

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. F D 2002/B-048

IN FAMILY DIVISION

BETWEEN      LEONIE BLOOMFIELD      PETITIONER/APPLICANT

A N D              WARRINGTON GEORGE      RESPONDENT  
                         BLOOMFIELD

Mr. Gordon Steer instructed by Chambers, Bunny & Steer for the Applicant.

Mr. Garth McBean and Mr. Carl Dowding instructed by Knight, Pickersgill and Dowding for the Respondent.

**Heard: 8<sup>th</sup> December, 2004 and 13<sup>th</sup> December, 2004**

**Straw, J. (Ag.)**

The applicant Mrs. Leonie Bloomfield is asking the court to make an award of \$35,000.00 monthly for maintenance against her former husband Warrington Bloomfield, the respondent.

Mr. Bloomfield has given oral and affidavit evidence that he is not able to pay monthly maintenance at this time but has offered the sum of \$1,000.00 per month.

Under Section 20 (1) (2) of the Matrimonial Causes Act, the court can made such an order for maintenance having regard to the means of the wife, the ability of the husband and to all the circumstances of the case.

### Means of Wife

The wife earns a net income of \$19,837.72 from her job with Air Jamaica with additional allowances of \$3,000.00. She also earns income of \$35,000.00 per month from the rental of an apartment at 4-6 Richings Avenue, Kingston.

The total monthly income is \$57,837.72.

Her expenses as per paragraph 3 of her affidavit dated 29<sup>th</sup> October, 2002 is \$67,006.00. To this is added the monthly mortgage of \$3,419.00 for the matrimonial home at Tanglewood where she resides. She also pays \$4,000.00 for the monthly maintenance in relation to the Kingston apartment. Her total expenses are therefore \$74,425.00. When the income is subtracted from the expenses, there is a shortfall of \$16,588.00

### Ability of Husband

Mr. Bloomfield has since remarried and lives rent free at his wife's residence.

He is also the principal shareholder and Managing Director of W& R Supersaves Limited. The company has a share capital of 100 shares. He owns 60%. His two daughters own twenty percent each.

The claimant, in her affidavit dated 27<sup>th</sup> May, 2004 at paragraph 4, states that the respondent has always been in total control of the company and does what he likes.

W & R Supersaves Limited owns a supermarket and three other shops at Columbus Plaza. Two of these shops were sold for \$3.3 million and \$2.6 million collectively. The respondent gave evidence that out of the second figure, \$1 million was retained by the lawyer to pay transfer fees and that \$600,000.00 has not yet been received. Up to December 2003, W & R owned N.C.B. \$8 million. The sale from the two shops has been used towards this outstanding debt as also to pay trade creditors.

The third shop is presently being used by his new wife as business premises. He owes his wife \$1 million, so the rental of \$40,000.00 monthly due from the shop is actually being used to pay this loan. Repayment should be completed as of January 2005. This rental will then be diverted to increase his monthly payment to trade creditors.

The supermarket has been rented since December, 2002 for the amount of \$230,000.00 monthly. Mr. Bloomfield states (at paragraph seven of his affidavit dated 27<sup>th</sup> May, 2004) that this rental is the only income received by W & R Supersaves Limited and is applied to his monthly expenses which totals \$230,000.00.

The court notes that these expenses do not include food, or utility bills. Neither does it reflect school fees, school expenses or medical expenses that he had been ordered by the court to pay in relation to his two sons, Warren Junior and Troy. It does include, however, an amount of \$28,000.00 per month for their maintenance.

It is clear to the court that Mr. Bloomfield may not have made full disclosure to the court in relation to his financial affairs.

I can only assume that his wife is meeting all other expenses on his behalf.

Under cross-examination, he admitted that in the past that he has been part of an auditing team, albeit a junior one, that visited PWD offices to do accounting. He alleges however that he has only a simple knowledge of accounts. He admitted that before he started the supermarket operations, he had been a Manager for an associated corporation to Grace Kennedy Limited. He said he has not sought employment because of his health.

He has not sought to assist the court by the presentation of any medical certificate which could corroborate his inability to work at this time.

In the case of *McEwan vs. McEwan*, 1972 2 ALL ER page 708, it was held that the court is entitled to take into account, not only the husband's actual earnings but also his potential earning capacity.

Other Circumstances of the Case.

The applicant resides in the matrimonial home, a five bedroom house situated at Tanglewood, St. Ann. She lives alone except when the parties two sons, who are at school, one in Kingston, and one in U.S.A. return for the holiday period.

On the 27<sup>th</sup> March, 2000, a consent order was made that the ownership of the home be transferred 40% to the applicant and 60% to the two sons Warrington Junior and Troy as tenants in common.

Mr. Bloomfield has signed the transfer document but has not yet paid the requisite transfer fees.

Counsel for the respondent has argued that the applicant could consider renting the said property and moving to a smaller premises in order to increase her income.

He also argues that she owns a mortgage-free apartment in Kingston and two vehicles, a 1998 Toyota Prado and a Merceda Benz which are both free from encumbrances. The respondent, on the other hand, neither owns any residential premises or a vehicle at this time.

The court bears in mind however that neither the apartment in Kingston or any of the vehicles were obtained by any assets of the respondent. The apartment in Kingston increased the applicant's income by

\$35,000.00 monthly. The court will be taking this into consideration when assessing the means of the wife.

In relation to the vehicles the respondent could only be suggesting that she seeks to sell one of the vehicles in order to increase her income.

The court also bears in mind that Mrs. Bloomfield has not stated that she is contributing in any major capacity to the expenses of the children. There is a maintenance order of \$28,000.00 monthly against the respondent in that regard, plus payment of all medical, dental, optical, school and boarding expenses.

In the case of *Attwood vs. Attwood*, 1968 3 ALL ER page 385, the court listed certain factors to be considered in matters of this nature (per Sir J. Simon, P at page 388).

- (i) Although the standard of living of all parties may have to be lower than before there was a breach of cohabitation, in general the wife and children should not be relegated to a significantly lower standard of living than what the husband enjoys.
- (ii) However, the standard of living of the wife should not be put significantly higher than that of the husband.

- (iii) In determining the relevant standard of living, the court should take into account the inescapable expenses of each including the maintenance of the relevant children.
- (iv) If the wife is earning income or if she has what should in all circumstances be considered as potential earning capacity, that must be taken into account in determining the relevant standard of living. However, the whole of her income need not be brought into account so as to inure to the husband's benefit.

Taking the whole of the wife's income into account, she still has a shortfall of \$16,588.00. I do not consider it equitable at this time to view the matrimonial home as an asset for potential income. The children own 60%.

I would think that they have the right to enjoy the use of the premises during the vacation period unless and until they all agree to deal otherwise with it.

In coming to a decision on the matter I have considered all the above factor's including the following:

- The respondent has the greater burden of the maintenance of the relevant children.
- However, he does have potential earning capacity.

- The majority of the company's income (of which the respondent is the principal share holder), has to be applied to the payment of outstanding debts.
- The company will be receiving an additional income of \$40,000.00 monthly as rental from Touch of Springs in (the new wife's business place) January 2005.
- Even applying the whole of the Applicant's income, a shortfall still exists.
- The possibility exists for the applicant to dispose of one of her vehicles and to invest the sum in an interest bearing account.

Taking all the relevant factors into consideration, I make an award of \$18,000.00 monthly as maintenance to the applicant. The first payment is to commence on 28<sup>th</sup> January 2005 and thereafter on the 28<sup>th</sup> of each succeeding month.