



[2018] JMSC Civ 36

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2016 HCV 02845**

<b>BETWEEN</b>	<b>DAHLIA GENTLES</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MARK GENTLES</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

**Mr. Dwight Sibbles and Ms. Morriesha Muschette instructed by Sibbles & Associates for the Claimant**

**Mrs. Tamara Francis Riley-Dunn instructed by Nelson Brown Guy & Francis for the Defendant**

**Heard: March 14, 2018 and March 20, 2018**

**Maintenance Act – spousal maintenance – condition precedent to maintenance order – whether the obligation to maintain spouse activated**

**A. NEMBHARD, J (AG.)**

**[1]** By way of a Fixed Date Claim Form, which was filed on the 7<sup>th</sup> day of July 2016, the Claimant seeks the following Orders of the Court:-

That the Defendant pay the sum of \$50,000.00 per month to the Claimant for such period as this Honourable Court shall deem fit;

1. Further or in the alternative that the Defendant pay to the Claimant such lump sum payment or payments as this Honourable Court shall deem fit;

2. That the Defendant pays for half the medical expenses of the Claimant for such period as this Honourable Court shall deem fit;
3. Costs to the Claimant;
4. Such further or other relief as this Honourable Court shall deem fit.

### **BACKGROUND**

- [2] The parties were married to each other on the 12<sup>th</sup> day of December 1992 and separated in July 2014. They continued to live in the same household until June 2016 when the Claimant vacated the matrimonial home.
- [3] The marriage was terminated by way of a Decree Absolute on the 17<sup>th</sup> day of June 2016.
- [4] Throughout the marriage the Claimant remained at home and had the responsibility for the management of the household and the care and upbringing of the children.
- [5] The Defendant is a soldier in the Jamaica Defence Force (JDF).
- [6] During the marriage the parties benefitted from subsidized housing provided by the Jamaica Defence Force (JDF). Upon the termination of the marriage that benefit was removed and both parties had to find alternate accommodation.
- [7] The Claimant moved out of the subsidized housing in June 2016 whilst the Defendant moved out of the subsidized housing in February 2017.
- [8] While the parties lived together the Defendant paid to the Claimant the sum of Twenty Thousand Dollars (\$20,000.00) as spousal support. The Defendant continued to pay this sum to the Claimant, subsequent to their separation from each other. This said payment continued until May 2016.

## **THE ISSUES**

**[9]** The issues to be determined in the instant matter are as follows:-

- i. Is the maintenance being sought by the Claimant reasonable and necessary?
- ii. Is the Defendant capable of providing the support that is being sought?

## **THE LAW**

**[10]** An application for spousal maintenance is governed in the first place by **section 4** of the ***Maintenance Act***.

**[11]** It is both convenient and instructive to set out **section 4** of the ***Maintenance Act*** in full. It reads as follows:-

***“Each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to –***

***(a) the circumstances specified in section 14(4); and***

***(b) any other circumstance which the justice of the case requires to be taken into account.”***

**[12]** Section 14 (4) of the Maintenance Act reads as follows:-

“In determining the amount and duration of support, the Court shall consider all the circumstances of the parties including the matters specified in section 5(2)...and –

***(a) the respondent’s and the dependant’s assets and means;***

***(b) the assets and means that the dependant and the respondent are likely to have in the future;***

- (c) ***the dependant's capacity to contribute to the dependant's own support;***
- (d) ***the capacity of the respondent to provide support;***
- (e) ***the mental and physical health and age of the dependant and the respondent and the capacity of each of them for appropriate gainful employment;***
- (f) ***the measures available for the dependant to become able to provide for the dependant's own support and the length of time and cost involved to enable the dependant to take those measures;***
- (g) ***any legal obligation of the respondent or the dependant to provide support for another person;***
- (h) ***the desirability of the dependant or respondent staying at home to care for a child;***
- (i) ***any contribution made by the dependant to the realization of the respondent's career potential;***
- (j) ***any other legal right of the dependant to support other than out of public funds;***
- (k) ***the extent to which the payment of maintenance to the dependant would increase the dependant's earning capacity by enabling the dependant to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;***
- (l) ***the quality of the relationship between the dependant and the respondent;***

- (m) ***any fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.”***

[13] Further, **section 5(2)** of the ***Maintenance Act*** provides as follows:-

“In determining the amount and duration of support to be given to a spouse under a maintenance order, the Court shall have regard to the following matters in addition to the matters specified in section 14(4) –

- (a) ***the length of time of the marriage or cohabitation;***
- (b) ***the spouse’s contribution to the relationship and the economic consequences of the relationship for the spouse;***
- (c) ***the effect of the responsibilities assumed during the marriage or cohabitation on the spouse’s earning capacity;***
- (d) ***the spouse’s needs, having regard to the accustomed standard of living during the marriage or cohabitation;***
- (e) ***whether the spouse has taken the care of a child of eighteen years of age or over, who is unable, by reason of illness, disability or other cause, to take care of himself;***
- (f) ***any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing to the family’s support;***
- (g) ***the effect of the spouse’s child care responsibilities on the spouse’s earnings and career development;***
- (h) ***the terms of any order made or proposed to be made under the Property (Rights of Spouses) Act in relation to the property of the parties;***
- (i) ***the eligibility of the spouse for a pension, allowance or benefit under any rule, enactment, superannuation fund or scheme and the rate of that pension, allowance or benefit.”***

- [14] The obligation to maintain the other spouse is, in the first instance, latent. It is activated by the inability of the other spouse to maintain himself or herself. So, the Court has to make, as a condition precedent to a maintenance order, a threshold finding that the dependant spouse cannot practicably meet the whole or part of her reasonable needs. As per E.J. Brown J in **Alfred Robb v Beverley Robb Claim No. D01148/2005, judgment delivered on December 11, 2009.**
- [15] The maintenance order reflects that assessment, together with the respondent's capability to maintain the applicant to the extent that it is necessary to meet her reasonable needs.
- [16] Section 14(4)(d) of the Maintenance Act enjoins the Court to consider "the capacity of the respondent to provide support."

### **ANALYSIS**

[17] **THE CLAIMANT'S INCOME AND EXPENDITURE**

- [18] An assessment must first be made of the Claimant's income.
- [19] Learned Counsel Mrs. Tamara Francis Riley-Dunn has submitted that the Claimant provided no affidavit evidence of an income, stating merely that she lives off the generosity of friends and family.
- [20] In answer to questions put to her by the Court the Claimant testified that she has been doing sewing (she sews sheet sets and spreads) and that she has erected a chicken coop and has forty (40) layer chickens.
- [21] It is her evidence further that she earns Three Thousand Five Hundred Dollars (\$3,500.00) per week from the raising of the chickens and that she sells one double sized bed sheet set for Four Thousand Dollars (\$4,000.00) and one king sized bed sheet set for Six Thousand Dollars (\$6,000.00).
- [22] The attendant expenses the Claimant indicated as being Three Thousand Seven

Hundred Dollars (\$3,700.00) for chicken feed (two bags of feed per week at One Thousand Eight Hundred and Fifty Dollars (\$1,850.00) per bag) per week and Four Hundred and Ninety Dollars (\$490.00) per yard of fabric. Six (6) yards of fabric are required to make a double sized bed sheet set while seven (7) yards of fabric are required to make a king sized bed sheet set.

- [23] It has been posited, on behalf of the Defendant, that evidence of any income received by the Claimant will have an impact on any assessment that the Court can make regarding the “***dependant’s assets and means***”, pursuant to ***section 14(4)(a)*** of the ***Maintenance Act***.
- [24] It is stated in ***Eutetra Bromfield vs. Vincent Bromfield [2016] JMSC Civ 221*** that the Court, in discharging its statutory duty, pursuant to the ***Maintenance Act***, must be presented credible information concerning the income and expenditure of the parties and ought not to accept any party’s failure to provide credible financial information to the Court.
- [25] The evidence before this Court is that the Claimant has received training in a trade, namely drapery, and earns an income from the making of sheet sets, albeit seasonally.
- [26] The Claimant has travelled to the United States of America where she is usually engaged in work providing care for the elderly and new born babies.
- [27] It is the Claimant’s evidence that the income generated from these activities is for her personal use.
- [28] The Claimant has established a chicken coop, currently with forty (40) layer chickens which she raises, an activity from which she also generates an income.
- [29] The Court agrees with Learned Counsel for the Defendant when she submits that the Claimant has been living outside of the resources provided by the Defendant and without the Defendant’s assistance since May 2016.

**[30]** The Claimant lists her expenses as follows:-

(i)	Electricity (JPS)	-	\$ 9,000.00		
(ii)	Water (NWC)	-	\$ 4,000.00		
(iii)	Food	-	\$30,000.00		
(iv)	Rent	-	\$30,000.00 (v)	Internet	
	-	\$ 9,000.00 (vi)	Hire Purchase	-	\$
		5,000.00			
(vii)	Educational expenses	-	\$10,000.00		

**[31]** The Court notes that the educational expenses listed are in respect of Mark Gentles Jnr., who, as it turns out, is no longer pursuing studies at the Portmore HEART Academy or at all.

**[32]** In any event, the Court finds it curious that a claim in respect of the educational expenses of a child should form part of a claim for spousal maintenance.

**[33]** Learned Counsel for the Defendant has invited the Court, should it be minded to make an award for maintenance, to divide in three the expenses as listed by the Claimant, on the basis that, it is her evidence that she resides with her two (2) adult children, both of whom are expected to contribute to the expenses of the home.

**[34]** The Court has heard no evidence of any medical condition and/or ailment that would adversely affect the Claimant's ability to earn an income.

**[35]** The Court has noted that Mrs. Gentles, in seeking to find employment, has restricted her searches to the geographical location of Portmore, in the parish of St. Catherine.

**[36]** The Court has regard to the unchallenged evidence of the Defendant that in or around 1992 he gave the Claimant money to complete Mathematics and English courses in an effort to empower her and to enable her to become financially independent. She started the courses but stopped.



- [37] In or around 1994 the Defendant gave the Claimant money to pursue a clothing and textile course. Again, the Claimant started and then stopped.
- [38] In or around 1996 the Defendant gave the Claimant money to travel overseas and to purchase goods for retail. The Claimant started the retail business but then ceased operating the said business

### **THRESHOLD FINDING**

- [39] In practical terms, the Claimant is already currently able to contribute to her monthly expenses, those being rent, food, internet, utilities and the payments on the hire purchase agreement.
- [40] There is no evidence that the Claimant has had to redirect funds to meet her basic needs and/or those of her household.
- [41] This, to my mind, demonstrates the Claimant's capacity to be financially independent of the Defendant at this present time as she has been able to continue to meet her financial obligations even in the absence of the Defendant's financial support.
- [42] The dicta of *Edwards J* in **Margaret Gardener v Rivington Gardener [2012] JMSC Civ 54**, at paragraph 110 of the judgment, is apt and quite pertinent to this case. Her Ladyship is quoted as follows:-

***"The provisions of the Maintenance Act recognize that there is an obligation be either spouse (practicably the one who is more financially able and then only to the extent that he or she is capable) to maintain the other, if it is necessary in order to meet the reasonable needs of the other spouse. This is only to the extent that the other spouse cannot meet all his or her reasonable needs and where certain circumstances exist. This means that maintenance of a spouse is not automatic. It involves necessity, capacity and reasonability."***

***[Emphasis mine]***

- [43] Having regard to the evidence of the Claimant this Court is of the view that Mrs. Gentles has not clearly demonstrated that she cannot meet her reasonable needs at this time.

#### **THE DEFENDANT'S INCOME AND EXPENDITURE**

- [44] Any Order of maintenance must only be made after a consideration of the Defendant's ability to provide the financial support that is being sought, as is required by **section 14(4)(d)** of the ***Maintenance Act***.
- [45] Learned Counsel Mr. Dwight Sibbles, on behalf of the Claimant, has urged the Court to consider the Claimant's Claim in the context of her reasonable needs and her ability to meet those needs and the Defendant's ability to meet any shortfall, in light of all the circumstances of this case.
- [46] The Defendant, on the other hand, contends that the maintenance being sought is neither required nor reasonable and has sought to give an account of his income and expenditure.
- [47] The Defendant's evidence is that his gross salary is Two Hundred and Forty Thousand Three Hundred and Thirty Seven Dollars and Sixty Six cents (\$240,337.66) with his net pay being One Hundred and Sixteen Thousand Eight Hundred and Eighty Dollars and Fifty Six cents (\$116,880.56).
- [48] The Defendant has listed his expenses as follows:-

(i) Rent	-	\$30,000.00	(ii) Light
	-	\$ 7,000.00	
(iii) Water	-	\$ 3,000.00	(iv)
Groceries	-	\$20,000.00	

(v) Petrol/Travelling - \$12,000.00  
(vi) Telephone - \$10,000.00 (vii) Miscellaneous - \$ 8,000.00  
(viii) Cable - \$ 7,000.00

[49] It has been submitted on behalf of the Defendant that, after paying for his reasonable expenses the Defendant is left with a disposable income of between

Ten Thousand Dollars (\$10,000.00) and Thirteen Thousand Dollars (\$13,000.00).

[50] It is the Defendant's evidence that he lives with his sister Vanessa Thomas. It is his evidence further that while his sister is expected to pay fifty percent (50%) of the bills of the household, she has been making her contribution only when she is financially able so to do.

[51] The Defendant testified that his sister Vanessa Thomas is a heart patient as she was born with a hole in her heart. She wears a defibrillator. His evidence continued that ***"most of the time she was out of work and in [the] hospital and all of that. She got a new one [defibrillator] sometime last month. During the time that she was ill I was the one paying all of the bills for the house."***

[52] In an effort to prove his income and expenses, the Defendant has produced his pay advice for the months of May, June and July of 2017, as well as his electricity, telephone, cable and internet and grocery bills.

[53] It is clear to the Court that the circumstances of the parties have changed since their separation and subsequent divorce from each other. The expense associated with their accommodation is no longer being subsidized by the Jamaica Defence Force (JDF) and each of them has had to make separate arrangements for his/her accommodation.

[54] The Court also finds that the standard of living to which the Claimant would have become accustomed during the tenure of the marriage would have been humble

at best and was, to some extent, facilitated by a number of loans that were accessed by the Defendant by virtue of facilities made available to him through his employers.

### **CONCLUSION**

- [55] In concluding, the Court finds that, in practical terms, the Claimant is already currently able to contribute to her monthly expenses.
- [56] This demonstrates the Claimant's capacity to be financially independent of the Defendant at this present time as she has been able to continue to meet her financial obligations in the absence of the Defendant's financial support.
- [57] The Court finds that the Claimant has not proven that she cannot practicably meet the whole or part of her reasonable needs.

### **DISPOSITION**

- [58] It is hereby ordered that:-
- (i) Judgment for the Defendant;
  - (ii) No order as to costs;
  - (iii) The Defendant's Attorneys-at-Law are to prepare, file and serve the Orders herein.