

Proof, maintenance.



SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994

Suit No. D41 of 1991

BETWEEN:

PETRONILLA CADET

Petitioner

and

GILLRAY MICHAEL GEORGE CADET

Respondent

APPEARANCES:

Miss B. Pierre for the Petitioner
Respondent in person

1994: November 29;
December 7.

JUDGMENT

MATTHEW J. (In Chambers)

The Petitioner is aged 49 and the Respondent is 53. They were married on may 14, 1986 at the Roman Catholic Church at Marchand. They have two children. They are:-

- Gillray Michel born May 14, 1974; and
- Michelle Irene born September 18, 1978.

CADET, PETRONILLA V GILLRAY M. G. CADET

On November 21, 1991 the Petitioner obtained a decree nisi for the dissolution of the marriage and on May 12, 1993 she filed a notice of application for ancillary relief.

On October 20, 1993 the Parties gave effect to a consent order in respect of the ancillary relief. At paragraph 3(a) of that order maintenance for the children was set at the monthly sums as follows:

Gillray Michel \$1,665.00; and
Michel Irene \$250.00.

At paragraph 4(h) of the order it was stated that the Respondent do cause his company to settle all its debts and liabilities secured on property belonging to the Petitioner and in particular the liability secured on a fixed deposit of \$10,000.00 at the Bank of Nova Scotia.

At paragraph 4(m) the Respondent was to cause the company to vacate a certain section of a property by October 31, 1993 and another section of the same property by November 30, 1993 and in default rent should accrue at the rate of \$800 per month.

These proceedings arise consequent upon the alleged failure of the Respondent to pay the maintenance for the children from January to May 1994; his failure to release the Petitioner's fixed deposit for \$10,000; and his default under paragraph 4(m) above.

The Petitioner filed a judgment debtor summons on July 14, 1994 asking for the payment of the following:-

- (a) Under paragraph 3(a) \$9,575.00
 - (b) Under paragraph 4(h) \$10,000.00
 - (c) Under paragraph 4(m) \$---800.00
- \$20,375.00
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She filed an affidavit in support on the said July 14, 1994. In her affidavit she stated that since the order the Respondent made maintenance payments for October, November and December 1993 but ceased payments thereafter. She alleged that the Respondent was gainfully employed as Managing Director of his own company, Domestic and Commercial Supplies Ltd, and she was asking for an order that the Respondent pay the arrears under the consent order and failing which that he be committed to prison for his contempt.

The Petitioner did not in her affidavit state that the Respondent had failed in his obligations under paragraph 4(h) and 4(m) of the consent order.

The Respondent did not file any affidavit in reply. Before the judgment debtor summons could be considered the Petitioner on October 31, 1994 filed an application to vary the consent order. In effect she was asking that the areas of maintenance of \$9,575.00 be waived if the Respondent would transfer his interest in a piano

to the children. Under paragraph 4(1) of the consent order it was agreed that the piano be sold and the proceedings divided equally between the Petitioner and the Respondent. The Respondent did not oppose the application and an order was made accordingly on November 9, 1994.

So in effect the maintenance sum of \$9,575.00 has been settled. The Court is left to consider the other two sums of \$800 and \$10,000.

In respect of the claim for \$800.00 the Petitioner as I have stated made no reference to any default by the Respondent in her affidavit. And she did not raise the issue in her viva voce evidence. The Respondent, on the other hand, when he gave viva voce evidence testified that he complied with the consent order and had given the Petitioner her keys to the property in question on October 27, 1993.

In my judgment the Petitioner has not on the balance of probabilities established that the Respondent owes her \$800.00.

Concerning the debt of \$10,000 the Respondent admitted he had not cleared the Petitioner's \$10,000. He stated that he has a property at Ravine Chabot on which there is no charge and he offered it to the Bank as security to release the Petitioner's \$10,000 but the Bank refused. Perhaps the Bank did refuse to exchange its security

but what the Respondent had to do was to go somewhere else and raise the \$10,000 on the security of his Ravine Chabot property.

The Petitioner has stated that the Respondent's business has been in operation for the earlier part of the current year and the Respondent so admits.

On the evidence before me I believe the Respondent has the means to pay the Petitioner the sum of \$10,000 owed to her but will not pay. I have suggested above a means whereby the Respondent can raise the \$10,000. The Respondent must pay that sum and he is ordered so to do with costs of \$750 making a total of \$10,750 to be paid by December 31, 1994 or in default three weeks imprisonment.

Before I end I must observe that from what has been said a consent order in respect of the maintenance of the children was made in October 1993. The Respondent paid maintenance for October, November and December 1993 but has not paid anything since. The Petitioner seems to want to reach out to him for in her evidence she said she does not consider herself an unreasonable person and if the Respondent had reached out to their daughter, Michelle Irene, that would have relieved the strain on her a little. That says something.

For the whole of 1994 the Respondent has not paid one cent towards the maintenance of the children and he was relieved of payments

from January to May in exchange for his right to the proceeds of sale of a piano that most men would willingly give to their young daughter.

As I have indicated above my order in this matter is that the Respondent pay the Petitioner the sum of \$10,750 not later than December 31, 1994 or in default 3 weeks imprisonment.

A.N.J. MATTHEW
Puisne Judge