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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. E178/2001

BETWEEN	MAXINE BARR-MEIJERINK	APPLICANT
AND	RONALD MEIJERINK	RESPONDENT

Ms. Carol Davis for Applicant.

Gordon Robinson instructed by Mrs. Priya A. Levers for the Respondent.

Heard on 24th and 25th July 2001, 15th and 27th February 2002, 1st and 21st March 2002 and the 29th August 2002.

Campbell J.

The applicant, Maxine Barr-Meijerink (hereinafter called the wife) filed an originating summons on the 24th April 2001, seeking an Order that:

1. The Respondent pays maintenance for the child of the family Tenille Hines, born 30th July, 1981.

2. That the Respondent pays to the Applicant for her life;

   (1) Such gross sum of money as this Honourable Court deems reasonable.

   (2) Alternatively such annual sum of money in advance or alternatively.

   (3) During their joint lives, such monthly sum for her maintenance and support.

3. That the Respondent be ordered to secure to the Applicant for her life;

   (1) Such gross sum of money as this Honourable Court deems reasonable.

   (2) Alternatively such annual sum of money in advance or alternatively.

   (3) During their joint lives, such monthly sum for her maintenance and support.

The originating summons was amended by adding a paragraph 2a as follows;

> "That the Respondent pays to the Applicant such periodical payments as may be just."

On the 19th June 2001, the respondent, Ronald Meijerink (hereinafter, called the husband) served notice, requiring the wife to attend for cross-examination. A similar notice was filed on behalf of the wife seeking to cross-examine the husband.

The wife's affidavit in support of the Originating Summons stated at paragraph

2. That the Respondent and I were lawfully married at the Sacred Heart Church Reading on the 1st March, 1998 by Marriage Officer, Reverend Gilmore.

3. The Respondent and I met and formed a relationship in 1994 and started living together in 1995. We continued living together until on or about July 2001, when the Respondent obtained an Order from this Court excluding me from the matrimonial home by falsely claiming that he required physical protection from me, his wife, and that I had inter alia, "pushed him downstairs and threatened him" and that he was "afraid for his life".

4. That I have one child from a previous marriage, Tennille Hines, born 30th July, 1981. Tenille lived with the Respondent and myself, and was considered by both of us as a child of our family. While we lived together the Respondent and I pooled our resources for the upliftment of our family, and Tennille was maintained from our pooled resources.

The husband's affidavit in response says at paragraph:

2(a) that the contents of Paragraph 2 are admitted in that the Applicant and I have been married for only three years, and separated for approximately one and a half years of that time.

© That soon after the marriage, I discovered that the Respondent was not the woman she portrayed herself to be, in that in 1998 she became abusive and violent. Further, she kept late hours, coming home in the early hours of the morning. In short, she was not a good wife.

He further alleges that his wife continuously lied to him and admitted to being unfaithful to him. That his wife had told him that she had miscarriage in December 1998, after she had led him to believe that she was pregnant in August 1998. That she had lied about expenditure, which were acquired on hire purchase and delivered to the home of Dwight Hall's mother. He testified that Dwight Hall is his wife's boyfriend. In cross-examination he denied that Tenille ever lived with them and that he ever treated her as a child of the family. He maintained throughout his cross-examination that Tenille was adequately sponsored by her father, who had given her a motorcar and a cell-phone. His evidence in this regard was supported by the evidence of his housekeeper, Esmie Lyons, who has been working with the husband since 1996, the year the parties started living together. Lyons said, "she would spend weekends and some holidays". She explained that Tenille did not stay all of her holidays with the parties. The evidence of the wife was that Tenille attended boarding school at Westwood High School in

Trelawny. The husband said that in the two years Tenille had been at Westwood, he had picked her up twice. He said that after they moved to the Lagoons, Tenille rarely came there, as she preferred to stay with her friends in Kingston. He admitted that himself, along with Tenille's biological father, paid the sum of US$7,800 for her attendance on an AFS programme to Switzerland. Piers Harvey is a neighbour of the Meijerinks, and testifies that "the only occupants of the house were the applicant and the Respondent. Patricia Pinto, another neighbour, who was not available for cross-examination, asserted that the parties were the only occupants of the house, she had not known that the wife had a daughter.

The husband brought a letter written by his wife, in which he says she admits infidelity and begs his forgiveness. He has also put in evidence, telephone bills, which he claims confirm that his wife called her boyfriend Dwight Hall "105 times in September 1999, 95 times in October 1999 and 80 times in November 1999". Delroy Nugent, who had known the parties for 10 ten years, testified that he knew Dwight Hall and had last seen him "about six weeks ago at a session in Falmouth, on the 18th April 2001". He said he was surprised to see the wife and Dwight Hall, because he was aware that she had indicated that she wanted to reconcile with her husband and that

Dwight Hall contributed to the break-up of the marriage. In cross-examination he said that the wife has never spoken to him about it.

Of the Consent Order that was made, the respondent says that he was not in Court and the proposal that he pay US$1,800 did not come from him. There had been no discussion between himself and his attorney. He had not been present in Court when the Order was made. There was no discussion with his wife prior to the Order.

In cross-examination, the wife said contrary to her sworn affidavit, she had never been married previously. She also said that when she told her husband that she had had an accident and as a result, she could not join him it was a lie. She had also lied about her daughter contracting pneumonia. She said she had told her husband that she had not been unfaithful. Of Tenille's biological father, she says, "He supported his child to an extent. He had assisted whilst his daughter was at Mt. Alvernia High School. She was unable to say if the student visa Tenille has was a result of a letter Tenille's biological father wrote. Asked about a particular phone number, she says "it sounds like her daughters number where she was". She said that her daughter had removed from her sister's home to her father's home, however she does not know where she is presently. Her daughter's school

fees are being paid by a loan agreement, and she is aware that Tenille's father gave her a 1998 Nissan Sentra.

Gordon Robinson, on behalf of the respondent has argued that the wife's application, by way of Originating Summons is not maintainable pursuant to the Maintenance Act, in an action brought in this Court. He contends that under the Maintenance Act, jurisdiction resides only in the Resident Magistrates Court to order maintenance.

Section 5 of Maintenance Act provides;

> "Any person entitled to be maintained by any other person or persons under this Act, and any person having the actual care and custody of any child so entitled, may, in case the person or persons by whom such first-mentioned person or such child is entitled to be maintained or some or one of them shall fail to maintain such person or child, make a complaint before anyone of the following persons, namely-
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> (a) the Resident Magistrate of the parish wherein such first-mentioned person or child lives;
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> (b) a Justice resident in such parish; or
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> (c) the Clerk or Deputy Clerk of the Courts of such parish.
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> Who shall thereupon issue his summons to the person or persons complained against <u>to appear at a Resident Magistrate Court (vested with jurisdiction respecting the parish aforesaid)</u> to be held on a day specified in such summons at some place to be named in the summons."

The question of jurisdiction under the Maintenance Act arose in the case of Samuels v Samuels (1992), 29 J.L.R. 44, on an appeal against an Order by a Judge of the Supreme Court, ordering a husband to pay an increased amount for his wife's maintenance. In arguing the ground that the Judge was wrong in law to rule that the allegation that the wife had committed adultery was irrelevant on an application for maintenance. Counsel based his argument that s12 of the Maintenance Act provides an absolute bar to an order under that Act where it is proved that the wife had committed adultery. Rowe P. said, at page 45 letter e;

> "Applications under the Maintenance Act can only be made in the Resident Magistrate's Court and in the Family Courts - see section 5 and 7 of the Judicature (Resident Magistrates) Act and section 4 of the Judicature (Family Court) Act. This application for alimony pending suit was not triable in a Resident Magistrate Court, was not made in such Court and was not governed by the Maintenance Act.....
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> .....Mr. Goffe's lament that a person's right should not depend upon the forum in which he chooses to litigate has merit, but his plea for generality of the law relating to maintenance cannot be achieved without statutory basis."

The dictum in Jarret v Jarret, RMMA #5/99 is in line with *Samuels v Samuels* (supra).

The statutory basis for applications under the Matrimonial Causes Act was highlighted by Rowe P. in Samuels v Samuels (supra), at page 45 letter G;

> "The Matrimonial Causes Act which came into force in 1989 enables a wife to apply for maintenance for herself if the husband fails to provide reasonable maintenance for her. This she may do under section 25 whether or not there is in existence a petition for the dissolution of the marriage. Where, however, as in the instant case, there is a pending petition for dissolution of the marriage, the wife may apply under section 20 of the Act for maintenance pending suit. Section 20(1) of the Act enables the Court to make a secured provision for the wife's maintenance upon dissolution of the marriage and expressly provides for interim payments in this way.
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> > 'And upon any petition for dissolution of marriage the Court shall have power to make interim orders for such payments of money to the wife as the Court may think reasonable.'
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> It is transparently clear that the Court's power to grant interim payments to the wife under section 20(1) above is neither dependent nor predicated upon an application for a secured provision. Once there is in existence a petition for dissolution, the Court therefore has the unfettered power to consider the grant of maintenance pending suit."

Counsel for the wife has submitted that it is open to the applicant to apply for maintenance either under s20 (2) or s25 of the Matrimonial Causes Act, and contends that s20 applies where there has been a Petition for Divorce, as in the wife's case.

Counsel for the Respondent, mounted a challenge to the application under both section 20 and section 25 Matrimonial Causes Act. According to Mr. Robinson, Section 20 is not amenable to this application. Firstly, section 20 (1) allows for application for permanent maintenance for life, as the wife here seeks, but only "on any decree for dissolution" which is not relevant to these proceedings. Secondly, Section 20(1) allows for interim orders, until the decree for dissolution is made, which clearly the wife's application is not seeking.

Any Order for maintenance, Mr. Robinson argues that whether by way of interim payment, secured provision, or annual payment, must be made by an application in the divorce action and not by way of separate originating process. It was submitted that it was not possible to sustain an application for Maintenance alone under the s25 Matrimonial Causes Act unless it is, or is capable of being "ancillary" to an application under section 10 of the Matrimonial Causes Act.

The side-note to s10, Matrimonial Causes Act, notes that, "The Court may grant injunction or make orders in relation to protection of parties, children, or other property."

Section 10 allows either party to a marriage to apply for relief, and empowers the Court to grant injunctive relief or make an Order, even in the

absence of an application for other relief under the Act. The Court may make an Order for (1) the personal protection of any party or relevant child, (2) restrain a party from entering or remaining in the matrimonial home, or specified area, etc. (3) restraining a party from entering the place of work or school, etc (4) in relation to the property (5) relating to the use and occupancy of the matrimonial home.

Mr. Robinson has submitted that for the Court to have jurisdiction in an application of this nature, it should be brought by notice or summons in the matter of an Originating Application for one of the main reliefs under Section 10 or for Divorce or Nullity, or at the minimum "there should be a set of facts on which such an order could be based.

The short answer to this submission is that the affidavit of the husband in response to his wife provides at paragraph 2(e) (iv) "a set of facts on which relief could be sought" by the husband and the Court would be empowered to grant an injunction pursuant to section 10-(1) (a) of The Matrimonial Causes Act, which provides;

A) For the personal protection of a party to the marriage or of any relevant child.

Paragraph 2(e) (iv) of the husband's affidavit states that:

> "Dwight Hall, the boyfriend of his wife, (according to the affiant's testimony) carries a

> semi-automatic 9mm handgun, which he regularly displays, and is a person to be feared."

Also at Paragraph 2 (c);

> "I discovered that the respondent was not the woman she portrayed herself to be in that in 1998 she became abusive and violent."

Was Tenillie a relevant child for the purposes of an application, pursuant to s25(1) of the Matrimonial Causes Act?

The schedule to the Matrimonial Causes Act defines relevant child as follows;

> "(a) A child of both parties to the marriage in question; or (b) a child of one party to the marriage *who has been accepted as one of the family by the other party.*" (Emphasis mine).

In Snow v Snow, Bagnall J. approved the comments of Wrangham J. on the importance of mutual arrangement to demonstrate acceptance of the child in the family, in Dixon v Dixon (1967) 3 ALL ER 659, where he said at page 661;

> "In other words, there cannot be acceptance of a child into the family without some sort of mutual arrangement between the parties involved, the husband and the wife, the natural parent and the natural parent's spouse. The next question is; What must be the extent and nature of the mutual arrangement?.....Acceptance of a child into a family means something more than

> accepting him into a particular collection of bricks and mortar."

In Bowlas v Bowlas (1965) 3 ALL E. R. 40, Willmer L.J. at page 43

> "They certainly gave no further consideration to the vital question raised by s2 (5) of the Act of 1960, viz. The extent to which the husband had on or after the acceptance of the children as members of the family assumed responsibility for their maintenance."

I accept the testimony of the husband that at the time when the couple started living together, Tenille was then in Kingston and later transferred to boarding school in Trelawny. I find that she never lived with the parties but would visit on some weekends and some holidays. That the husband was not consulted on her choice of school, and she has lived with either her biological father or his close relatives, for a substantial part of her stay in Florida. That her biological father has demonstrated the desire and the ability to support Tenille. I find that there was no evidence of mutual arrangement between the parties for the acceptance of Tenille as a part of the family at the time of the marriage. It is clear from the evidence that the husband was unaware that Tenille would be attending FCAI, how then would the wife have claimed rental expenses for Tenille in Jamaica. There was no support for the wife's contention that Tennile was supported from the parties' joint account. I find that the husband has not assumed responsibility for Tenille's maintenance.

In Snow v Snow (1971) 3 ALL ER 833 Bagnall J. at page 843, commented,

> "the words assumed responsibility were not limited in meaning to payment of money for the support of the child, but were intended to direct the attention of the Court to the question of fact and degree to be decided in light of the particular circumstances, in what way and how far the acceptor had undertaken the burden of providing for the child, and that the husband in unconditionally accepting the children as members of the family, when knowing of their situation, had assumed responsibility for them, at least to the extent that so long as nothing was forthcoming for them in the United States of America, he would provide for them."

I find that there was no assumption of responsibility by the husband for the maintenance of Tenille.

Maintenance for the wife

It was submitted on behalf of the husband that it would not be just in these circumstances to make an award for maintenance. The marriage was of short duration, the couple separated after eighteen months, and that the wife's *liaison* with Dwight Hall had predated, existed, during and after the parties' marriage. Reducing the marriage to one of convenience. There are no children of the union. In Clifton v Clifton (1936), 2 All ER Annot, 886;

> "The marriage had not been consummated and was annulled, the reasoning of the court was

> nonetheless instructive, Bucknill, J. 'Is there any reason why the wife in this case should receive maintenance at the hands of her husband? The parties were only married for a year and the marriage has been annulled on the ground of the incapacity of the husband. The case seems to me to be entirely different from the case of divorce where there is fault on the part of the husband.....nor can I see that the wife has really made out any case of maintenance to be granted to her."

The duration of the marriage was also relevant in Krystman v Krystman (1973) 3 All ER 247, after what was described as a shotgun marriage the couple co-habited for a period of two weeks. No child was born of the union, the wife's application for maintenance was dismissed in the Court of Appeal which overturned the county court Judge Order for payment of £75 per year.

It was also urged on behalf of the husband that the wife has maintained her career throughout her marriage, she has maintained her social life with attendance at the Kiwanis, and music sessions. The question of her conduct and the relationship with one Dwight Hall has been described by the husband's Counsel "so obvious and gross that it is repugnant to justice" to order her husband to support her in any way. He instances the letter of Dwight Hall to the applicant, in which Hall declares "I have been so blessed the last two years by a woman that loved me so much." Counsel has ask the

Court to say that the wife's letter to her husband dated 12th March 2000, is an admission of the unfaithfulness, of which Hall's letter provides evidence.

As we had seen, adultery is an absolute bar to maintenance under the Maintenance Act. It is not so under the Matrimonial Causes Act, but will be considered as a factor in assessing the applicant's conduct, providing the respondent has not condoned the adultery.

In Samuels v Samuels (supra) Rowe, P. in examining s20(1) of Matrimonial Causes Act, said at page 45.

> "In Valentine v Valentine C.A. 28/9 (unreported judgement delivered on 28/2/92) this Court held that conduct of a wife or husband may be relevant to the grant of maintenance in certain exceptional cases. We said;
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> > 'The decided cases show that where the Statute empowers a court to take into account the conduct of the parties when fixing the amount of maintenance "conduct" there does not mean conduct that has contributed to the breakdown of the marriage. Conduct can be taken into consideration as a factor which may modify the otherwise predictable result; financial recklessness in the husband or some wholly unacceptable social behaviour by the wife which suggest that in justice some modification of the order should be made. Watchel v Watchel et al (1973) 1 All ER 113.'
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> In the instant case no provision is specifically made in section 20(1) of the Matrimonial Causes Act for the conduct of the parties to be taken into account but the phrase "all the circumstances of the case" is wide enough to encompass the examples of conduct taken from Watchel case."

Section 25 of the Matrimonial Causes Act refers to maintenance payments "as may be just". In Watchel v Watchel, the wife was 46 years, remarriage though possible was not an imminent probability. She had been married for 18 years, had contributed to the matrimonial home and the family. Denning MR. said;

> "In the vast majority of cases it is repugnant to the principles underlying the new legislation, and in particular the 1969 Act. There will be many cases in which a wife (although once considered guilty or blameworthy) will have cared for the home and looked after the family for very many years. Is she to be deprived of the benefit otherwise to be accorded to her by s5 (10)(f) because she may share responsibility for the breakdown with her husband? There will no doubt be a residue of cases where the conduct of one of the parties is in the Judge's words, both 'obvious and gross', so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice. In such a case the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered....." (Emphasis mine).

Conduct of a gross and obvious nature

Counsel for the wife contends that even if the Court finds that the husband's allegations proven they do not amount to conduct of a gross and obvious nature, as in the example given of living in opening adultery at the time of the hearing (see Samuel v Samuels (supra) page 44.

Miss Davis refers the Court to Harnett vs Harnett, 1 WLR 219, where the English Court of Appeal considered the question of adultery as a part of the broader issue of conduct in an application for maintenance. The wife, having been discovered by her husband in *flagrante delicto*, with a man 20 years her junior, the Court held;

> "The wife clearly behaved foolishly and reprehensibly. I think that the need she sought to satisfy was solely physical, with no intention of destroying the marriage. She simply thought - if she thought at all – that she would not be found out. This behaviour was, in my view, susceptible of forgiveness by a reasonable and caring husband....."

Mr. Robinson in urging the Court to recognise the cultural divide between the two jurisdiction said;

> "This decision was English in nature, where after almost 1000 years of civilisation, adulterous conduct by wives may be more easily forgiven than in Jamaica where it is taken very very seriously indeed." Be that as it may.

In Harnett's case, the parties had been married for fifteen years. There were two children. The husband conceeded that he was in part responsible for the breakdown of the marriage. He was violent and unkind, suffered from spinal trouble, as a result, was unable to work. The husband in this case has frequently given his wife present of jewelry and trips abroad. He was described by the wife as a powerful man who exercise frequently.

Dwight Hall's letter of December 1999, which states, "I have been so blessed the last two years by a woman that loved me very much" indicates that the wife's relations with Dwight, pre-dated and lasted throughout the parties period of marriage. This letter lent substance to the charge of a "marriage of convenience". The husband funds were used to purchase items for delivery to Dwight's mother's address. The numerous telephone calls, the duration of the marriage, the distinct probability of the wife's remarriage. The fact that the union produced no children, and that the wife's career has not been adversely affected by her marriage, to my mind places this case in that residue of cases that to make an order for the financial support of the wife would not be just.