

NAMES ✓

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FAMILY DIVISION

SUIT NO. F/2003 D-01459

BETWEEN ZELTA GAYLE-STERLING PETITIONER

AND BARRINGTON GEORGE STERLING RESPONDENT

*Mrs. Judith Cooper-Batchelor instructed by
Chambers, Bunny & Steer for the Applicant.*

Miss Arlean Beckford for the Respondent

Heard: 7th April, 2005

McDonald, J. Ag.

Zelta Sterling, the Petitioner and mother of Kevin Kegan Sterling born on 8th March, 1989 and Kimberley Kay Sterling born on 13th May, 1999 seeks an order that Barrington Sterling, Respondent and the father of the children pay the sum of \$30,000 for each child per month towards their maintenance.

The issue of custody has been determined by way of Court order made on the 13th May, 2004.

The Petitioner was granted custody care and control of the children. The Respondent was granted access to the children for half summer holidays

and for alternate Easter and Christmas holidays. He was ordered to pay half of the travel expenses incurred on the proposed visits.

An interim order for maintenance was made in respect of the children; the Respondent was ordered to pay to the Petitioner \$US 500 per month as from 30th May, 2004. The final order as to maintenance is now before the Court for determination.

Mrs. Cooper – Batchelor informed the Court that US \$4,800 is owing on this interim order.

The Respondent asserted that J\$12,000 is the affordable sum he can pay towards the children's maintenance.

Section 7(3) of the Children (Guardianship and Custody) Act provides as follows:-

“Where the Court makes an order, giving the custody of the child to the mother then whether or not the mother is then residing with the father the Court may further order that the father shall pay to the mother towards the maintenance of the child such weekly or other periodical sum as the Court having regard to the means of the father may think reasonable.’

I will now examine the Respondents means. It is not in dispute that he is an unlicensed electrician by profession. The Petitioner has deposed in her affidavit that he earns at least \$60,000 per month net as an electrician.

She also stated that he is a building contractor and takes home at least \$40,000 per month from this.

She has claimed a monthly sum of \$60,000 for the maintenance of the children from his monthly income which she states is between \$70,000 - \$100,000.

On the other hand the Respondent deponed that he is not a building contractor, and that his net monthly income for the past 9 months as an electrician is \$17,061.44.

The Petitioner has produced no documentary evidence to substantiate the Respondents earnings as an electrician. In cross-examination she said that during the time of the marriage he earned a steady income as an electrician.

She said that whilst living with him, he would get on the average 6 – 7 jobs per month, some large, some small.

He would get approximately 1 or 2 large jobs per month. A large job would take him approximately 1 – 2 weeks to complete depending on whether material was provided and as to the number of workers he had, and various dependent factors.

She said a small job could be done in half a day or less. She testified that given the partial disclosure she had been given over the years, for a

large job, he would earn \$70,000 - \$100,00 depending on the size of the big job. She said the workmen would have already been paid and this amount represented the Respondent's "cut" or his share.

In addition when asked in cross-examination the basis on which she said today that he earns \$60,000 per month from electrical work she said that she did his paper work, she was instrumental in setting up his business financially, and by what he disclosed to her as his wife. She expanded on this by stating that the Respondent sometimes asked her to type bills and statements and payment for the workmen.

It was suggested to her that this was not true, she denied it. It was suggested to her that it was not true that he got 6 - 7 jobs per month on average and that his net earnings were \$70,000 - \$100,000 from a large job - she disagreed.

The evidence of the Petitioner is that she left Jamaica to work in the Cayman Islands on the 12th December 1989, over 15 years ago and since then she would visit Jamaica on the average 6 times per year depending on whether the respondent flew to Cayman or not. The duration of her visits would vary from 3 days to one week to 1 month.

She told the Court that on a 3 day visit, she would normally exchange U.S. dollars and make lists of the bills that have been incurred in Jamaica.

The Petitioner's estimated the Respondent's net earnings to be \$60,000 per month. The Court has to take into account that on the Petitioner's unchallenged evidence the parties have separated for the last 2 years. She would not therefore be in a position to currently state with any accuracy or at all the frequency with which he obtained jobs, the types of jobs and their duration or his remuneration from same. It is also highly unlikely that if she even did any clerking in his office that she would have continued to do so over the past two years.

The Respondent in his further affidavit dated 26th October, 2004 has exhibited a Financial Statement for 9 months ending September 30, 2004 prepared by one Mr. Fernel C. Davis who terms himself a "Business and Accounting Consultant." There is no evidence before the Court that he has any professional qualifications. This statement was unchallenged.

The report stated that Mr. Sterling's income for this 9-month period is \$744,580 which when averaged out is \$82,731.1 per month and his gross operating profit is \$724,905 or \$80,545 per month. His personal and business expenses are \$571,352 or \$63,483.56 per month; leaving him with a net income of \$17,061.44 per month.

The Respondent's monthly earning as indicated in the Financial statement differ from the amount stated in paragraph 14 of the Respondent's

affidavit dated 20th April, 2004 where he states that he earns \$38,500 per month from which he states that he can afford to give the Petitioner \$12,000 towards the care and upbringing of the children. I find that the defendant appears to be less than frank with the Court in respect of his earnings.

In cross-examination, the Respondent admitted that he pays \$24,000 per month on a car loan. This is the item referred to as loan payment of \$225,000 under personal and business expenditures in the Financial Statement.

He further admitted that he now owes approximately \$33,000 on this loan. It therefore follows that in the next month or so, he would have \$24,000 per month extra to divert towards the maintenance of his children.

On the Respondents case therefore, he ought to have \$12,000 plus \$24,000 i.e. \$36,000 from his earnings as an electrician to contribute towards his children's maintenance.

The Petitioner said under cross-examination that the basis on which she stated that the Respondent took home \$40,000 per month as a building contractor was that on many occasions she had acted as a middle person in the transfer of funds between herself, the owner of the building and the Respondent. The last time that she acted as an intermediary was two years ago. She testified that she got the Respondent the job as contractor to

supervise the building of Sharyn Grant's house at Vista Del Mar Drax Hall in St. Ann's Bay. Further that Miss Grant would send money on a regular basis to the Respondent from which he would take his pay. At paragraph 9 of her affidavit filed on 10th May, 2004 she exhibited 7 receipts of money transfers all made in 2003 from Sharyn Grant of The Bight, Cayman Brac to Barrington Sterling of St. Ann's Bay. These amounts ranged from CI \$200 to \$4000.

In response, the Respondent deponed that he was asked to assist Miss Grant in the building of her house as she is a friend of the Petitioner. He was only the electrical technician, but the money was sent to him to pay the other workers including mason, carpenter, watchman, plumber, steel man and handyman. So far he has only collected \$40,000 for his own electrical work done on the house for a period of over 3 years.

In cross-examination the Petitioner stated that before the separation the Respondent had collected approximately half a million dollars on this job. She said that the Respondent had told her over a period of time how much he had taken from what was sent previously by quoting more expensive labour costs but negotiating for cheaper price and paid such. This evidence was unchallenged.

I find that the evidence presented is not sufficient for me to conclude that the Respondent does engage in building construction work for reward. If he does odd jobs as a contractor, there is no concrete evidence as to the frequency with which he does so, or as to his income.

It is hereby ordered that the Respondent pay to the Petitioner the sum of \$36,000 per month for the maintenance of Kevin Kegan Sterling and Kimberley Kay Sterling to commence on June 30, 2005 and thereafter on the last day of each succeeding month until each child attains the age of 18 years. There shall be liberty to apply.