[2019] JMSC Civ. 195

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014M01250

BETWEEN	**CARL DONOVAN WRIGHT**	**PETITIONER**
AND	**NADIA SOLAINE GRAHAM WRIGHT**	**RESPONDENT**

IN CHAMBERS

Mrs. Juliet Mair Rose instructed by Riam Esor Law for the Petitioner

Mrs. Kaye-Anne Parke instructed by Chambers Bunny & Steer for the Respondent

Heard: July 23 and October 22, 2018, and January 14, February 4, and October 4, 2019.

Petition for Dissolution of Marriage – Application for Custody and maintenance of children – Whether child is a child of the family – Divorce not yet final – Matrimonial Causes Act - Children (Guardianship and Custody) Act – Maintenance Act

LINDO J

[1] On May 15, 2014, the Petitioner, Mr Carl Wright brought a Petition for the dissolution of the marriage between himself and the Respondent, Mrs Nadia Graham Wright. The marriage took place in Jamaica on April 22, 2006 and both parties are domiciled in Jamaica.

[2] There are three children born to the parties since the marriage, D, born on June 11, 2006; M born on December 18, 2008 and G born on November 27, 2010. Prior to the marriage, the Respondent had a child J, born on April 20, 2002. The Petitioner is not the biological father of this child.

[3] On March 16, 2015, the Petitioner filed a Notice of Application for Court orders in which he sought custody of the children of the marriage and maintenance in the amount of $130,154.17 “reflecting half the costs of the total costs for the monthly maintenance” for the said children.

[4] The Respondent on June 11, 2015, filed a Notice of Application for Court orders in which she sought: *“Sole custody of the relevant children namely; JB...D ...M...G... with reasonable access to the Petitioner”.* She also sought “*maintenance... of $350,000.00* monthly, “*in addition to one half educational, medical, dental and optical expenses reasonably incurred”.*

[5] The court will not pronounce on the dissolution of the marriage unless the issues relating to the children are addressed. Hence the applications for custody and maintenance of the children are before me for a determination.

[6] At a hearing which took place on June 11, 2015, the following interim order was made:

> *“...Interim payment for maintenance in the amount of $50,000.00 shall be paid by the Petitioner to the Respondent commencing on June 24, 2015 and thereafter on the 24th day of each successive month, as well as ½ medical costs and ½ educational costs in relation to D, M and G ...*
>
> *“... By consent, interim custody of D...M...and G... is granted to the Respondent.”*

[7] On January 12, 2016, the Respondent filed a Notice of Application for court orders seeking an extension of time to file and serve an affidavit in response and that the hearing set for January 12, 2016 be adjourned. By order of the court made on June 29, 2016 an extension of time was granted to the Respondent

[8] The hearing of the Petitioner’s application filed on March 16, 2015, seeking custody and maintenance of the children, and the Respondent’s application filed on June 11, 2015 seeking custody and maintenance of the children, including J, were set down for hearing on July 21, 2016. The applications were not heard then but were further adjourned to July 23, 2018.

[9] When the matter came on for hearing on July 23, 2018, the two applications were heard together. The evidence in support of the Petitioner's case, and in response to the Respondent's counter application, is contained in affidavits filed on March 16, 2015, June 5, 2015, June 30, 2015 and January 22, 2018. Evidence in support of the Respondent's case is contained in affidavits filed on June 11, 2015 and January 15, 2016.

[10] The affidavits of the parties were admitted as their examination in chief and they were cross examined.

The Petitioner's Case

[11] Mr Wright's evidence is that his marriage to the Respondent has broken down since 2010 although they continued to live separate and apart under the same roof. He states that he has never assumed financial support for J although he does not deny him anything he provides for his other children, that the Respondent receives monthly maintenance from J's biological father and that J stopped calling him "daddy' in 2006. He adds that he paid J's school fees 'once' and gave him lunch money 'sometimes' and that he had no assistance in paying for the schooling for D, M and G. He itemised his expenses for the children to include school expenses, rent and utilities, helper's fees and grocery as amounting to $122,750.00 per month.

[12] When cross examined, he denied beating the children or using expletives to them but indicated that he "talks to them sternly" and in relation to the closeness of the family, he stated that he was unsure of a close relationship between D, M, G and J, but that the family was generally 'close enough'.

[13] He denied that he enrolled D and M in primary school after he learnt that the Respondent had applied for a Protection Order at the Family Court and said he was assisted by the Ministry of Education to get them into school but his wife later moved them to another. He denied, in part, the allegation of repeatedly

turning off the breaker, stating that he only did so once and he denied padlocking the refrigerator.

[14] He said that for the three years since the interim custody order was made, he had not been able to spend quality time with the children, they could not come to an agreement in relation to access, and the Respondent completely denied him access. When asked about the children's willingness to go to him he, in a very quiet tone, said that they were willing to go with him.

[15] He denied that the grades of M and D were negatively affected by having to visit him in keeping with the Court Order and stated that he would not be in agreement with an order for access every other weekend even if it was in the best interest of the children.

[16] He stated that he is a Canadian citizen and that he should start collecting his pension from both Canada and Jamaica when he is 65. He denied that he is a tailor, but agreed that he owns his home, mortgage free, and is a landlord. He said that he has rented three shops and earns $92,000.00 per month including maintenance, $60,000.00 per month and $87,000.00 per month in respect of these shops. He stated that he has a contract with Digicel for lease of a space for a cell tower for $330,000.00, for six months. He denied having two other shops which could be rented but stated that they were unfinished and stated that there is an incomplete detached unit for a soup kitchen, which, contrary to what the Respondent stated, she did not invest in.

[17] He said that a teacher rents part of the house for $15,000.00, but he does not generally collect the rent as she cleans the house for him. He stated that when he had the children the electricity bill was on average $30,000.00-$40,000.00 per month, but now it is between $1,000.00-$2,000.00 and the water bill was $800-$10,000 but now it is generally under $10,000.00 and that it costs $120,000.00 to maintain his vehicle each month and approximately $27,000.00 to $28,000.00 for gas. He stated that $130,000.00 per month for general living expenses is

reasonable, and that the $50,000.00 given to his wife is reasonable for maintenance.

[18] He said that he no longer pays school fees for M and D and that the debt declared to the court was cleared but he continues to borrow money.

The Respondent's Case

[19] The Respondent states that the Petitioner accepted J as a child of the family when they were married and he provided financial support for them and included J in family activities and that the relationship deteriorated in 2012. She also provides evidence that an "interim maintenance order was secured" from the Family Court for the parishes of Kingston and Saint Andrew, exhibits the copy of an order made on April 24, 2015 in respect of child D, and adds that she now receives $40,000.00 per month from the Petitioner as a result of the court order.

[20] She also states that in 2012/2013 the Petitioner interfered with the general power supply which "had the effect of limiting [them] to only one light in the house at nights" and that in June 2015 he unplugged the main refrigerator, locked the grill thereby giving access to the other refrigerator when he is at home and removed toaster and microwave from the kitchen.

[21] In her affidavit sworn to on the January 15, 2016, the Respondent states that J's biological father has not maintained him since he was three (3) years old and that the Petitioner encouraged J to call him "daddy" from before their union. She states that after the breakdown of the marriage, the Petitioner stopped assisting with J's care and stopped communicating with him.

[22] She states that she earns "roughly $80,000.00 per month" and that her expenses in relation to the children amounts to $197,900.00, which includes cost of rent, housekeeper, electricity, water, groceries and clothing.

[23] In cross examination, she stated that she owns a registered company and earns approximately $70,000.00 per month from it, but that amount is not consistent.

She stated that she does not pay rent, although she continues to have other living expenses. She stated that the house she currently lives in has three bedrooms on her side, and the live-in helper stays in a bedroom on the other side of the house. She stated that the light and water bill for the entire premises amount to $40,000.00 and $10,000.00, respectively. She said phone and cable is approximately $7,000.00 per month, the housekeeper's wages are $32,000.00, groceries are $80,000.00, transportation fees are approximately $30,000.00 and cooking gas is $3,500.00 per month.

[24] She said that in relation to J, the Petitioner was a good father up to the point of their separation, in 2015 and J called him "daddy" up to that point. She added that between 2010 to 2015, the Petitioner treated J in an inhumane manner and would not respond to him.

[25] She stated that she gave between $150,000.00-$200,000.00 of her redundancy payment to the Petitioner for the development of the soup kitchen and that in 2012 she was unemployed, in 2013 she ran her business for six months, and between 2015 and 2018 she held various jobs. She added that she has not gone back to the family home since 2015, and is unable to speak to the current condition of the house.

[26] She said that she is unhappy with the current court order, and denied that she frequently refuses the Petitioner access to the children, because they have other planned activities. She stated further that she was unaware that the Petitioner had a teacher as a tenant to specifically assist the children with homework and that they go to school with incomplete homework.

[27] She said it would not be in the best interest of the children if they resided with the Petitioner and indicated that the Petitioner expressed difficulty in affording the preparatory school fees and that she was aware of the preparatory school's dissatisfaction with late payment or non-payment of the school fees. She also

said that the Petitioner assisted her with the payment of J's school fee for each term.

[28] She indicated that she felt uncomfortable at the family home because it is attached to a business place and that it is unsafe for the children because it is open to the public.

[29] She stated that J's biological father assisted in maintaining J by providing groceries, infant supplies, formula or cash until he was three years old and that she sought the aid of the Court when the maintenance stopped, but was unsuccessful as he migrated and she was not in contact with his family members.

[30] She stated that she was aware of a '$1,000,000.00, bi-annual contract' between Mr Wright and Digicel which started between 2005 to 2006, but she only perused the contract. She denied using the refrigerator for an air conditioning unit.

The Submissions

[31] At the close of the hearing of the evidence, Counsel were ordered to file closing submissions which they did. I have considered carefully the submissions made, as well as the evidence presented by the parties. I am grateful for the assistance of Counsel for the comprehensive submissions filed and while I will not restate these submissions, except as may be necessary to indicate the reasons for my decision, I intend no disrespect for not making full reference to them.

[32] I will note, however, that Counsel for the Respondent indicated that the "applications as cited are brought pursuant to the **Matrimonial Causes Act**. In particular section 23...". Although there is no indication on any of the applications that this is the relevant law under which they have been brought, the applications having been brought after the filing of the Petition for dissolution of marriage, the court will not pronounce on the Petition until the issues relating to the custody, maintenance and upbringing of the children are settled.

The Issues

[33] The court has to determine:

(a) Whether the child J is a child of the family and is entitled to maintenance,

(b) to whom custody of the children D, M and G is to be granted and the arrangements for access; and

(c) what order in respect of maintenance ought to be made

Whether J is a child of the family

[34] **Rayden on Divorce**, 11th Ed. (1971) at page 867, states as follows:

> *"Now, under the provision of the 1970 Act, to establish that a child is a child of the family it is sufficient to show that the child was treated by both parties as a child of the family."*

[35] **The Matrimonial Causes Act,** Section 2, defines 'relevant child' as:

> *(a) A child of both parties to the marriage in question; or*
>
> *(b) A child of one party to the marriage who has been accepted as one of the family by the other party..."*

[36] The case of **Bowlas v Bowlas** [1965] 3 All ER 40 which had to do with the issue of whether a child was a child of the family, is very instructive. It held, *inter alia*, that:

> *"although the mere fact that a man married a woman with children, and set up home with her, might be sufficient evidence that he accepted the children as members of his new family constituted on the marriage, yet in the present case careful investigation was required before drawing from the fact of marriage with knowledge of the children and of their position the inference that the husband had accepted them as members of the new family and had accepted responsibility for their maintenance".*

[37] It is therefore necessary to consider whether the Petitioner ever maintained the child J, whether his actions towards the child amounted to him accepting the child as a child of the family and whether it has been shown that the child was treated by both parties as a child of the family.

[38] I have critically examined the evidence to see the extent to which the Petitioner assumed responsibility for the maintenance and upbringing of the child J, and I note that the child along with the Respondent came to live with the Petitioner as a family, at the age of about four years. I note also that it is the evidence of the Petitioner that he accepted the child into his home, and participated in the care of "everyone" in the house.

[39] I bear in mind that J's biological father is obliged to maintain him and the evidence, which I accept as true, is that he did so, to some extent at least, up to when the child was about three years old.

[40] Evidence was also led to support the view that a relationship of father and son had developed between the Petitioner and J. The Petitioner himself stated that he transported J to school and gave him lunch money. His responses, in cross examination, to questions relating to this issue however, were met with a generalized response of his treatment towards all the children in the household at the material time and an assertion that he paid J's school fees "once", although the Respondent stated that he did so "occasionally".

[41] It was also disclosed, during the cross examination of the Respondent, that the Petitioner had a dismissive attitude towards the child J, but that he was a good father to him up to the time of their separation and that the child called him "daddy" up to 2015.

[42] I did not find the Petitioner to be a convincing witness. He was evasive and chose to be general in his responses to questions concerning his relationship with, and his treatment of, J. He repeatedly indicated what he did for all the members of the household when questions were put to him about what he did in relation to J, in particular. I therefore prefer and accept the evidence of the Respondent in relation to this. I accept that the parties got married in 2006, and J would have been four years old at the time, and I also accept as true, the

evidence that the Respondent and the child J started living with the Petitioner six months after the marriage.

[43] Although the Petitioner asserted that there was an order at the Family Court for J's biological father to support him, no evidence was presented to the court to substantiate this and although it is the Petitioner's evidence that he accompanied the Respondent to the 'ATM' and she would always say J's father has not left any money, I find it reasonable in the circumstances to believe that J's biological father was not maintaining him.

[44] I find as a fact that up to the time the parties separated, the Petitioner covered the expenses of the household to include J, he consistently transported J to school, and occasionally provided school supplies and lunch money for him. Additionally, I find that the Petitioner also did random acts, specifically relating to the child J, such as alteration of his school uniform and sewing on of epaulet, which are acts which I find tend show that he treated J as a child of the family.

[45] In all the circumstances, I believe it is reasonable to find that J is a child of the family and was so treated by the Petitioner and the Respondent, and is therefore a relevant child as defined by the MCA.

To whom should custody of the children D, M and G be given

[46] Section 7(1) of the **Children (Guardianship and Custody) Act** provides as follows:

> *"7.-(1) The court may, upon the 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."*

[47] Pursuant to Section 18 of the said Act, in deciding any question concerning the custody or upbringing of a child, the Court, *"shall regard the welfare of the child as the first and paramount consideration."*

[48] The court, in considering whether to grant custody to one of the two competing parents, is directed not to consider:

> *"...whether .....the claim of the father... is superior to that of the mother, or the claim of the mother is superior to that of the father;"*

[49] I find guidance in the Court of Appeal case of **Dennis Forsythe v Idealin Jones,** SCCA 49 of [1999], unreported, delivered April 6, 2001, where Harrison J.A., (as he then was), said at paragraph 8:

> *"A Court which is considering the custody of the child, mindful that its welfare is of paramount importance must consider the child's happiness, its moral and religious upbringing, the social and educational influences, its psychological and physical well-being and its physical and material surroundings, all of which go towards its true welfare. These considerations, although the primary ones, must also be considered along with the conduct of the parents, as influencing factors in the life of the child and its welfare".*

[50] I therefore consider that "welfare" must be taken in its widest sense. (See **Re McGrath**, [1893] 1 Ch. 143). I therefore find that other considerations must be taken into account and not merely the fact that one parent may have more money than the other.

[51] In the instant case, the Petitioner is owner of a commercial plaza and a home and earns approximately $255,670.00 per month as of March 2015. His home is where the children have spent their formative years but they have been in the care of their mother since June 2015 and have regained some sense of normalcy in their lives. The Respondent lives in a home with her grandmother, she is self-employed and earns approximately $80,000.00, per month, as of July 13, 2018. These are factors I have considered in coming to my decision. However; one parties' ability to afford more than another, is not the guiding factor.

[52] A mother and father have equal rights to custody of a child and it is clear that any decision being made in respect of a child should be made by both parents. Both parents want custody with care and control, but the court has to determine this issue based on what is in the best interest of the children, taking into consideration the applicable legal principles.

[53] In **S (BD) v S (DJ) (Infants: care and consent)** [1977] All ER 656 it was highlighted that:

> *"continuity of care is one of the most important factors in deciding what was in the best interest of a young child."*

[54] I note that the children have been with the Respondent since 2015 and that in interviews with the children, conducted by the Child Protection and Family Services Agency in June 2018, M expressed a preference to live with his mother because she takes care of him and does not use expletives, while G was unsure and D indicated that he had no preference for either parent.

[55] Although the child J is not a subject of the custody application, I believe that in considering the children's happiness, the matter of sibling bond may be relevant. This point was considered by the Jamaican Court of Appeal in the case of **Buckeridge v Shaw**, RMCA No. 5/98, unreported, delivered July 30, 1999. At page 8 of the judgment, Walker JA said:

> *"Another consideration for the court must be the desirability for children born of the same parents and whose births closely follow each other, to grow up together in the same environment thus facilitating a bond between the children"*

[56] Although J is four years older than D, I find it reasonable to believe that the siblings have formed some relationship. There is however no evidence as to whether the children share any interests, therefore this factor is not compelling under the circumstances.

[57] In considering the moral and religious upbringing of the children, I accept as true the evidence that the Petitioner uses expletives generally, as well as to the

children. I also find on the evidence that both the Petitioner and the Respondent make an effort to ensure that the children receive religious teaching. However, while the Petitioner appears to have no difficulty with the children continuing to attend Saxthorpe Methodist Church which is closer to his home, the Respondent, despite her expressed challenge with transportation, continues to send them to the Methodist Church in Red Hills.

[58] D is now attending high school while M and G attend primary school. They are doing well, academically. The evidence which I accept as true also is that the Respondent keeps in touch with their teachers to be up to date with their progress and that she sits with them and assists with assignments, projects, preparation for examinations and other activities. There is evidence that the Petitioner does not assist the children with their school assignments but evidence was led that a teacher, who rents a room from him, supervises the children and assists with their homework.

[59] The conduct of the parties is a factor I have also examined in coming to a determination on the issue of which party should have custody of the children. The Petitioner has denied the allegation that he used expletives to the children. However, there is support for this and I accept as true, the evidence in relation to this as well as the evidence that he gets angry easily. I also accept as true the evidence that he padlocked the refrigerator and, at least on one occasion, turned off the breaker thereby denying the Claimant and children of electricity for a period of time.

[60] There was the allegation of promiscuity on the part of the Respondent by the Petitioner, but this was not substantiated. I bear in mind that although the behaviour of the Petitioner is repugnant, there is no evidence that it has caused any effect on the children and neither has the alleged conduct of the Respondent been said to have had any impact on them.

[61] Having examined the foregoing factors, I note that in the instant case, the parties have not displayed any degree of maturity or cordiality which would lead this court to find that they can or will co-operate in matters relating to the welfare of children, which would suggest that they should have joint custody of the children. There is a lot of tension which is quite evident between them and this I find has, and will continue to affect their ability to make the best decisions for the children. The Petitioner claims that he can provide an environment which is more nurturing, calm and less aggressive for the children and they will be stable if he is given custody while the Respondent on the other hand says he is cruel and manipulative.

[62] In the case **Jussa v Jussa** [1972] 2 All ER 600 Wrangham J., at page 603 of the judgment said:

> *"...I recognise that a joint order for custody with care and control to one parent only is an order which should only be made where there is a reasonable prospect that the parties will co-operate. Where you have a case such as this the present case, in which the father and the mother are both well qualified to give affection and wise guidance to the children for whom they are responsible, and where they appear to be of such calibre that they are likely to co-operate sensibly over the children for whom both of them feel such affection, where you have that kind of situation, it seems to me that there can be no real objection to an order for joint custody".*

[63] The Court of Appeal in **LMP v MAJ** [2017] JMCA Civ 37, in discussing whether joint custody was an appropriate order, stated *inter alia*, that

> *"...despite the assertions of the appellant, that the learned judge did not err when he found, based on the strained relationship between the appellant and the respondent, that joint custody would not have been the appropriate order to have made. This was an exercise of his discretion."*

[64] I am of the view that an order for joint custody is best made in circumstances where the parties are, at the very least, on "speaking terms" and are able to agree on important matters concerning the children. It is also my view that joint custody would create the opportunity for both parents to make the effort to co-operate for the benefit of the children. However, the instant case does not appear

to me to be a case in which joint custody ought to be granted. This is apparent in the parties' response to the interim custody order made in June 2015. The relationship between the parties is acrimonious and this to my mind would cause their ability to make sound decisions for the benefit of the children to be compromised.

[65] I believe it is reasonable to find that the Respondent has shown a more appropriate approach towards the welfare of the children in terms of giving personal attention to them and in particular by assisting them with school work. It is for the reasons stated as well as the fact that the parties do not appear to be able to communicate effectively in matters relating to the children that I find that it would be in the best interest of the children for the Respondent to have sole custody.

Access

[66] The Petitioner has asserted that for the three years since the interim custody order was made, he has not been able to spend quality time with the children and has spent most of the time he had with them, transporting them. He contended that he and the Respondent could not come to an agreement in relation to access to the children and she completely denied him access. When asked about the children's willingness to go to him, he quietly and hesitantly, agreed that they were willing to go with him.

[67] He denied that the grades of M and D were negatively impacted by having to visit him in keeping with the requirements of the interim court order and admitted that he would not agree with an order for access every other weekend, even if it was in the best interest of the children.

[68] The court had the benefit of the Social Enquiry Report prepared pursuant to an order of the court. All the parties were interviewed by the Social Worker and visits were made to the respective homes. I have carefully considered the contents of

the reports as well as the findings and recommendations which include the recommendation that joint custody be granted.

[69] I am of the view that the best interests of the children can only be served if an order is made for the children to remain in the care and control of the Respondent where they are in a more stable environment and one in which there will be more certainty as to parental supervision including assistance with school assignments and if the Petitioner is granted liberal access and be made to contribute to their maintenance.

Maintenance of Children

[70] The court is empowered to entertain the applications and to make orders for maintenance of children. Pursuant to the **Matrimonial Causes Act,** 1989 (MCA) and the **Maintenance Act,** 2005 (MA).

[71] Parents have an equal financial obligation under law to maintain their unmarried children who are minors, and, by virtue of Section 8(1) of the **Maintenance Act** (2005), this obligation is "to the extent that the parent is capable of doing so".

[72] The court is therefore mandated to apportion the obligation between the parties according to their capacities to provide support.

[73] Additionally, **Section 7(3) of the Children (Guardian and Custody) Act** provides as follows:

> *"(3) Where the Court ....makes an order giving the custody of the child to the mother...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."*

[74] It is therefore necessary to determine the financial capacities of the parties and whether the sum claimed by the Respondent can be regarded as reasonable in the circumstances, or whether the figure suggested by the Petitioner should be preferred. In so doing, this court will examine the monthly expenses for the

children, the means of the parties and any other circumstances which the justice of the case requires to be taken into account.

[75] There is in place an interim order for the maintenance of the children M, D and G. By this interim order, the Petitioner is to pay the sum of $50,000.00 per month for the three children as well as half medical and half educational costs.

[76] The Petitioner in his application for custody and maintenance of the three children is seeking "the amount of $130,154.17 per month" to be paid by the Respondent while the Respondent is seeking an order for custody and maintenance in respect of the children including J and is asking the court that "the Petitioner... pay.... $350,000.00 per month for the children, including J, in addition to one half educational, medical, dental and optical expenses reasonably incurred".

[77] In support of his application, the Petitioner states that his expenses in relation to the children amounts to $122,750.00 and includes school expenses, rent and utilities, helper's fees. He provided evidence of school expenses for D, M and G and states that the Respondent has the financial means and should contribute equally to the care, well-being and maintenance of the three children.

[78] From the evidence, I find that the Petitioner has a gross income of approximately $255,670.00. I find also that he would have cleared the debt which he referred to in his evidence in chief and would at this time be paying less for utilities since the children are not at his home.

[79] The Respondent's evidence is that the expenses of the children including "rent contribution" would be $197,900.00. I bear in mind that stated income is "roughly $80,000.00 per month" but she is not now paying rent as she resides with her grandmother.

[80] In **McEwan v McEwan** [1972] 2 All ER 708 the Court held that when assessing whether the sum to be paid for maintenance is "reasonable in all the

circumstances of the case" the justices were entitled to take into account, not only the husband's actual earnings, but also his potential earning capacity. Persuaded by that authority I believe the potential earning capacity of both parties need to be considered.

[81] I am of the view that there is the potential for the Petitioner to earn more when the other shops are rented. Additionally, although on the evidence presented it is not clear when the Petitioner will start receiving pension, I find that he will in due course start receiving his pension payments from Canada as well as Jamaica and this should increase his income substantially. On the other hand, I found no evidence from which I could make a determination on the likelihood of the Respondent earning more than she states she is earning at present.

[82] I bear in mind that the sum sought by the Petitioner as maintenance for the children from the Respondent included the cost of school fees payable to preparatory schools whereas the two younger children are now attending primary schools. It is therefore my considered view that the Petitioner has the capacity to provide maintenance for the children and his capacity to pay is greater than that of the Respondent.

[83] In assessing the amount to be awarded, having taken into account the means of the Petitioner his ability to pay and his potential earning capacity as well as the means of the Respondent, I am also mindful that there will be miscellaneous expenses which will have to be borne by the party with care and control of the children. I have concluded on the evidence that the sum of $100,000.00 per month, as well as contribution to the educational, medical and optical expenses of the children would be reasonable for the Petitioner to bear in relation to the maintenance of the four children.

Disposition

[84] Applying the principles from the authorities, along with the statutory provisions, including such matters as the paramountcy of the welfare of the children in

matters such as this, and the requirement that the responsibility for maintenance of a child be borne equally to the extent possible, having regard to the means of the parties and other relevant factors and having regard to considerations of what is fair and just in all the circumstances, the court makes the following orders:

1. That JB is hereby declared to be a relevant child of the marriage.

2. That sole custody, care and control of the relevant children namely: M, D and G, is granted to the Respondent with access to the Petitioner as follows:

   The Petitioner shall have the children M, D and G on the 2nd and 4th weekends in each month commencing on Friday October 26, 2019 at 4 pm until Sunday afternoon at 5pm and for half all major school holidays and at other times as may be mutually agreed by the parties.

3. That the Petitioner pays to the Respondent by way of maintenance for the relevant children the sum of $100,000.00 per month commencing on the 25th day of October 2019 and thereafter on or before the 25th day of each succeeding month until each child attains the age of 18 years in addition to one half of the educational expenses reasonably incurred, and one half of the medical, dental and optical expenses, as well as the expenses for extra-curricular activities, as they arise, commencing on the 25th day of October 2019, for the benefit of the said children until each child attains the age of 18 years.

4. Each party will bear his/her costs of the applications.

5. There shall be liberty to apply

6. The Respondent’s attorneys-at-law shall prepare, file and serve this Order.