

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO ANUHMT2001/0044

BETWEEN

JEAN ANDREA SIMMONDS HARRIS

Applicant

And

BRUCE EVERON HARRIS

Respondent

Appearances:

Alfred McKelly James for the Applicant

Sharon Cort for the Respondent

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2004: February, 19th, 27th
April, 6th
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JUDGMENT

[1] Joseph-Olivetti: This is a claim by way of ancillary relief by Mrs Jean

Harris for:-

- (i) US\$7,826.87 being hospital expenses relating to the birth of a child of the family;
- (ii) US\$42,000.00 being monies from her students loan allegedly loaned to Mr Harris for start –up of his business and the family’s living expenses
- (iii) A lump sum payment of \$300,000.00 or periodic payments by way of maintenance for herself and to enable her to provide a home for the minor children of the family.

[2] The parties, both citizens of Antigua and Barbuda were married to each other in Florida, United States of America (“USA”) on 6th January, 1990.

The union lasted 12 years until it was terminated on the 22nd February, 2002 upon divorce proceedings instituted by Mrs. Harris . There are four children of the marriage. Their ages range from 18 to 3 years as their relationship commenced some time before. During the marriage Mrs Harris worked at first in her husband's business and then was employed as a primary school teacher and Mr Harris' only source of income was his company, Harris Boat Works Limited. The family enjoyed a high standard of living as the company generated good returns.

[3] The company paid the mortgage on the matrimonial home but that subsequently fell substantially into arrears. During the course of these proceedings the court with the parties consent on the 19th June, 1993 ordered that the home be sold as the parties were unable to meet the payments or to arrange to reschedule the loan. Unfortunately, both parties have seen fit to vacate the property pending sale and now it appears that there will be no equity after the debts in the house are paid. The proceeds of sale were ordered to be paid to Mrs. Harris to assist her in housing herself and the children.

[4] Mrs. Harris was by consent awarded custody on the 7th February, 2003 and has since migrated with the children to Florida, U.S.A. where she lived prior to her marriage. The eldest child was already at school there. She is presently unemployed but is pursuing a masters programme in education. Mr Harris was, again by consent ordered to make interim

payments of \$4,580.00 monthly for the children's maintenance. However, that was reduced on 19th June, 2003 to \$3,500.00 but he has fallen into arrears. Mrs. Harris alleges that she relies on the generosity of her relatives to support herself and the children and that has not been disputed.

[5] I will now consider the first issue. I find that the parties first three children were born in the USA and that they agreed that Mrs. Harris should go to Florida for the birth of the youngest child. Mrs. Harris evidence is that because Mr Harris wanted this child badly he agreed to pay all the medical bills and it is on that basis that the claim is made. Mr. Harris denied that he agreed to pay the bills and said that as far as he was aware there were no bills for the births of the other children as Mrs. Harris claimed state insurance and he expected the same thing to happen. He did accept that he had some responsibility and his counsel submitted that half was fair.

[6] The child is the child of both parents and they are both responsible for all costs attendant on her birth. It appears that the marriage was rocky by the time the child was born and deteriorated swiftly thereafter. I do not accept that there was any agreement about the costs of the birth as claimed. However, Mr Harris was the substantial wage earner at the time and would in the normal course of things have been expected to meet the costs. Had the marriage not broken down no doubt he would have paid. I

accept Mrs. Harris evidence that the pregnancy was a particularly difficult one and in that respect Mrs. Harris could be said to have borne major costs attendant on the birth of the child. Accordingly, I think it fair that he pay this claim in full.

[7] On the claim for US\$42,000.00 I find that Mrs Harris from her own evidence must have incurred at least the bulk of those loans prior to her marriage as they returned to Antigua barely three years after the marriage. It is not feasible that she did not use any of these student loans for her own benefit and saved it for the use solely of Mr. Harris. Mr. Harris was employed in Florida, had his own home and no doubt both parties enjoyed the benefit of each others income as they should.

[8] Mrs. Harris said he borrowed the monies from her to set up his business in Antigua. However, I accept that the funds Mr Harris used was the US\$25,000.000 he inherited. Further, there is nothing in the documentation provided by Mrs Harris to substantiate that the sum of US\$42,000.00 is still outstanding as she claims. This is more than 12 years after the alleged loans were incurred and it defies credibility that she had an agreement with her husband that he repay loans for which she was legally responsible and that she stood by, whilst the family pursued the good life and did nothing about ensuring that he serviced the debts until after the marriage had ended. Mrs. Harris does not impress

me as a person who would ignore these matters .I am satisfied that she has not proved her claim on this issue and it is dismissed.

[9] The applicable law on the third issue is contained in section 13 of the Divorce Act 1997 (**"the Act"**) which makes provision for, inter alia, the grant of spousal support. Under section 13(2) the court has power to make an order ordering one spouse to secure or pay to the other a lump sum and or periodic sums as the court thinks reasonable for the support of the other spouse. Section 13(5) directs the court to consider the means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought including, the length of time the spouses co-habited; the functions performed by the spouse during the cohabitation and any order or arrangement relating to support of the spouse or child. And Section 13 (7) states that an order that provides for the support of a spouse should recognize any economic advantages or disadvantages to the spouse arising from the marriage or its breakdown, apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8); and relieve any economic hardship of the spouse arising from the breakdown of the marriage; and in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable amount of time.

[10] As already stated Mrs. Harris is now unemployed, living in difficult circumstances in Florida with the children bent on improving her employable skills no doubt with the laudable aim of taking full control of her life. She earns a paltry sum from working two days a week as a part-time teacher but hopes to get full employment at a reasonable wage in September. She has a parcel of land in Antigua and does not appear to have anything else apart from the contents of the former matrimonial home which Mr. Harris earlier agreed that she should have. No idea of the value was given. She claims to have had 2900 shares in the company.. See paragraph 3 of her affidavit filed 27th June, 2003. In her oral testimony she alleged that after her return just after the birth of the last child Mr Harris had her removed as shareholder. I note that Mr. Harris did not dispute that she was a shareholder or that he removed her as such. It also appears that she assisted him with the company during the marriage and cared for the family. There is no doubt that Mrs. Harris has taken on the onerous responsibility of supporting the children and that she cannot do so single-handedly and that she has suffered serious economic disadvantages from the breakdown of he marriage.

[11] I also note that Mrs. Harris is still in the prime of her life, fit, well-educated and ambitious and I have no doubt that once she gets back on her feet she will be able to maintain herself and therefore no extended support is needed. Mr. Harris ought to be grateful for that.

[12] Mr. Harris produced his company's audited financial statement for period ending 31st October, 2002 to establish his financial position. No prior statements were relied on nor evidence given of the current status of the business or explanation as to why a business that was doing so well is apparently undergoing a down-turn. I also note that he has not given us an up-dated personal income and expenditure position. Mrs Harris challenged certain areas of the report but understandably as she no longer has anything to do with the affairs of the company could not give any conclusive evidence to support her objections. The person who prepared the financial statement did not attend to be cross examined and some of Mr. Harris' explanations in cross-examination in particular on the question of his labour force advertising and trips abroad did not sound convincing. I agree that those costs appear inflated.

[13] In all the circumstances Mrs. Harris is entitled to some form of spousal support. In addition she is entitled to assistance in housing the children and the court has power to make such an order as it is for the benefit of the children. See **Hughes v. Hughes (1993)45 WIR 149**. And this, even though on the face of it Mr Harris does not have the means to make a lump sum payment as this would undoubtedly have crippling effects on him and the court is mindful that it ought not to make an order which would have that effect.. See **Backhouse v. Backhouse [1978]1ALL E.R. 1158**. However, Mr. Harris cannot escape his responsibilities by pleading financial difficulties. He does not strike me as someone who would permit

his children to live off the charity of others for any length of time. If his company cannot support his obligations then he would have to seriously consider seeking other forms of employment if need be. He cannot simply walk away from his obligations.

[14] It is clear that the parties are still smarting from their real or perceived wrongs and that a clean break solution by way of a lump-sum payment would have helped to ease the tension and in time the existing acrimony but because of the financial circumstances of Mr. Harris this is not possible. However, the court trusts that these feelings will dissipate in time as the parties appear to be intelligent and sensible and like it or not it might be useful for them to bear in mind that because of their children they are inextricably bound as family and will eventually look forward to sharing the same grandchildren. Their future is in their own hands.

[15] There is also the fact of the vacant matrimonial home. Its value will obviously deteriorate if it is not maintained and if a sale is not imminent then steps should be taken to preserve it and perhaps rent it. As Mr. Harris has no claim to the equity he would think it not worth his while to maintain it but if this is not done his indebtedness to the bank will simply increase.

[16] In conclusion this court orders as follows:-

(1) That Mr Harris pay to Mrs . Harris the following sums:-

- (a) US\$7826.87 forthwith;
 - (b) \$2000.00 per month for her maintenance for a period of one year commencing from the 30th April, 2004 and continuing on the last working day of each successive month thereafter;
 - (c) \$2,000.00 a month to assist her in providing accommodation for the children of the family commencing from the 30th April, 2004 until each child attains the age of 16 or sooner dies;
- (2) The court confirms that Mr. Harris should continue to pay maintenance of \$3500.00 per month for the children of the family until each child attains the age of 16 or sooner dies, he will be entitled to apply to reduce the amount payable in that event;
 - (3) All arrears should be made current within two month from the date hereof if this has not already been done;
 - (4) Mr. Harris is to pay the costs of this application fixed at \$5,000.00.

Rita Joseph-Olivetti
High Court Judge