IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FAMILY DIVISION

SUIT NO. F.1999/O-006

BETWEEN	JOHN MICHAEL ANTHONY ORELUE	PETITIONER/ APPLICANT
A N D	ANDREA GAIL PARKIN-ORELUE	RESPONDENT

Mr. John G. Graham and Miss Peta-Gaye Manderson instructed by John G. Graham and Company for Petitioner/Applicant.

Mr. Gordon Steer instructed by Chambers, Bunny and Steer for the Respondent.

Application to Vary Consent Order filed on 23rd June, 2010

Heard: 1st June, 2011

CORAM: MORRISON, J.

[1] On the 25th April, 2001 the Applicant, John Orelue was, by way of a Consent Order in the following terms, obliged to pay:

1. All the educational expenses for the relevant children and for their extra lesson.

2. All the medical, dental and optical expenses not covered by the Respondent's health insurance plan and which relate to the relevant children.

3. The sum of Twelve Thousand ($12,000) Dollars per month to the Respondent; and

4. (i) inter alia, expenses for clothing and shoes including school uniform.

(ii) for the bills relating to electricity, water, telephone, cable, internet, entertainment and for the maintenance of the pets.

(iii) the expenses for maintenance of the house at 33 Heathwood Drive including a helper and a gardener.

[2] By way of an application for Court Orders filed on the 23rd July, 2010 he seeks orders to vary the order of April 25, 2010 in the following terms:

(a) that the Respondent shall be solely responsible for the maintenance payable to Allerdyce Green Maintenance Services, electricity, water, telephone, cable and internet bills for the house at Heathwood Drive and;

(b) that the Respondent be solely responsible for paying the household helper, the gardener and for the maintenance of the pets.

[3] The Applicant grounds the variation he seeks on the basis that “the bills and expenses have significantly increased since the date of the Consent Order” and that he is no longer able to solely bear these expenses.

[4] There can be no doubt that such a person as the Applicant can seek the Court’s intervention to vary an order made by it even though it be a consent order.

[5] Section 24 of the Maintenance Act allows for “Agreements in respect of Maintenance” and by S.5(B) and S.8 of the said Act a court if satisfied that it would be unjust to give effect to the agreement, have regard to a number of criteria.

[6] They include the provisions of the agreement; the time that has elapsed since the agreement was made; whether in light of the circumstances existing at the time

the agreement was made the agreement was unfair; whether by changes in circumstances since the agreement was made render the agreement unfair or unreasonable and any other matter which it considers relevant to any proceedings.

[7] The Applicant relied on his two affidavits sworn to on June 22, 2010 and on February 28, 2011 which the Respondent countermanded by filing her affidavit in response which is dated 12th December, 2010 having been sworn to on the 11th of that month.

[8] The gravamen of the applicant's complaint is that he having been divorced from the Respondent on July 4, 2001, and having remarried on August 1, 2006 that he now relies heavily on his wife's income and at times, "…..I have to be dipping into my savings in order to make ends meet and, due to the increase in cost of living over the years, it is a financial burden for me to continue to pay all the bills for the house at 33 Heathwood Drive without any contribution from the Respondent especially in light of the fact that the property is now registered in her name."

[9] From the above quote it may safely be said that what the Applicant is saying is that, his financial salvific future is in dire straits, if the Respondent, who is now a beneficiary of the former matrimonial house at 33 Heathwood Drive, it having been registered in her name, is not made amenable to the orders that he now seeks. That, if the latter fact be treated as a benefit then there ought to be some diminution to the extent of the household bills he is responsible for with respect to the former matrimonial house (the house). That insinuation, if anything, is implausible as was part of the consent order and importantly, the house was transferred into the name of his children, including Gabrielle and the Respondent.

[10] Also, he inveighs that the burdensome costs in relation to the house ought to be reduced as, “the Respondent is employed as a medical technologist and as I verily believe that she is in a position to take over payment of the household bills for the house at 33 Heathwood Drive.”

[11] In rebutting the application for the consent order to be varied the Respondent says that “living expenses have increased,” so much so that “the current payment of $14,000.00 is woefully inadequate.” This being so, she argues, the application is unmeritorious. When looked at against the facts that, “the monthly cheque is written by his mother on her account; that the applicant does not pay the telephone bills or internet bills; that the applicant currently drives a Toyota Tacoma; owns a lot of land at Long Mountain that is valued at $25,000,000 and is the operator off a business known as J & G Imports that imports and sells shock absorbers and fuel additives, the applicant’s plea of impecuniosity is a ruse mounted “in an effort to not maintain his child properly.” The Respondent then tabulates her monthly expenses for Gabrielle, now fifteen years old, which is in the order of $113,700.00

[12] To this raft of objections the Applicant took issue with the Respondent as regards the:

(a) chequing account

(b) enormity of a phone bill for one month

(c) Toyota Tacoma

(d) Value of the Long Mountain property

(e) Transactions for J & G Imports

(f) Expenses associated with Gabrielle.

[13] It is evident to me that, of the two Affiants, who incidentally were both cross-examined, the Applicant, who was less than forthright, was also unforthcoming. He rested on general notions of hardship. While the Respondent's overall evidence and demeanour did not emerge with bristling accuracies it was, nevertheless, preferred to that of the Applicant. One of the deficits in the applicant's affidavits was the lack of hard data in respect of his earnings, vis-à-vis his expenditure past and current. Whereas his criticisms of the handling of the financial affairs of Gabrielle by the Respondent is, in some instances, valid, he being the Applicant in this case, is obliged to put before the court cogent evidence and documentary support in advancing his application. Certainly, from my vantage, the applicant has not demonstrated that he is not in a position to maintain the consent order that he agreed to on the 25th April, 2001. Simply put there is no evidence before me that demonstrates a change in his financial circumstances other than his mere self-serving say-so. As a corollary, he has not shown by way of evidence that the Respondent can satisfy and meet the variations of the order that he now earnestly seeks. In any event, I accept her evidence that she is not in a position to take up the financial mantle of maintenance should the Applicant succeed to the extent of his Application.

[14] Apropos, the evidence emerging from the affidavit evidence is that it was the Applicant who unilaterally increased the monthly amount for the maintenance of Gabrielle from $12,000.00 to $14,000.00 in about 2009 a fact which may well be recognition on his part of the harsh economic reality confronting the upbringing of his child, which he now seeks propitiation from.

[15] In ***Stockhausen v. Willis***, HCV 2920 of 2004, Anderson J. had to consider the self-same issue of the variation of a consent order. His Lordship relied on a passage from Halsbury's Laws of England, 4th Edition, volume 13, paragraphs 1168-1170 for the principle that obtains in respect of such an applicant. I so adopt. The principle is this:

> "A consent order may be varied if there is a material change in the position of one of the parties……" However, rejoins Anderson, J, "this provision of power to vary should be considered even more crucial in matters relating to children and the primary consideration is always the welfare of the child."

[16] At the expense of repeating myself, nowhere in his affidavits are there past or current earnings to evince or justify the orders sought in his application.

[17] In the end, and bearing in mind that the Respondent abandoned her claim for an increase in maintenance support for Gabrielle, and taking into account that it is in Gabrielle's best interest that the maintenance order was made and is to be maintained, this court is of the view, on a balance of probabilities, that the Orders as sought by the Applicant:

> (a) that the respondent shall be solely responsible for the maintenance payable to Allerdyce Green Management Services, electricity, water, telephone, cable and internet bills for 33 Heathwood Drive, and;

(b) that the Respondent be solely responsible for paying the household helper, the gardener and for the maintenance of the pets: are refused for the reasons as have been given.