



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2023: No. 52

**IN THE MATTER OF SECTIONS 12 AND 22 OF THE MINORS ACT
1950**

B E T W E E N:

Mother

Applicant

-and-

Father

Respondent

JUDGMENT AND ORDER

(In Chambers)

Application for variation of Consent Order for child support payments

Dates of Hearing: 31 October 2024, 23 January, 21 February and 14 March 2025

Date of Judgment: 25 March 2025

Appearances: Mother in person
Father in person

JUDGMENT AND ORDERS of Martin, J

Introduction¹

1. This matter came before the Court initially as an application by the Father by way of a summons dated 25 September 2024 to vary the terms of a Consent Order of 18 April 2023 (the “Consent Order”) made in respect of child support payments for the two children of the relationship. The application was to reduce the amount of monthly child support payments from BD\$1000 a month to BD\$350 a month. The main ground for the application relied upon by the Father was that his employment status had changed since the making of the Consent Order and now being self employed, he could only afford to pay BD\$350.00 a month. The Father also sought an Order backdating the effect of the variation to October 2024.
2. In response, the Mother made a cross-application for an increase in the amount of child support, claiming that the increased costs of the provision of health insurance coverage, child counselling sessions and extra-curricular activities justified an increase in monthly payments to BD\$2000 a month, but later modified her application to an increase to BD\$1150 a month.

Summary and Disposition

3. For the reasons set out in detail below, the Court has decided to modify the Consent Order in the following respects.
4. First, the amount of the monthly payments will be adjusted to BD\$800.00 per month with effect from 1 January 2025, payable on the first day of each month. This is to reflect the one-half share of (i) the additional cost of providing health insurance

¹ In this Judgment the names of the parties and the children and any identifying facts have been omitted or anonymized to protect the privacy rights of the children.

coverage for the two children which is currently paid by the Mother and (ii) the cost of the extra-curricular activities of the children. In relation to the cost of providing child counselling services, the Father is ordered to meet one half of those costs in the event that further counselling is recommended by the children's child counsellor.

5. Second, the arrears accrued under the Consent Order at the rate of BD\$1000 per month from October to December 2024 are reduced to BD\$835.00 (i.e. BD\$3,000.00 is to be reduced to BD\$835.00 for that period).
6. Third, the Father's recent payment of BD2,500 towards the arrears is to be applied to reduce the accrued arrears to October 2024, thereby reducing the accrued arrears accrued to the end of September 2024 from BD\$7,000.00 to BD\$4,500.00.
7. The Father has not paid any child support in 2025. Adjusting the monthly sum due to BD\$800 a month from 1 January 2025 means that the total arrears to 31 March 2025 amount to BD\$7,735.00 (i.e. BD\$4500 plus BD\$835.00 for 2024 plus BD\$2,400.00 for 2025).
8. The Father is to reduce these arrears by a minimum payment of BD\$500 per month with effect from 1 April 2025 until they are brought up to date.
9. In light of the factors set out below in relation to the conduct of the proceedings, there is to be no Order for costs.

Background

10. The Mother and Father presently share access to their two children on the basis of alternate weeks, after a long and expensive access application. The Father says that he needed to demonstrate that he had adequate accommodation to provide safe and appropriate housing to justify shared access. The cost of this had reduced his disposable income so that he could not afford to continue to pay the child support of BD\$1000 a month. He therefore felt he had no choice but to not pay his agreed child support payments. He felt that because the Mother was earning more money than he was, and had more than adequate resources from her job to meet any ongoing expenses for the

children, that it was more important for him to have access to the children than to pay the monthly child support payments.

11. Naturally, the Mother resented the assumption that she should bear all of the increased expenses that had fallen on her and resisted the application, saying that the Father could afford to pay his share, and sought an increase (ultimately) to BD\$1,150.00 a month.
12. The Father and Mother have agreed that they will each pay the ongoing expenses for housing, food, clothing and ordinary necessities for the children while they are in their respective homes and care, and neither sought a contribution from the other for those expenses.

The issues

13. The parties agreed that the only issues in dispute between them were three distinct categories of expense. These categories were (i) the increased cost of health insurance coverage that now fell on the Mother's purse after the Father had ceased employment in July 2024 and could no longer carry the children on his former employer's health insurance plan (ii) the costs of child counselling services for the children to help them adjust to the new situation between their parents and to cope with the strain of divided loyalties and (iii) the costs of the extra curricular activities that the children are enrolled in.

Additional health insurance costs

14. The Father's initial position was that he should not have to make any contribution to the expense of providing health insurance cover for the children because (i) he had always covered that expense for the last several years at his job and so it was only fair, now that he was self-employed, that the Mother should bear that expense and (ii) his income was so much lower than the Mother's income that she could afford it in any event and did not need his contribution.
15. The Mother said that although she had a steady income, the Father should make his equal contribution and that in reality he could afford to do so if he chose to. If not, she said that it was not right that he should pass his share of the expenses on to her if he

could not afford to pay them and should give up his apartment if he was really unable to meet his share of the children's necessary expenses. She said that he had other assets he could sell to pay off the arrears he had accrued and that she should not have to (in effect) subsidise his living expenses.

16. In the end (in closing arguments), however, the Father conceded that he should and would agree to pay his share of the additional insurance costs, provided that the Mother proved what those were and that she had in fact enrolled the children on her health plan. This point will be considered further below when the evidence is briefly considered.

Child counselling services

17. The Mother said that the children would benefit from child counselling services and sought an equal contribution from the Father. The Father said he did not think the children needed child counselling and he had not given his consent to it. Again, in the end (in closing arguments) the Father agreed he would pay an equal share of these expenses if they were necessary, but he required an opinion from the child counsellor to the effect that the children needed these services before he would agree to pay a half-share of those costs.

Extra curricular activities

18. The Father said that the children have too much going on outside school, resulting in the children being "burnt out" and exhausted and that while one (or maybe two) extra curricular activities might be appropriate, he did not agree to being required to pay for half of the cost of an activity if he did not agree to children being enrolled in the activity concerned.
19. Mother said that the children had been enrolled in several out of school activities while she was in a relationship with the Father and he had never objected to them. She said that it would now be unfair to the children to remove them from these activities which she felt were beneficial and provided a continuity of structure and positive influence for the children. She also said that the range of activities for the children at their ages

allowed them to try out different things before deciding what they liked or wanted to concentrate on when they grow a little older.

20. The extra curricular activities cost (on average) BD\$557.00 per month for both children².

Arrears of child support

21. The Father admitted that he had fallen into arrears and by the time of the hearing in March 2025, he had not paid any regular child support for a year, meaning that he would be BD\$12,000 in arrears. He said he had just paid (in the days before the hearing) BD\$2500 towards the arrears. This will be addressed further below.

The evidence

22. The Father produced copies of his bank statements for the six months between June and December 2024, along with a detailed summary of the properties he owns or receives income from, and the assets he has, as well as the income he receives from his self employment. It is not necessary to go into a detailed description and summary of the income and expenditure incurred. It is sufficient to note that in the period from September 2024 to December 2024 the Father received approximately BD\$43,500.00 in combined income from all sources, or an average of BD\$14,500.00 per month³. This takes into account the fluctuations in the Father's income from his various activities in self-employment.
23. This plainly shows that the Father is in a position to make regular payments of BD\$1000 a month from his income, even though he has other debts and obligations to meet. The Father complains that he has bigger outgoings than the Mother, which reduce his disposable income to much less than hers. On this application, where there is such a limited range of issues in dispute, this is not the correct approach to take.

² The amounts are not in dispute.

³ Based on a review of his bank account statements, rental receipts and other earnings.

24. It is not for the Court to determine or dictate how someone budgets their income and expenses or how they arrange their financial affairs. It is however for the Court to insist that in terms of prioritising the interests of the children, a parent must ensure that whatever their obligations to the children may be, those are paid first and in priority to all other obligations.
25. Initially, the Mother did not produce her bank statements or credit card statements, but gave a general summary of what her income is, and produced some statements reflecting what she claimed as the expenses. She is paid approximately BD\$15,000 a month⁴, and although this fluctuates, when fluctuations occur they are generally in addition to this sum. Therefore, their relative incomes are not that far apart.
26. A detailed comparison of the respective incomes of the parties is not necessary because the parents are not arguing over who should make what contributions for general living expenses. Both parents say they can afford to meet the living expenses for the children while they are in their respective homes.
27. However, the Mother's reason for not producing her bank statements was that her adult son by a prior relationship was a joint account holder and she said she wanted to protect his privacy. She also said that she feared that disclosure of the detailed bank records would enable the Father to engage in coercive and abusive behaviour and so she refused to provide the information to him. The Mother said she would give evidence in the witness box and testify to what she earned instead.
28. The Father objected and said that he had given his disclosure and that the Mother was obliged to give her disclosure in the same way. At this stage of the proceedings the Mother was represented, and the matter was adjourned so that an application could be made by her counsel to restrict the disclosure of this information could be made. In the end no such application was made and the Mother appeared on the next occasion representing herself. The Mother maintained her objection to disclosing her financial records.

⁴ Based on her pay confirmation letter and the bank statements.

29. In light of this the Court made an Order requiring the Mother to produce her financial records in an unredacted form and gave a written ruling on the nature of her objections and explaining why these objections were ill founded. A copy of the Ruling is appended to this Judgment and Order.
30. Despite that Ruling, when the matter came on for hearing on 14 March 2025, the materials handed in by the Mother were redacted and blanked out to obscure the details of what the expenditures from her account related to. The Court (and the Father) was able to read the amounts of the income and expenditure even though the description of the payee of the items on the bank records was blanked out. The Court considered that it would be unjust and disproportionate to adjourn the hearing again (for a fourth time) and decided to proceed on the basis that if there was an expense that required explanation that could not be read, the Court would order further disclosure if necessary. As noted above, the parties are not arguing about contributions to general living expense costs for the children, so a line-by-line analysis of the income and expenditure of each party is not relevant to the issues the Court has to decide.
31. In the event, there were no items that needed to be expanded upon or elaborated. The records reflect that the Mother is better paid than the Father, and is able to afford the expenses in respect of which she is seeking the Father's contribution, even if he does not pay them.
32. However, it emerged in the Father's cross examination of the Mother that the Mother had not in fact enrolled the children on her health insurance plan as dependents as at the hearing in October 2024. In fact, the Mother produced no evidence (other than her say so) that she had enrolled them with effect from January 2025. At the Court's direction, the Mother produced a letter of confirmation after the hearing that the children were enrolled on her health insurance plan in January 2025 as dependents at a monthly cost of BD\$981.11 per month.
33. Further, it emerged that the cost of child counselling services is a projected cost, not an actual cost, so that the Mother is not in fact incurring these costs and was not incurring these costs when she made her application for an increase. It has not yet been determined that the children would benefit from child counselling at all.

34. As noted above, the fact of the extra curricular activities (including after school care) is not in dispute nor is the amount of the total incurred annually for both children and pro-rated on a monthly basis. It is BD\$6,690.00 or BD\$557 per month.
35. One item in dispute is the cost of hair care, which the Court has omitted from the extra curricular activities and considers that this is best left to be met in the ordinary course of regular costs to be paid by the Mother or Father when the cost is incurred.

The Court's assessment

36. The Court considers that it is appropriate for the parents to make an equal contribution to the basic costs of providing health insurance coverage for the children, even though in the past the cost may have been borne exclusively by one parent when the parties were together. The situation has changed due to the change in the Father's employment to self employment, and justifies the Court in re-assessing the present arrangements under the "interim" Consent Order.

Health insurance

37. It is important that each parent make a contribution to what is an essential component of ensuring the children's well-being. As has been seen above, this is not a case where one parent has insufficient income to make an equal contribution of that cost. Indeed, the Father has (eventually) accepted that he would make that contribution, despite his application to vary the Consent Order to reduce his obligation.
38. It is therefore now uncontroversial that the Father shall pay half of the additional cost of adding the children to the Mother's health insurance plan, namely an amount of BD\$490.55 per month (i.e. half of BD\$981.11 per month).

Extra curricular activities

39. The children are enrolled in various extra curricular activities and were enrolled in these same activities (with the exception of one) when the parties were together. I reject the Father's argument that he should not be required to make his half-share contribution to

the cost of those activities if he objects to it or does not give his consent to it. The activities concerned are unobjectionable and the Court accepts the Mother's submission that it is in the interests of the children to continue in those activities and to ensure that they have an exposure to different interests as they grow and begin to decide what activities they enjoy and want to pursue as they mature.

40. Therefore, the Father shall pay his half share of this cost of BD\$278.50 (i.e. half of BD\$557 a month).

Child counselling

41. The children are not presently receiving counselling. The only evidence that has been put forward by the Mother is (i) she thinks it would be beneficial and (ii) the counsellor is not in a position to assess whether the children would benefit from it without further information and a further meeting with them to make that assessment. The Father has not given his consent to that, and so no independent professional assessment has yet been made.
42. Until such time as an independent professional assessment has been made that the children would benefit from child counselling services, the Court cannot award the costs of that. The Court can indicate that in the event such an assessment is made in the future, the Father should make an equal contribution to that cost, on the same basis that this is an expense incurred for the well-being of the children, in the same way that the cost of providing health insurance coverage is an essential expense to provide adequate medical care for the children. The Court is satisfied that as things stand, the Father is able to afford to make that contribution, and the Court understood the Father to say that if a professional recommendation is made for the children to receive counselling, he would pay half of the cost.
43. It follows from the agreement that the only items in dispute are the additional health insurance cost and the extra-curricular costs (since no child counselling expenses are in fact being incurred) that the Mother's application for an increase to BD \$1,150 must be refused. This is (obviously) because the total of the Father's contributions to those expenses falls below the amount she is claiming.

Conclusions

44. The Consent Order was made as an interim measure at a time when the circumstances of the parties were at an initial stage of the break-up of the relationship and before matters had settled down. The Father was then employed and had regular income, which has now been replaced with irregular income in self employment. The parties want to have a new arrangement that reflects the present conditions, although they each disagree as to how that should look going forward.
45. It is therefore appropriate for the Court to review the arrangement and put in place a new Order on an ongoing basis. The Court will not refer to it as a permanent Order, as the Order can be updated or amended to meet changed circumstances in the future, provided they are material and make a significant impact on the parties' respective abilities to meet the essential expenses for the children.
46. The position in relation to health insurance is agreed: namely that the Father will pay one half of the additional cost, and that has now been quantified at **BD\$490.55** (half of BD\$981.11) per month. The children were added to the Mother's health plan from 1 January 2025, so the Father is to pay his contributions to health insurance from that date onwards.
47. In addition, the Father is to pay one half of the extra curricular activity and after school care expenses. These are averaged at **BD\$278.50** per month.
48. If and when an independent professional provides a written recommendation that the children need counselling to assist them in making the adjustment to their new family situation, then the Father is to make a one half contribution to these expenses.
49. The monthly total of the Father's share of the two quantified ongoing expenses is therefore BD\$769.05. In order to make this a round number, taking account of likely small fluctuations in the extra curricular expenses, the Court considers that a monthly sum of **BD\$800 a month** (i.e. BD\$400 a month per child or BD\$100 per week per child) reflects an appropriate contribution by the Father. This Order will take effect from 1 January 2025.

Arrears

50. The arrears need to be adjusted to reflect the position disclosed by the evidence. The Mother is only claiming (in fact) for two categories of expenses. The Father has applied for the change in the Order to be backdated to October 2024. In the circumstances the Court considers that it is appropriate to do so in this case because the Mother is only claiming contribution for specific expenses.
51. It is plain that the health insurance costs for which the Mother seeks a contribution were not being incurred between October and December 2024. It is also plain that the costs of child counselling services were not being incurred during this period. The only costs that were being incurred were the monthly costs of extra curricular activity at a rate of BD\$278.50 a month. Therefore, it would be unjust to require the Father to pay the sum of BD\$1000 for each of those months when the level of actual expenses for health insurance and child counselling claimed were non-existent. Therefore, the arrears for these months need to be reduced for those three months from BD\$3000.00 to **BD\$835.00**.
52. The Father has recently reduced the arrears by BD\$2500.00. Applying this to the arrears outstanding in October of BD\$7000, this reduces the 2024 arrears to BD\$4500.00. To this sum must be added the BD\$835.00 representing the extra curricular expenses between October and December 2024. This makes the total arrears up to the end of 2024 a sum of **BD\$5,335.00**.
53. On the basis of the new monthly payment of BD\$800.00 a month commencing 1 January 2025, the arrears from 1 January 2025 to 31 March 2025 will therefore amount to BD\$2400.00 (i.e. three months at BD\$800.00). When added to the accumulated arrears (as adjusted) for 2024, this brings the accumulated arrears to a total of BD\$ **7,735.00** to 31 March 2025.
54. These arrears must be paid in addition to the ongoing child support of BD\$800 per month at a rate of **BD\$500 per month** commencing with effect from 1 April 2025. This will have the object of eliminating the arrears by June 2026 (if not sooner).

55. These payments must be made regularly and on the first day of each month in order to enable the Mother to plan her own budget accordingly. The payments must be made by direct bank transfer to the Mother's bank account (i) to avoid unnecessary contact and (ii) to facilitate keeping track of amounts paid by the Respondent.

Costs

56. The Court has determined that there shall be no order for costs on this application. Although the Father has apparently met with partial success on his application to vary the interim Order, there are a number of factors in the conduct of the proceedings which militate against an award of costs.
57. First, the parties were unrepresented in the hearing⁵, and so the recovery if any that would be very small in amount, and an award of costs will only add fuel to the hostile atmosphere between the parties.
58. Second, having challenged the Mother's claims to a contribution to health insurance and child counselling, the Father conceded at the very end of the hearing that he would agree to pay his half contribution to these expenses. Had the parties engaged in sensible discussions perhaps with the help of a dispassionate intermediary or mediator, and a constructive attitude to making the best arrangements for the children, the whole proceeding could easily have been avoided.
59. The bitterness that has been displayed between the parties in these proceedings is highly regrettable. It is to be hoped that now that an Order has been made, they will put their inter-personal issues behind them and work together to achieve a less acrimonious attitude to one another and devote their energies to promoting the best interests of their children ahead of their own.

⁵ The Mother engaged counsel for one hearing but did not have representation at the substantive hearing.

60. The Court has produced an Order reflecting the terms set out above.

Dated this 25th of March 2025



THE HON. JUSTICE MR. ANDREW MARTIN
PUISNE JUDGE