IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 01603/2006D

BETWEEN	GARFIELD COLEY	PETITIONER
AND	FAITH COLEY	APPLICANT/RESPONDENT

Mrs Valric Neita Robertson and Mr. Patrick Peterkin for the Petitioner

Mrs. Helene Coley Nicholson for the Respondent

Heard: September 17, 25 and October 21, 2008

Application for Maintenance

Straw J

Notice of Application for Court Orders was filed on May 5, 2008 by the Applicant/ Respondent for:

1. Custody of the child of the marriage – Adrian Andrew Coley;
2. Maintenance by the petitioner of the child in the amount of $32,000.00 per month.

The petitioner is paying an interim amount of $20,000.00 monthly and is asking the court to make an order of $15,000.00.

In relation to the issue of custody, the petitioner has consented to custody being granted to the mother. He is, however, requesting access every other weekend, every other birthday and Christmas Day and one half of school holidays.

The contentious issue is over the amount of maintenance that the petitioner is to pay.

Children (Guardianship and Custody) Act

Section 7 (1) – grants the power to the court to make an order as to the custody of the child as it may think fit.

Section 7 (3) – states that where the court makes an order giving the custody of the child to the mother, it may further order that the father pay maintenance on behalf of the child having regards to the means of the father.

The authorities suggest that the court should also take into consideration the means of the mother (In re Guardianship of Infant Acts 1953 3 WLR 619).

The Maintenance Act places an obligation on both parents to support a child.

The relevant section reads as follows:

> Section 8 (1) subject to subsection 2, every parent has an obligation, to the extent that the parent is capable of doing so, to maintain the parent's unmarried child who:
>
> (a) is a minor; or
>
> (b) ------

Section 9(1) A maintenance order for the support of a child –

> (a) shall apportion the obligation according to the capacities of the parents to provide support; and
>
> (b) ------

Section 9 subsection 2 lists certain factors the court is to consider in addition to circumstances specified in Section 14 (4) in order to make any order for maintenance:

(a) that each parent has an obligation to provide support for the child;

(b) the child's aptitude for, and reasonable prospects of obtaining an education; and

(c) the child's need for a stable environment.

The court is also to have regard to factors specified at Section 14 (4) in determining the amount and duration of support. These include the following:

(a) Respondents and defendant's assets and means.

(b) Assets and means that the defendant and respondent are likely to have in the future.

(c) ------

(d) The capacity of the respondent to provide support.

(e) Mental and physical health, and age of the defendant and the respondent, the capacity of each of them for appropriate gainful employment.

(f) ----

(g) Any legal obligation of the respondent or the defendant to provide support for another person.

(h) ------

(i) ------

(j) ------

(k) ------

(l) ------

(m) Any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account.

Adrian is the relevant child. He was born on the 18th November 2002 and so is approaching his sixth birthday and he attends the Villa Park Childhood Education and lives with the applicant at Lot 77, 41 Westminster Drive, Willodene in a three bedroom house. He suffers from asthma and is in need periodically of medical intervention. The obligation is on both parents to maintain this child. The major issues for the court to consider therefore are the financial capacities of both parents.

On the date that the written submissions were handed in, in the absence of counsel for the petitioner, Mrs. Coley-Nicholson intimated to the court that her client was now out of a job as her patient had recently died. However, this was not the evidence that was put before the court for consideration and any such change in circumstances would have to be contained in an affidavit and subject to cross-examination by the other party if required.

This court is therefore considering the evidence of the capabilities of both parties in relation to the evidence presented. Both counsel made submissions in relation to that evidence.

If the applicant's situation continues unabated she may have to apply to vary the order which is being made by this court. The court will consider the following heads in making the order for maintenance:

i. The monthly expenses for the child.

ii. The means of the husband and wife.

iii. Any other circumstances which in the opinion of the court, the justice of the case requires to be taken into account.

1. **The monthly expenses of the child have been stated to be the following:**

Food	-	6,000.00
School bus driver	-	2,000.00
School fee	-	958.33
Clothing	-	3,000.00
School supplies	-	500.00
Domestic helper	-	14,000.00
Gardener	-	750.00
Paediatrician	-	1,250.00
Electricity	-	2,300.00
Water	-	500.00
Telephone	-	500.00
Mortgage	-	7,067.50
Total	-	$38,825.83

In relation to the amount for mortgage, the property is owned by the applicant and the petitioner as joint tenants.

The figure of $7,067.50 is actually half of the mortgage due monthly. The petitioner pays the other half. He also pays $2,200.00 out of the applicant's share by way of salary deduction. She is therefore paying $4,867.50 monthly. The court is not of the view that this amount should be listed as part of the expenses of the child in the above circumstances.

In relation to the amount for the helper, the applicant states that she needs a live-in helper and that it is her sister who is employed in that position. The actual amount paid to her sister is $4,000.00 weekly in relation to her supervision of Adrian.

The amount of $14,000.00 monthly is therefore a reasonable figure for the care of the child as the applicant is employed as a practical nurse/caregiver.

Mrs. Neita-Robinson, counsel for the petitioner, has submitted that the amount for health is unreasonable having regard to the fact that both the applicant and Adrian are entitled to free medical care by virtue of the petitioner's occupation as a soldier with the Jamaica Defence Force (JDF). This medical coverage can be accessed at any public hospital including the Spanish Town Hospital which is the closest to where the applicant resides.

Adrian suffers from periodic attacks of asthma and has to have medical intervention. The situation, as it exists now, is that if the applicant and Adrian have to access medical intervention outside of the JDF facility, if it is a government run facility, the medical treatment is free. However, the drugs would have to be paid for by the patient. If the facility is private, any money paid by the applicant including expenses for drugs would be reimbursed. What is clear is that there may be certain occasions when money is needed up front. The court is of the view that the monthly amount is reasonable under the circumstances and in the best welfare of the child.

Mrs. Robertson has also submitted that the amounts for electricity and water should not be considered as the applicant shares the house with two sisters and the children of one of the sisters. These family members pay no rent.

The applicant has stated that both sisters lived previously in a family home rent free and that she is the one who invited them to live with her in the best interest of the child. However, she states that one of the sisters contributes to some of the electricity but that she pays the full amount of the water.

I do not find that the amount of $500.00 an unreasonable amount in relation to the water. The applicant's evidence is that $1,000.00 is her monthly expense and $500.00 has been attributed to the child. Similarly, the amount of $4,600.00 represents her monthly electricity expense. She is stating that the child's expense be half the amount. She does not state how much is contributed by her sister to the electricity. It is reasonable, however, for all the adults to share in the cost of the electricity.

The court therefore adjusts the amount attributable to Adrian to $1,500.00. In relation to the expenses of the gardener, the house belongs to the applicant and the petitioner. I do not know that she could require that her sisters bear any of that cost.

I have also adjusted the amount to $750.00 as half the expenses due to the child. The adjusted amount for the monthly expenses of the child is therefore $30,958.33.

2. Means of the Mother

The applicant is a practical nurse and earns $5,600.00 per week in relation to one job and $18,000.00 monthly in relation to a second job. Her total is therefore $40,400.00 monthly. She has no other source of income.

Her other capital assets includes two insurance policies for the benefit of herself and Adrian and a savings account with Churches Credit Union with deposits totalling $28,000.00.

At present, by way of an interim order, she receives $20,000.00 monthly from the petitioner as maintenance for the child. There is a shortfall of $10,958.33. The petitioner also pays a monthly sum of $2,200.00 towards her half share of the mortgage. She, therefore, effectively receives $22,200.00 per month from him.

3. **Means of the Father**

The petitioner earns a net salary per month of $46,000.00. This amount includes allowances which he sometimes does not receive. Deductions from his gross salary includes payments to Royal Bank of Trinidad and Tobago (RBTT) in the amount of $23,209.99, an amount of $7,456.85 to Guardian Life Insurance, an amount of $6,213.00 to GSB Credit Union and the amount of $3,150.00 to Victoria Mutual Building Society (VMBS) – Half Way Tree.

Counsel for the applicant challenged Mr. Coley in relation to the purpose for the payment to RBTT. It was suggested to him that it concerned a loan that he took out to construct a house for the mother of his second child. He has denied it and states that the loan from RBTT is a combination of loans taken out at different periods and that the loan was first taken out before he got married. The reasons for the various loans included the repayments of a loan to a friend, assistance with the purchase of a car and renovation of the matrimonial home at Willodene. Exhibit 1 is a document from the bank with details of the loan amount. It is for the amount of $700,000.00, for a loan of four years. The first payment was due on December 24, 2007. Whatever the reason for the loan, it is an obligation that he now has to meet and the court must have regard to that.

In relation to the other deductions, he states that the amount to the credit union is a sum that he attempts to save on a monthly basis. However, he states that he has to go regularly to the credit union for money to help with his expenses.

He has two insurance policies, one with Cuna Mutual and the other with Guardian Life.

In relation to the policy at Guardian Life there is a status letter from the said institution. It is for the amount of $2,040,000.00. The applicant is listed as the beneficiary, however, this is revocable at the request of the petitioner. The applicant has indicated that she wishes the benefit of this policy to continue.

The petitioner has indicated through Mrs. Robertson that he is willing to have her appointed as an irrevocable beneficiary.

The Cuna Mutual policy covers funeral expenses for both petitioner and applicant in the event of their death.

The amount to VMBS is by way of a Heritage International Scholarship Trust Plan for the benefit of the child, Adrian. The applicant has indicated that she wishes all of these benefits to continue. There is no evidence of any other source of income available to the petitioner.

He lives on barracks at the Jamaica Defence Force (JDF) compound while on duty. He has listed his expenses as follows:

$20,000.00 as maintenance for Adrian

$10,000.00 as his personal rental

$10,000.00 towards maintenance for his other child, Andrew

The total would be $40,000.00. This leaves him with $6,000.00 from his salary plus a potential $6,213.00 as monthly savings. The amount of $12,213.00 would be what is available for him to spend on himself.

At present, the applicant, Mrs. Coley is occupying the matrimonial home with her son. The petitioner pays approximately $10,000.00 towards the mortgage. She pays

approximately $4,867.50. It is a three bedroom house. There is a possibility that one of the three bedrooms could be rented so as to increase her income.

In determining the amount of maintenance to be paid, the court must have regard to the capacity of each parent. The fact of the matter is that the break-up of a family unit is not desirable. It will affect the financial status of the family as each parent is now living under separate roofs and living expenses are no longer shared.

The court also has to consider that the petitioner now has another child to maintain. The petitioner has offered to pay $15,000.00 monthly. The applicant is requesting $32,000.00. From the evidence available to the court at this time, her request is not realistic.

The court assesses that she is bearing about $10,000.00 of the child's expenses at the present time. She herself has indicated that along with the $20,000.00 she receives from the petitioner, she usually has to find a further $7,000.00. The amount of $10,000.00 is a reasonable one for her to bear in the circumstances. However, in the interest of justice, the court is prepared to reduce the amount paid by the petitioner to $17,000.00 monthly on condition that the applicant be appointed as an irrevocable beneficiary on the policy with Guardian Life. Of course, either party has liberty to apply if there are changes in the circumstances.

The court therefore makes the following orders:

1. By consent, the custody of the child, Adrian Andrew Coley is granted to the applicant, Mrs. Coley.
2. The petitioner is to pay the sum of $17,000.00 monthly for the maintenance of the said child commencing on the 30th day of November

2008 and thereafter, on the last day of each month. Such monthly sum is to be paid into the applicant's account at Jamaica National Building Society (JNBS), number 422290031 by way of salary deduction.

3. Access to the said child is granted to the petitioner, Mr. Coley, every other weekend commencing on alternative Friday evenings at 5:30 p.m. to Sunday evenings at 4:00 p.m. and on Christmas Day/or Boxing Day, and one half of Easter and Summer holidays.

Liberty to apply.