



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CHAMBERS

SUIT NO. 2006/M0003

BETWEEN	ANNA NICHOLA JONES	APPLICANT
AND	DENNIS ELROY JONES	RESPONDENT

Mr. Gordon Steer and Miss Deborah Dowding instructed by
Chambers, Bunny & Steer for the Applicant.

Mr. Donald Gittens for the Respondent.

Maintenance – Maintenance of Children – Children (Guardianship and
Custody) Act – Maintenance Act.

Heard on the 28th May, 16th June, 31st July and December 16, 2008

THOMPSON-JAMES, J (Ag.)

By way of application for court orders filed on the 17th September
2007, Dr. Anna Jones seeks the following orders:-

- (1) That she be granted custody care and control of the relevant
children namely; Victoria Ashley Jones born on the 14th day of
May 2000 and Joshua Zachary Jones born on the 2nd day of
February 2002 with reasonable access to the
respondent/father, Dennis Elroy Jones.

(2) That the respondent/father pays by way of maintenance to the applicant the sum of one hundred and eighty thousand (\$180,000.00) dollars monthly, plus all education expenses for the relevant children.

On the 12th February 2008 the Honourable Mr. Justice Morrison (Ag.) made an interim payment order of ninety-five thousand (\$95,000.00) dollars per month inclusive of school fees.

On the 28th May 2008 the issue of custody, care and control and access was resolved with the consent of the parties.

The issue now before the court is that of the determination of the maintenance of the children and Dr. Dennis Jones' contribution.

The parties were married on the 14th day of April 1998. They no longer cohabit. Dr. Anna Jones has petitioned the court for dissolution of the marriage. Dr. Dennis Jones from the submissions made on his behalf seems to be offering the sum of ninety-three thousand seven hundred and eighty-three (\$93,783.00) dollars for the maintenance of the children as well as to pay 50% of their medical and educational expenses.

The Evidence of Dr. Anna Jones

Dr. Anna Jones in her affidavit testified that she was married to Dr. Dennis Jones on the 18th April, 1998. The Marriage produced two (2) children, namely; Victoria Ashley Jones born on the 14th May 2000 and Joshua Zachary Jones born on the 2nd day of February 2002 (the relevant children). The marriage has ended. The parties have separated since October 2004. In September 2006 she filed a petition for divorce.

Dr. Dennis Jones is a dentist earning in excess of \$12million yearly. In addition he owns several pieces of Real Estate and is collecting rental in the amount of \$200,000.00 monthly. He is not contributing in a meaningful way to the maintenance of the children, as he only contributes to the payment of school fees.

She listed the monthly expenses in relation to the children as amounting to two hundred and fifty-eight thousand five hundred and sixty-six (\$258,566.00) dollars. She earns approximately \$5million yearly and her personal expenses amounts to one hundred and fifty thousand (\$150,000.00) dollars monthly.

In Cross-Examination

She admits that she shares in the benefit of the expenses that she listed in the affidavit however; she does not share in overtime for

the nanny, entertainment, clothes and uniform as well as miscellaneous and extra curricular activities.

Victoria is the only one currently riding. Joshua plays football which attracts a fee of US\$70.00.

Dr. Dennis Jones' father transports the children to school, her mother collects them 90% of the time, while she collects them the remainder of the time. Her mother is her landlord and there is no rental agreement between them.

Her business is operated through a Company, Align International. The shareholders being her mother and herself.

The company maintains bank accounts both in chequing and savings in its own name. She has credit cards in her own name however, she is unsure as to the number of credit cards issued to her as well as her combined credit limit. The company discharges expenses for her but she exhibits no bank statements in relation to the company.

She holds the following properties:

- (i) 5 Rodeo Drive; which is mortgaged, along with Dr. Dennis Jones;
- (ii) Property in St. Elizabeth which is not fully transferred to her
- (iii) 5 acres of land in Trelawny registered in her name.

- (iv) A home at Cassitas which generates an income of \$40,000.00 monthly.

She agrees that there might be others which she cannot recall.

There is no motor vehicle registered in her name and she owns one (1) life Insurance Policy.

The company owns land at Lady Musgrave, St. Andrew; however, she is unsure of the rental.

Dr. Dennis Jones is not involved in the company neither did he pay the deposit on the house at Cassitas.

The Evidence from Dr. Dennis Jones

Dr. Dennis Jones in his affidavit testifies that he is a Dentist and to the best of his knowledge his wife does not pay rent. She lives at a family house owned by her parents. As an Orthodontist, Dr. Anna Jones is in a specialty area and has been practicing in this capacity for over ten (10) years. He practices as a general dentist whilst she is able to practice both as a general dentist as well as a specialist, making her potential earning capacity greater than his. He earns an average monthly income of \$750,000.00. He does not collect rental of \$200,000.00 per month. He collects rental of \$120,000.00 from three (3) pieces of Real Estates.

The expenses claimed by Dr. Anna Jones are exaggerated and is not a reflection of how the family was maintained whilst they were together.

Victoria rides at Caymanas Park and is transported there by her grandfather who would not charge for this service. Justin used to play football at the Barbican playfield.

None of the children presently takes extra lessons and for their combined educational expenses he pays \$183,000.00 per term; as well as payment for extra educational expenses. He gives his total average monthly expenses as \$557,000.00.

In Cross-Examination

He testifies that he pays a mortgage of \$237,000.00 monthly and he owes \$9million to RBTT, involving properties.

The property in Annotto Bay which is presently being renovated generates a rental income of \$35,000.00. The cost for renovation is \$2.5million, \$2million dollars of which is a gift.

He owns property at Taylor Drive which used to earn \$40,000.00 monthly. The tenants have vacated the premises. He has property at Rodeo Drive from which he earns a rental of \$25,000.00 monthly as well as \$15,000.00 in relation to a helpers quarters rented. He operates a business known as Tyre Masters with location in

Tombstone St. Elizabeth and Windward Road, Kingston. At the Kingston location he has two (2) tenants who pay a monthly rental of \$10,000.00 each. He rents property in old Harbour at a monthly rental of \$45,000.00. He sublet this premises however the landlord collects the rental.

He is the father of three (3) other children. He pays to their mothers \$20,000.00 monthly for each child's maintenance and pays school fees for two (2) of the children as well. He is not in a position to honour the Interim payment of \$95,000.00 ordered by the court for the maintenance of the relevant children.

He agrees that in his profit and loss accounts he has excluded the profits and losses in relation to the Tyre business. It is incorrect to say that he collects rental from the 5 properties however he went on to that it is correct that he collects rental from the five (5) properties.

Although he owns two (2) other motor vehicles, he drives a Mercedes Benz in which he has ownership but it is not registered in his name and does not belong to him.

In Re-Examination

He testifies that he has no further interest in the St. Elizabeth property. He operates on an overdraft. He receives no income from

the Tyre Business and after deducting his monthly expenses he has \$192,000.00 extra monthly.

I find the following Inconsistencies

On Dr. Anna Jones Testimony

In her affidavit she listed the expenses claimed for, as relating to the children. In cross-examination she agrees that she shares in some of these expenses. In her affidavit she claims \$6,000.00 as transportation expenses in relation to school and extra curricular activities. It is also her testimony that Dr. Dennis Jones' father takes the children to school. Her father collects them 90% of the time whilst she collects them the remainder of the time.

She lists her net salary as \$110,000.00 monthly whilst her expenses amount to \$150,000.00 monthly. I appreciate that she also testified that the company discharges some of her expenses. However I still have a difficulty reconciling these figures.

On Dr. Dennis Jones' Testimony

Dr. Dennis Jones testifies that his monthly income is \$750,000.00 yet this carries no component of the Tyre Business.

He rents property in Old Harbour which he sublets yet it is the landlord who collects the rental from the tenants.

He testifies that he pays \$20,000.00 monthly for the maintenance of each of his three (3) other children yet he went onto say that he pays one of the mother's \$20,000.00 monthly for both children. He discloses a profit and loss statement which excludes the profit and loss of the Tyre Business.

Initially he said that he did not collect rental from all five (5) properties then he went on to agree that he did collect rental from all five (5) properties and this is against the background of his earlier statement that he collects \$120,000.00 monthly in relation to only three (3) properties. Dr. Anna Jones had loaned him \$1million for the purchase of the Mercedes Benz, which he has repaid. He drives the vehicle but he does not own it although he has ownership in it. He cannot explain the incorrect statement in his financial documents.

Submissions on Behalf of Dr. Anna Jones

The written submission in essence outlines the contradictions in the testimony of Dr. Dennis Jones. It further outlines how the monthly expenses could be adjusted downwards and suggests that an order be made for him to pay the amount of \$135,000.00 monthly, in addition to half of all medical, dental, optical and 2/3 of all education expenses.

Submission on Behalf of Dr. Dennis Jones

The written submission in essence did not propose to take issue with most of the expenses claimed but proposes that the amounts claimed for entertainment and transportation to and from school as well as extra curricular activities were not true.

Issue was taken as well with the amount that was claimed for rental. It was pointed out that neither of the party had made full or frank disclosures in their affidavits. The parties it is proposed should bear equally the maintenance of their children.

Finding of Facts

I find that the parties are both persons of substance. They have not been forthright with the court.

Dr. Anna Jones submitted no statement in relation to her earnings neither did she in her affidavit disclose her earnings or holdings.

Dr. Dennis Jones did not disclose the Tyre Masters Business in his affidavit. Initially he sought to say that the profit and loss of the Tyre Company was taken into consideration when he disclosed his monthly income as \$750,000.00, he later retracted this. Neither did he explain the inaccuracies in his financial documents.

Dr. Anna Jones' Expenses

Dr. Anna Jones detailed the children's monthly expenses which amount to \$258,566.00 as follows:

Rental	\$70,000.00
Electricity	\$12,500.00
Water	\$ 1,100.00
Groceries (\$60,000/2)	\$30,000.00
Nanny	\$21,666.00
Overtime for Nanny	\$ 4,300.00
Entertainment	\$35,000.00
Clothes	\$ 8,000.00
Uniforms	\$ 2,000.00
Medical Expenses	\$ 2,000.00
Health Insurance(local/overseas)	\$23,000.00
Miscellaneous Expenses	\$ 5,000.00
Telephone, internet(children)	\$ 5,000.00
Motor vehicle expenses to take Children from school and to extra Curriculum activities	\$ 6,000.00
Extra curricular expenses Swimming, riding extra lessons	<u>\$30,000.00</u> \$258,000.00

However in cross-examination Dr. Anna Jones admits that she shares in the expenses for rental, electricity, water, groceries and the

nanny. I will add entertainment to this list and reduce the amounts claimed in these areas by 1/3.

Hence the following items will be reduced as follows (and the figures rounded off to the nearest dollar);

Rental(2/3)	\$47,000.00
Electricity(2/3)	\$ 8,400.00
Water (2/3)	\$ 731.00
Nanny (2/3)	\$14,500.00
Entertainment (2/3)	\$23,400.00
Telephone/Internet	<u>\$ 4,000.00</u>
	\$98,071.00

I will allow the following amounts for the sole benefit of the children;

Groceries	\$30,000.00
Overtime for nanny	\$ 4,300.00
Clothes	\$ 8,000.00
Uniforms	\$ 2,000.00
Medical Expenses	\$ 2,000.00
Health Insurance	\$23,000.00

(local/overseas)

Miscellaneous	\$ 5,000.00
Extra curricular activities	<u>\$15,000.00</u>
	\$187,371.00

Dr. Anna Jones has not actually proved her claim in relation to extra curricular activities apart from the \$US70.00 for football. However I will allow \$15,000.00 for extra curricular activities. It is conceded that an amount should be awarded for extra curricular activities as it was submitted on behalf of Dr. Dennis Jones, that an amount of \$10,000.00 should be allowed for extra curricular activities

The \$6,000.00 claimed for transportation of the children from school and extra curricular activities will have to be deducted as Dr. Anna Jones has testified that the paternal grandfather takes the children to school 90% of the time, the maternal grandfather collects them and the remainder of the time she collects them herself. Further Dr. Dennis Jones' evidence that Victoria is the only one of the children who currently rides and is taken to Caymanas Park for this activity by her grandfather who is unlikely to charge her for this service was never challenged.

I find that the total amount for the children's expenses will then amount to \$188,000.00.

Dr. Dennis Jones' Available Income

After listing the details of his average monthly expenditure, Dr. Dennis Jones arrived at a total of \$557,000.00. He testified that his average monthly income was \$750,000.00. His earnings from rental \$120,000.00.

It is unclear from the evidence whether the \$120,000.00 for rental is included in the \$750,000.00

However he testifies that after deducting his expenses he is left with \$192,000.00 extra.

The deducted amount includes child support which in turns covers school fees for his other three (3) children. His net surplus I find is therefore \$192,000.00

The Applicable Law

By Section 7(1) of the Children (Guardianship and Custody) act;

"The court may upon an application of the father or mother of a child, make such order as it may think fit regarding the custody of such child and the right of access thereto of either parent, having regard to the welfare of the child, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either

parent, of any guardian under this Act; and in every case may make such order respecting costs as it may think just.

Section 7(3)

"Where the court under subsection (1) make 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."

By subsection 8(1) of the Maintenance Act

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;

By section 9(1)(a) of the Maintenance Act

A maintenance order for the support of a child

- (a) Shall apportion the obligation according to the capacities of the parents to provide support;

By section 9(2)(a) of the Maintenance Act

In considering the circumstances of a dependant who is a child, the court shall have regard to the following matters in addition to the circumstances specified in section 14(4)-

- (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 Application of the Law to the Finding of Facts

As far back as 1953 the courts recognized that in assessing the quantum of maintenance the court must take into account the means of the mother – re T (infant) 1953 Chancery Division page 789

This was followed in Butler vs Butler Suit # D1982/B099, by Harrison J(Ag.) as he was then at page 7, the learned judge states that the means of both parties must be considered and of course this is the provision of section 9 (2)(a) of the Maintenance Act which in essence amounts to, that each parent has an obligation to provide support for the children.

I must therefore in determining the amount that Dr. Dennis Jones should be ordered to pay for the maintenance of the relevant children, take into account the means of Dr. Anna Jones as by virtue of section 9(2)(a) each parent has an obligation to provide support for the children. I must also by virtue of section 9 (2)(b) of the Maintenance Act among other considerations have regards to the children's aptitude for and reasonable prospect of obtaining an education and by virtue of Section (9)(2) of the said Act, I must also consider the children's need for a stable environment.

After giving due consideration to the foregoing then by virtue of section 9(1)(a) as well as the provisions of section 14(4) of the Maintenance Act, I must therefore proceed to apportion the obligation according to the capacities of the parents to provide support.

Both parties are persons of reasonable substantial means. The relevant children are accustomed to a reasonable good standard of living which includes skiing in Colorado, horseback riding and vacations at Resorts. The fact that the parents are no longer cohabiting it seems to me does not mean that there should be a reduction in Victoria's and Joshua's standard of living. I do not see any reason to in anyway alter their standard of living.

In considering all these factors in an effort to determine Dr. Dennis Jones contribution to the maintenance of the two (2) relevant children I must bear in mind that it is the welfare, the best interest of the children that is paramount.

The factor of the maintenance of Dr. Jones other three (3) children were taken into consideration in arriving at his net surplus income.

I also took into consideration the fact that a father must never be ordered to pay more than is reasonable having regards to his means
(– re – T – (infants)).

In the final analysis I find that in arriving at Dr. Dennis Jones' contribution I must apply a means test.

However I must balance this against the fact that Dr. Anna Jones is the one who has the day to day care and control of the relevant children and that in calculating the expenses in relation to the needs of these children, there can be no precise mathematical computation. The vicissitudes of life I find does not allow for this. I find that there will always be other miscellaneous expenses not factored into these calculations or allowed for and these may well have to be borne by the one who has care and control.

I am mindful of the earning capacity and the means of both parents

I would therefore order that Dr. Dennis Jones pays 3/5 of \$188,000.00 i.e. \$112,000.00 monthly for the maintenance of the two (2) children and 50% of all medical and education expenses.

Conclusion

Based on the earnings of both parties, the expenses pertaining to the children, which I find that are reasonable to be incurred as well as the available disposable income of Dr. Dennis Jones I find that he should contribute \$112,000.00 per month to the maintenance of the children as well as pay 50% of all medical and educational expenses.

Order

1. That Dr. Dennis Jones pays to Dr. Anna Jones the sum of \$112,000.00 for the maintenance of Victoria Ashley Jones and Joshua Zachary Jones as well as 50% of all medical and education expenses, commencing on the 16th December, 2008.