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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. F/G 035/95

BETWEEN HUDSON GRANT APPLICANT

AND SONIA DAWN GRANT RESPONDENT

Mr. Audel Cunningham for the petitioner instructed by Mrs. Nancy J. Tulloch-Darby,
Attorney at Law.

Mr. Lancelot Cowan for the respondent, instructed by Cowan, Dunkley and Cowan,
Attorneys at Law.

**HEARD: OCTOBER 20, & 26, 2000
MARCH 22 & 23 2001
MAY 22. 2001**

IN CHAMBERS

RECKORD, J.

The parties were married on the 2nd of January, 1987.

There are 2 children of the marriage, the last one Paul, being born on the 12th of
May, 1990.

The parties separated on the 7th of June, 1991, and in that same year the applicant
formed a relationship with one Miss Carol Williams who is now residing with him.

By order of the Corporate Area Family Court, on the 24th of November 1993, the
respondent was granted custody, care and control of both children and the applicant was
ordered to pay \$1,400.00 per month for maintenance together with educational, medical
and dental expenses.

Applicant has paid only \$6,000.00 towards maintenance and has not been obeying the order of the Family Court.

Between April 1997, and February 2000, applicant's Attorneys stated they enable to make contact with the applicant.

Applicant in his affidavit date 20.10.2000 states he paid \$18,000.00 lump sum to respondent on 25.8.98. This represented arrears for over 12 months.

He said in his affidavit of 20th October 2001, that he offered \$25,000.00 to respondent in September 1999, which she did not accept. This represented arrears for over 17 months.

On applicant's case he left the matter of payment of maintenance and payment of his mortgage to a 3rd party whom he claims defrauded him. Hence maintenance was not paid to the respondent for the children and the National Housing Trust sold his house in which the respondent and the children were living without his knowledge because of non-payment of his mortgage.

I find the applicant to be negligent in failing to ensure that his servant or agent carried out his instructions. I find the applicant unreliable and irresponsible in leaving important family matters to a third party without any proper reason for so doing.

As to his complaint that the respondent refused to issue receipts, he could easily have opened an account at a nearby bank in the name of the respondent and lodged the monthly sum to that account.

Instead, he deliberately disobeyed the order of the Family Court to pay the monthly sums to the respondent and instead started giving money directly to the children.

The applicant's complaint that letters addressed to him from the National Housing Trust and from lawyers were received and destroyed by the respondent are without any basis and are unsupported.

His further allegation that letters collected by the children to be taken to him were taken from them by the respondent is spurious and without foundation.

The applicants' complaint in paragraph 8(d) of his affidavit dated 27/10/2000, that the respondent, who herself is a teacher, "shows great disregard for the educational needs of the children" is unbelievable and I reject it as untrue.

The orders of the Family Court in 1994 giving custody to the respondent and the order for maintenance have never been set aside or stayed and are still subsisting.

Why, therefore, has not the applicant applied to have the decree nisi which he obtained from as far back as the 7th of May, 1996, made absolute, since he is planning to be married "as soon as is practicable" to Miss Williams, his new found love.

There are some irregularities in this application.

The re-listed summons is dated 19th of June, 2000. Yet, no affidavit in support of the summons was filed until October, 2000, when an affidavit signed and dated 19.10.00 is sworn to on the 20th of October, 2000. A second affidavit was subsequently filed on the 28th of October, 2000.

On the totality of the affidavit evidence and after interviewing both children, I find that in the best interest of the children they ought to remain in the custody of their mother.

For these reasons, the application in the re-listed summons is refused and the summons is dismissed with costs to be respondent to be agreed or taxed.