to me the Petitioner stated that when she and her husband lived together he never gave her money on a regular basis and would

sometimes give \$80.00 a fortnight and sometimes \$100.00 a fortnight. That would mean that he gave between \$160.00 and \$200.00 a month approximately for the whole family.

It appears to me that in these circumstances it would be inflicting a punishment to order him to pay for the children only \$400.00 a month.

In making financial provisions for a party to the marriage or for the children of the family the Court has a duty to have regard to the matters contained in Section 25 of the Divorce Act. One such matter is 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. Another is the standard of living enjoyed by the family before the breakdown of the marriage.

All the evidence before the Court is that the Respondent is a tradesman who has no fixed income.

My order is that the Respondent pay to the Petitioner the sum of \$80.00 per month in respect of each of the children until that child attains the required age.

PROPERTY

There is one bit of property consisting of bare land in which each of the Parties has a one-third interest. The Petitioner tendered a deed of sale in respect of that portion of land measuring 5,405 square feet and owned by the following:

- (a) Anderson Herman;
- (b) Christopher Victor; and
- (c) Meredith Victor.

The Petitioner stated that it was her uncle, Anderson Herman, who gave the deposit to pay for the land but that all the further

instalments were met by her without any contribution from her husband.

She asked that his one-third interest be transferred to the children.

I believe the Petitioner's account of the transaction in respect of the purchase of the land and in view of the small amount of maintenance that the Respondent gives or is likely to give to the children I grant the application sought here.

My full order therefore is -

1. I grant custody of the two girl children of the family to the Petitioner with access to the Respondent limited to the daytime.
2. The Respondent is ordered to pay to the Petitioner for the maintenance of the two children \$80.00 per month in respect of each child commencing February 29, 1996 and thereafter at the end of each calendar month until each child attains the required age.
3. The Respondent is ordered to transfer his one-third interest in the property comprising 5,405 square feet situate at Monier in the Quarter of Gros Islet to the two children of the family within 30 days failing which the Registrar is directed to effect the said transfer.
4. The Respondent is to pay the Petitioner's costs in the sum of \$250.00.

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A.N.J. MATTHEW
Puisne Judge