



# In The Supreme Court of Bermuda

## DIVORCE JURISDICTION

2018 No: 14

**BETWEEN:**

**M. M.**

**Petitioner**

**and**

**O. M.**

**Respondent**

## **RULING**

*Final application for Ancillary Relief; Child Maintenance*

**Date of Hearing:** 11 July 2019; 6 and 16 August 2019

**Date of Ruling:** 22 November 2019

The Petitioner appearing In Person

The Respondent appearing In Person

RULING of Registrar, Alexandra Wheatley

### **Introductory**

1. The Petitioner and the Respondent were married on 10 November 2004. The parties were married for close to fourteen year as the Decree Nisi was made absolute on 20 June 2018, albeit they had lived separate and apart since December 2016. There are three children of the family who are in the sole care and control of the Petitioner. The Respondent has since the parties' separation exercised no access to the children of the family.

2. The Petitioner made an application seeking the following relief on 4 July 2018 (“the Application”):
  - 1) The Respondent to continue to pay \$600 per week towards the mortgage of the former matrimonial home (“FMH”) by way of an attachment of earnings;
  - 2) The Respondent pay child maintenance in the sum of \$150 per week, per child also payable by way of an attachment of earnings; and
  - 3) The Respondent pay a lump sum to represent back payments of child maintenance as the Respondent had not contributed towards their expenses since December 2016.
3. On 25 September 2018, the parties consented that the Respondent would pay the following sums to the Petitioner by way of an attachment of earnings on an interim basis:
  - a) Periodical payments of \$600 per week (representing a contribution to the monthly mortgage payments); and
  - b) Child maintenance in the sum of \$180 per week; i.e. \$60 per week, per child.
4. This final hearing commenced on 11 July 2019; however, due to outstanding financial disclosure not being provided by the Respondent, I made an order for the Respondent to provide specific items of disclosure and adjourned the matter to 6 August 2019. Regrettably, on return date of 6 August 2019 the Respondent failed to fully comply with the terms of the Order dated 11 July 2019. Additionally, when the Respondent attended court on 6 August 2019 he produced his bank statements for the first time and no copies were produced for the Petitioner or the Court. Therefore, in order to allow the Respondent and the Court time to review the financial disclosure produced as well as give the Respondent one final opportunity to produce the remaining financial disclosure ordered previously, the hearing was adjourned to 16 August 2019.
5. Whilst this matter had to proceed to final appearance on 16 August 2019, I commended the parties for being able to reach a reasonable and level-headed resolution at the final hearing as it relates to the FMH and the mortgage payments. Both parties accepting this agreement was essential in ensuring there was a roof over the children’s heads as well as the parties accepting the FMH currently has a negative equity. The parties were able to agree the following terms:
  - a) The Petitioner shall remain in the FMH at a minimum, until such time as the youngest child of the family completes high school education. At this time the parties will review the position of the Petitioner remaining in the FMH; and
  - b) The Respondent shall continue to pay the Petitioner by way of periodical payments, \$600 per week by way of an attachment of earnings, representing his half share of the monthly mortgage payments for the FMH. These payments shall continue until such time as the youngest child of the family

completes high school education or on such other termination date that may be subsequently agreed between the parties.

6. The parties should also be applauded for recognizing the importance of them prioritizing working on co-parenting for the wellbeing of their children which has not been successful for them thus far. Therefore, they agreed it would be of great assistance for them to be referred to the Court appointed mediator to address matters following issues regarding the children: co-parenting; communication; and access. Despite these issues regarding the children not being in a formal application before the court, given my broad jurisdiction under the Matrimonial Causes Act 1974 (“the Act”), specifically where matters are agreed between the parties, I will indeed refer these issues to the court appointed mediator. I will, however, not require the court appointed mediator to file a formal report with the court at this time as there is no formal application before the court to determine these matters.
7. Additionally, at the final hearing, the Respondent agreed that he would increase his weekly payments for child maintenance to \$240 per week; i.e. \$80 per week, per child; and I ordered as such until further order of the Court and reserve my final decision. Therefore, the only matter for determination is the level of child maintenance and whether, if at all, the said maintenance should be backdated.

## The facts

### *Petitioner’s position*

8. The Petitioner provided pay advices from her employment at the Department of Education. They confirm she receives a net monthly salary of \$6,613.82. Whilst the Petitioner receives \$6,413.82 per month, \$200 each month is deducted from her salary to be deposited in a savings scheme for the Bermuda Union for Teachers; therefore, her true net income is \$6,613.82. I accept this is her monthly income and that she does not receive income from any other source other than the current monthly periodical payments and child maintenance payments paid to her by the Respondent.
9. The Petitioner submitted her monthly expenses are as follows:

#### Household expenses

Mortgage	\$5,037.00
Land tax (\$556 per annum)	\$47.00
House insurance	\$186.00
Electricity	\$350.00
Home telephone (long distance)	\$79.95
Internet	\$89.00
Cable	\$95.95
Bike gas	\$47.00
Bike license and insurance	\$41.00
<b>Total:</b>	<b>\$5,972.90</b>

Children's expenses (for all three children)

Clothing (including school uniforms)	\$290.00
Groceries	\$552.00
School supplies	\$90.00
Hot lunches	\$240.00
Extra-curricular activities (Dance classes included)	\$205.00
Therapy	\$150.00
Medications	\$70.00
Birthday/Christmas presents, toys	\$300.00
Hair	\$240.00
<b>Total:</b>	<b>\$2,137.00</b>

**Subtotal of household and children's expenses: \$8,109.90**

Petitioner's expenses

Clothing	\$100.00
Groceries	\$184.00
Dentist	\$60.00
Cell phones (her plus, mother and son)	\$400.00
Lunches	\$87.00
Personal needs (including hair)	\$200.00
Expenses for other child currently in university	\$200.00
<b>Total:</b>	<b>\$1,231.00</b>

**TOTAL MONTHLY EXPENSES: \$9,340.90**

10. Therefore, based on the Petitioner's monthly income of \$6,613.82 and the monthly expenses of \$9,340.90, she is in the red each month by \$2,727.08. The total monthly payments made by the Respondent to the Petitioner is \$3,637.20 (the periodical payments of \$600 per week; i.e. \$2,598 per month (\$600 multiplied by 4.33 weeks = \$2,598); plus the weekly payments of \$240 for child maintenance; i.e. \$1,039.20 (\$240 multiplied by 4.33 weeks = \$1,039.20) totals \$3,637.20. Therefore, the Respondent's total current income is \$10,251.02 which would leave the Petitioner effectively with a surplus of \$910.12 each month. However, during the hearing the Respondent accepted there are several repairs which need to be carried out at the FMH, such as purchasing a new stove as well as there being arrears of the mortgage payments of \$6,719.06 as at 9 July 2019, arrears of land tax for the FMH of \$2,692.00 as at 13 March 20129.

*Respondent's position*

11. The Respondent is employed at Stevedoring Services Limited (“SSL”) and produced two pay advices for 2018 as well as a summary from his employer of his earnings for the period 4 January 2017 to 2 January 2018. The most useful pay advice in determining the Respondent’s average monthly pay is dated 30 October 2018 as it provides a breakdown of all his weekly deductions as well as his year-to-date earnings. At first glance, the Respondent’s net, year-to-date earnings appear to be \$34,133.84 as at 30 October 2018 which would mean his average monthly income as being \$3,413.38 (for the ten month period). However, there are a number of deductions that are made from the Respondent’s pay advice of cash deductions such as his child maintenance payments for his child overseas. During the hearing the Respondent rightly accepted these cash deductions should be accounted for in his net annual salary. The total cash deductions as at 30 October 2019 are \$37,400.00. Therefore, his total net, annual income as at 30 October 2018 is \$71,533.84. As such, his net, average monthly income can be calculated as being \$7,153.38 from his position at SSL.
12. In addition to his salary from Stevedoring Services, he is employed on an on-call basis with G.E.T. Security Limited (“G.E.T”). The Respondent produced a letter from G.E.T dated 22 July 2019 confirmed he earned \$6,192.15 for the last twelve month period. He therefore earned an average of \$516.00 per month from this position. The Respondent reiterated this employment is not guaranteed and stated he used to earn more from this second job, but the income from this has gradually reduced over the years. The Petitioner challenged this as she stated throughout the marriage the Respondent always ensured he was obtaining a second income and earned significant sums from this additional employment. The Respondent accepted he has been employed with G.E.T for the last 10 years.
13. Taking into account the Respondent’s two sources of income, his net, average monthly income is \$7,669.38.
14. The Petitioner also submitted the Respondent is in a far greater advantageous financial position as he has had the ability to travel overseas on six occasions during the last year. This was disputed by the Respondent; however, he confirmed he has travelled on three occasions this year.
15. The Respondent set out his expenses as follows:

Rent	\$500.00
Belco	\$100.00
Cell phone	\$140.00
Groceries and laundry	\$480.00
Gas for bike	\$80.00
Child maintenance for child overseas (\$100 per week)	\$433.33
<b>TOTAL:</b>	<b>\$1,733.33</b>

16. Therefore, given the Respondent's average monthly income being \$7,669.38, he is left with a surplus of \$5,936.05 each month. However, after deducting his total monthly payments to the Respondent of \$3,637.20, this surplus is reduced to \$2,298.85.

### The law

17. When deciding what financial orders made under Sections 27 or 28 of the Matrimonial Causes Act 1974 ("MCA"), I have a statutory obligation to have regard to all the components set out in Section 29 of the MCA in order to take into consideration all the circumstances of the case. The first consideration is given to the welfare whilst there is a minor of any child of the family. When assessing "needs" courts will have regard, in particular, to the matters set out in section 29(2):

"29 ...

(2) *Without prejudice to subsection (3), it shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(d), (e) or (f), (2) or (4) or 28 in relation to a child of the family and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say—*

- (a) *the financial needs of the child;*
- (b) *the income, earning capacity (if any), property and other financial resources of the child;*
- (c) *any physical or mental disability of the child;*
- (d) *the standard of living enjoyed by the family before the breakdown of the marriage;*
- (e) *the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;*

*and so to exercise those powers as to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in subsection (1)(a) and (b), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him.* [Emphasis added]

18. I must then consider the circumstances of the parties, the elements of which are set out at Section 29(1) as follows:

"29 (1) *It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(a), (b) or (c) or 28 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters -*

- (a) *the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;*

- (b) *the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*
- (c) *the standard of living enjoyed by the family before the breakdown of the marriage;*
- (d) *the age of each party to the marriage and the duration of the marriage;*
- (e) *any physical or mental disability of either of the parties to the marriage;*
- (f) *the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contributions by looking after the home or caring for the family;*

.....  
and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other." [Emphasis added]

## Conclusion

19. Neither party challenged the other's expenses put forward, save for that the Petitioner was skeptical the Respondent had been paying \$500 per month in rent to his family. The Petitioner, albeit after two orders requiring him to do so, provided a letter from his aunt confirming he has been paying the rent of \$500 per month.
20. I accept that both parties have put forward reasonable expenses and I find the parties' incomes as set out herein are accurate and true. The main statutory factors which are of primary importance to this case are the needs of the children and the income/earning capacity of the parties.
21. I find the Respondent has the means to contribute a greater sum of child maintenance for the three children of the family given his earning capacity is greater than the Petitioner's as well as his expenses being far less as the Petitioner has sole care and control of the children. The needs of the children also require him to do so.
22. The children's direct monthly expenses equate to \$2,137.00; however, the Petitioner incurs monthly indirect expenses for the household for which a portion should be considered as attributed to the children in order to maintain a roof over their heads. The monthly household/indirect expenses total \$5,972.90. Given the age of the children, I find it is reasonable to apportion three-quarters of these expenses to the children; i.e. \$4,479.68. Therefore, the total monthly expenses for the children amount to \$6,616.68. The Respondent is currently contributing \$3,637.20 per month which encompasses the provision of \$2,598 for periodical payments (representing \$600 per week for the mortgage payments for the FMH). If the provision for periodical payments is removed from the children expenses, this would reduce the total of their direct and indirect expenses to \$4,018.68; i.e. \$927 per week which is \$309 per child. On this basis, I find

the Petitioner's application for the Respondent to pay \$150 per week, per child for child maintenance is fair reasonable as it represents approximately half of their expenses as well as taking into consideration he is also contributing \$600 per week towards the mortgage of the FMH.

23. I accept the Respondent was not paying child maintenance since the parties separated in 2016 other than his contributions towards the mortgage and consequently it is only fair for the child maintenance be backdated. As the divorce petition was not filed until 9 February 2018, I am unable to backdate the order prior to this date. Therefore, the weekly child maintenance payments shall take effect from this date.
24. Due to the backdating of this order, there are arrears of child maintenance owed to the Petitioner. These arrears shall be paid by way of weekly installments of \$100 per child. Therefore, the Respondent's total monthly child maintenance payments shall be \$250 per week, per child until such time as the arrears are extinguished at which point the weekly sum will be reduced by \$100 per week, per child. The Respondent may also pay the arrears by way lump sum, but I will not require him to do so.
25. The monthly child maintenance payments, the periodical payments as well as the payments against the arrears of maintenance due to the backdating shall be made by way of an attachment of earnings payable through the Collecting Office of the Magistrates' Court. The Respondent should be aware there may be a delay in the commencement of the required to the attachment of earnings currently in place. Therefore, until such time as the new attachment of earnings is processed, he shall make all monthly payments directly to the Collecting Office of the Magistrates' Court.
26. I will make no order as to costs.

**Dated this 22<sup>nd</sup> day of November 2019**

---

**ALEXANDRA WHEATLEY  
REGISTRAR FOR THE COURTS OF BERMUDA**