

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. HCV 5580 OF 2005**

**IN THE MATTER OF SECTION 10 OF
THE MATRIMONIAL CAUSES ACT,
1989**

**BETWEEN CARROL AMELIA WILLIAMS-PRESCOD CLAIMANT
AND GREGORY CYRUS PRESCOD DEFENDANT**

IN CHAMBERS

**Miss Daniella Gentles instructed by Mrs. Suzanne Ridsen-Foster of
Livingston, Alexander and Levy for the applicant**

No appearance for defendant and defendant absent

JANUARY 23 AND 26, 2006

**EX PARTE APPLICATION FOR INJUNCTION ORDER UNDER SECTION 10 OF
THE MATRIMONIAL CAUSES ACT**

SYKES J

1. It appears that applications for injunctions under section 10 of the Matrimonial Causes Act are increasing. This is one such application. It is an ex parte application. The applicant, Mrs. Carrol Amelia Williams-Prescod, has applied for an injunction to bar her husband, Mr. Gregory Prescod, from entering or returning to the matrimonial home. She is a Jamaican national and her husband is said to be from The Commonwealth of the Bahamas. She alleges in her affidavit sworn on December 2, 2005, that her husband abused her, physically and verbally. The abuse has also produced emotional distress. She has exhibited medical certificates

from a Dr. Robertson. The first is dated March 8, 2005, in which the doctor indicates that he saw Mrs. Williams-Prescod on the same date of the report and she was found to be suffering from a painful haematoma on the posterior skull. This injury, said the doctor, was caused by a blunt instrument. She was given medication and sent home. The second report is dated March 16, 2005. This report indicates that the applicant is suffering from depression and anxiety attacks. The manifestations of the depression and anxiety are nightmares, shortness of breath, a racing heart, nervousness, poor memory and poor concentration. At the time of the second report, the claimant was on anti-anxiotic medication.

2. The parties were married on February 26, 2000. According to the applicant the relationship began deteriorating in early 2004. It is alleged that he had an extra marital affair and when questioned about it, he ripped the clothes from the applicant's body and assaulted her. This pattern of abuse continued and reached its climax in February/March 2005. It is being said that at that time, he pinned the applicant against a wall and began squeezing her neck. This was in the presence of the children. After the children left for school, he attacked her again pinning her in a corner and landed a heavy blow on the back of her head which produced dizziness. Presumably, this was the blow that caused the haematoma referred to by Dr. Robertson in the March 8 report. She was rescued by her cousin who got the respondent to leave the house. During his absence, she called the police. They arrived. The respondent returned shortly after the arrival of the police. On his return, he was told by the applicant that he had to leave the house. He resisted but the applicant was adamant. The applicant's sister then gave the respondent a cheque for \$200,000 which represented his portion of the savings account held jointly with the applicant. He was taken to the bank; then to the airport by the applicant's brother in law and left the island. The respondent has not been seen since. The applicant at paragraph 22 of her affidavit says that she has been trying for sometime to establish the whereabouts of her husband. She has not had any success.

3. The applicant also alleges that the house in which she lives was bought by her using her own resources. It is registered in her name alone. She resides at the house with the two children of the marriage. The home is also her place of business.
4. What does the law say are the considerations a court should bear in mind when faced with this kind of application? Mangatal J (Ag), as she was at the time, in ***Carol Fay Reid v Clinton Rexford Reid*** Suit No. F 2001/R – 055 (delivered November 14, 2003), at paragraph 7, identified eight factors to be taken into account when considering an application such as this. These factors were gleaned from English cases with different statutory provisions but that does not make them any the less valuable because the factors are ones which, unless precluded by the words of the statute, a judge would, as a matter of common sense, take into account if he is being asked to exclude a spouse from the matrimonial home.
5. In her submissions, Miss Gentles was at pains to point out the risk of not granting the order sought. She submitted that because the respondent is the father of the children, he might return at any time. Miss Gentles stated that Mrs. Williams-Prescod is traumatized and lives in constant dread of the possibility of the respondent's return. The injunction would foreclose that possibility and give her client a greater sense of security and peace of mind.
6. She urged that I take the following matters into account:
 - a. the property is registered in the applicant's name alone;
 - b. the applicant bought the property out of her own resources;
 - c. there is a history of violent conduct of the husband;
 - d. there is nothing that would prevent the husband's return to the house despite the fact that he left the house in March 2005;
 - e. the husband maintains telephone contact with the home;
 - f. the absence of the husband since March 2005 suggests that he has found other accommodation;
9. In examining the evidence, I observe that other than calling the house, which in the circumstances would be distressing, Mr. Prescod has not made any attempt to

return to the matrimonial home. No allegation has been made that he has indicated any desire to return to the matrimonial home. There is no allegation that anyone at his behest has been molesting the applicant and her children. In fact, nothing has happened to the applicant since March 2005.

10. I now analyse the considerations raised by counsel. With regard to factors (a) and (b), they indicate that the respondent would not be able to make any legal or equitable claim to the property. Factors (c) and (d) tend to show that the respondent unless restrained may return to the house and may continue where he left off. His conduct on the telephone (factor (d)) does not show any change of heart on his part. Factor (f) demonstrates that the order would not impose any hardship on him from the standpoint of alternative accommodation. Finally, this is an ex parte order which can be varied or set aside on new information coming before the court. All these factors are valid considerations but as it presently stands, there is no evidence of imminent threat from the respondent. The evidence is that Mrs. Williams-Prescod not only ejected the respondent from the matrimonial home but paid him off. On the same day that he received the cheque, Mr. Prescod succumbed to extraordinary powers of persuasion; he left the island and has not returned. Further, technology is now available to deal with the telephone calls. Caller identification devices can be used to screen the calls; number can be changed. While I am sympathetic to the applicant, I do not believe the law allows the court to grant an injunction or order on the speculative possibility that something may happen. Something more is needed other than Mrs. Williams-Prescod's fear of a possible future event that may never come to pass. The application is refused.