

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FAMILY DIVISION

SUIT F1998/B133

BETWEEN HEADLEY BINNS PETITIONER/RESPONDENT

A N D DORIS MAUD BINNS RESPONDENT/APPLICANT

Wendell Wilkins instructed by Robertson, Smith, Ledgister
and Company for Respondent/applicant.

Mrs. Janet Taylor instructed by Janet Taylor and
Company for Petitioner/respondent.

Heard: 28th September & 29th October, 1999

Harris J.

This is an application by a wife, the respondent/applicant, for maintenance. The parties were married on the 14th February, 1987. They have since separated. The wife is a retired teacher and the husband a bus operator.

The wife deposed that her only current source of income is \$7,112.34 monthly representing pension which she receives. Her monthly expenses are outlined as follows:

Food	\$4,000.00
Telephone	\$1,500.00
Electricity	\$ 500.00
Water	\$ 450.00
Cooking gas	\$ 500.00

Personal Domestic Helper	\$2,000.00
Life Insurance	\$ 125.00
Car Insurance	\$1,000.00
Car Maintenance & Repairs	\$1,400.00
Gasoline	\$1,300.00
Health Expenses	\$ 750.00
Clothing	\$ 700.00
Miscellaneous	\$ 800.00
Rental	<u>\$15,000.00</u>
Total	\$30,025.00

The husband states his current income to be \$250,000.00 annually, which he realised from the proceeds of his business of the operation of a bus.

His monthly expenses are stated to be as under: -

Electricity	\$ 800.00
Water	\$ 350.00
Telephone	\$ 1,000.00
Helper	\$ 3,200.00
Groceries	<u>\$12,000.00</u>
Total	\$17,350.00

The provisions of the Matrimonial Causes Act S20 1 (2) permits the court, if it thinks fit, to direct a husband to pay to the wife during their joint lives such monthly or weekly sum for her maintenance and support, as the court may think reasonable.

If the court is satisfied that maintenance ought to be awarded, in assessing the amount to be so awarded, it should take into account the wife's means, the ability of the husband to pay and all the circumstances of the case

it deems reasonable. If the means of the wife are such that the husband ought to be called upon to pay, in considering his ability to pay, the court reviews not only his income at the time the application is given consideration but also his faculties, that is, his capacity to provide maintenance for his wife. In *N v N* (1) 138 L.T. 693 at page 696 Lord Merrivale summed up the matter in these words:-

“The court not only ascertain what money the husband had, but what moneys he could have had if he liked, and the term ‘faculties’ describes the capacity and ability of the respondent to provide maintenance... I conceive that I must take into consideration the position in which the parties were, and the position in which the wife was entitled to expect herself to be and would have been, if her husband had properly discharged his martial obligation...”

The question to be answered is what sum, if any, should the husband pay to the wife? I will first consider the extent of the wife's means. She obtains a monthly pension of \$7112.34. There is evidence of the existence of property known as Lot 3 Glenco Housing Scheme, registered in the names of her daughter Deanna Sinclair and herself as joint tenants. This property is tenanted. She collects the rent. She asserts that the property is owned by her daughter but her name was added to the document of title for the purpose of survivorship. It is settled law that, in the absence of evidence to the contrary, where property is conveyed to parties in their joint names, a joint beneficial tenancy is created. The fact that Mrs. Binns' name was placed on

the title for the purpose of survivorship shows that a joint tenancy of property was intended.

She attempted to negative the subsistence of an interest in the property by indicating that it was bought by her daughter from the National Housing Trust and that her name was placed on the title for convenience. No contract of sale between the daughter and National Housing Trust was ever exhibited, despite the exhibition of other documents between the daughter and National Housing Trust. The duplicate certificate of title records the Jamaica Teachers Association Housing Cooperative Limited as the transferor of the property, not the National Housing Trust. It has been shown that the housing scheme in Glenco was a project of the Jamaica Teachers Housing Association and preference was given to teachers to purchase units in the scheme and this I accept. There is no evidence that her daughter was ever a teacher. There is evidence that Mrs. Binns was. She does the collection of the rent. It is my finding that the property was bought by her daughter and herself jointly. It follows therefore that she holds a one half interest in lot 3 Glenco Housing Scheme and would be entitled to one half of the rent collected.

I will now examine the husband's means. The wife stated that shortly after they were married in 1987, based on her discussions with him and his expenditure pattern, she estimated his gross income to be \$24,000.00 weekly.

This was refuted by him and he stated his gross weekly income for 1987 to be \$2,324.00, that is \$120,848.00 for that year. He exhibited a certificate from the Collector of Taxes purporting to support his claim with respect to his income for 1987. This certificate reflects that his income as stated on his income tax returns for 1987 was \$24,433.00. It is clear that he had not been truthful with respect to the declaration of his income for that year.

He exhibited copies of his income Tax returns for 1997 and 1998. In 1997 his annual income is listed at \$80,500 and in 1998 it is recorded as \$85,600. He asserts that his bus operation had not always been profitable. He also stated he made losses during the years 1992 – 1996 as his bus had frequently been in need of repairs and out of use for long periods. It was also disclosed by him that, due to the unprofitability of the bus operation, in 1996 he bought a pick-up van with a view of commencing another venture. This venture never materialised as the vehicle proved to be defective. He also declared that he still continues to operate the bus from which he now earns approximately \$250,000.00 per annum. His approximate monthly income would be \$20,833.00. He placed his monthly expenditure at \$17,350.00, which if accepted, when deducted from his income, leaves an estimated \$2,538.00 available for disposal.

The husband has been less than frank with the court with respect to the disclosure of his true income and I reject his evidence as to his income. I accept the wife's evidence that subsequent to their marriage in 1987 she estimated his gross weekly income to be \$24,000.00. If he had been consistently operating his enterprise at a loss from then until now, it is highly unlikely that he would have continued to place reliance on the bus as his sole source of income. It is my view that he earns an amount far in excess of \$250,000.00 per annum from his bus operation. There is also evidence that he is the owner of 8 acres of land at Litiz St. Elizabeth valued approximately at \$1,200,000.00 an half an acre of land at Chocolate Hole, St. Elizabeth with a 3 bedroom house thereon valued at approximately \$3,000,000.00 as well as a 1980 pick up van. In my opinion he has the capacity to earn additional income from these assets.

I will now address the matter as to whether the wife ought to receive maintenance. She is 71 years old. Although she has stated that since retirement she had obtained intermittent temporary employment and that her last such employment was terminated on 17th March, 1999, she ought not reasonably to be expected to continue working at this age. Her current cost of living must be taken into account. Her liabilities far exceed her income.

In my judgement she must be given the opportunity to continue to enjoy a comfortable lifestyle and will therefore be awarded maintenance.

Her income incorporates her pension of \$7112.34 as well as one half of the rental from Lot 3 Glenco Housing Scheme. The full rental is shown to be \$1,300.00, as evidenced by receipt dated 9th June, 1995 which was exhibited; one half of the rental is \$650.00 monthly. Her monthly income is computed to be \$7,762.34. The ownership of the house is not exclusively vested in her. There is also the fact that it is tenanted. In my view, the husband should provide her with accommodation, among other things. The following items relating to her monthly expenses ought reasonably to be paid by her husband, which should be discounted by the amount of which she is now in receipt by way of her personal income:-

Food	4,000.00
Electricity	1,500.00
Water	450.00
Cooking Gas	500.00
Telephone	1,000.00
Medical Expenses	750.00
Domestic Helper	2,000.00
Clothing	800.00
Rent	<u>12,000.00</u>
Total	23,000.00

It is ordered that the husband the Petitioner/respondent do pay to the wife the Respondent/Applicant the sum of \$15,237.00 monthly for her maintenance, being the sum of \$23,000.00 less \$7,762.00 commencing November 1, 1999.

Costs to the Respondent/Applicant.