

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

CLAIM NO. ANUHMT 2006/0015

BETWEEN:

SANDRA BUTLER POTTER

Petitioner/Applicant

and

EUSTACE POTTER

Respondent/Defendant

Appearances:

Mr. Charlesworth Brown for the Applicant

Mr. Hollis Francis for the Respondent

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2007: May 11 June 4
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RULING

[1] **Thomas J:** By an Application filed on 28th November 2006, the Applicant seeks an order of the Court:

1. Requiring the Respondent to pay such lump sum or periodic sums as the Court thinks reasonable for the support of the Petitioner/Applicant.
2. Varying the order made herein on April 6, 2006 by increasing the monthly sum paid by the Respondent to the Petitioner as his contribution towards the support of the child of the marriage.
3. That the Respondent meets the cost of this Application.

[2] The grounds of the application are:

1. The Applicant's income is less than it was previously during the marriage, as a result of which she is experiencing a rapidly declining standard of living.
2. The higher level of income and corresponding higher standard of living enjoyed by the Applicant during the course of the marriage was grounded on the income from the hotel business jointly owned and operated by her and the Respondent which income is now exclusively controlled and/or used by the Respondent.
3. The Applicant is in need of financial support in order to maintain herself at the level previously enjoyed during the marriage.
4. The monthly sum of \$750.00 paid by the Respondent pursuant to the order of this Court is inadequate to maintain the child of the marriage at the level previously enjoyed during the marriage.

EVIDENCE

[3] In her affidavit in support filed on 28th November 2006, the applicant gives a chronology of the various events between the Respondent and herself. In particular she gives details of a business venture which they operated and from which she earned an income but which she no longer enjoys. Included in the details are the loans secured with her assistance and participation.

[4] According to the Applicant, from about October 2005 she and the Respondent ceased living together at which time she moved back to her own dwelling house in Pares Village along with the 9 – year old child of the marriage. In this situation, based on her sole net income of \$1663.83, she had great difficulty in making ends meet on her own.

[5] At paragraph 19 of her affidavit the Applicant gives details of her monthly expenses as being in total \$4,243.00. Therefore given the net income of \$1,663.83 there is a monthly deficit of \$2,600.00. The Applicant says that as a consequence her savings have been depleted and she has to place reliance on family and friends.

[6] It is of some importance to note that at paragraph 20 of her affidavit the applicant says that she is mindful of the Respondent's assertion in his affidavit of 1st March 2006 that he

spends between \$150.00 to \$250.00 every week on food items which our child brings home.

[7] In his affidavit in reply the Respondent acknowledge the loan of \$20,000.00 which was secured by the Applicant for the purposes of the business ("**Ocean Inn**") but he denies that it was operated jointly. He further contends that, contrary to what the Applicant deposes concerning the success of the said business, it was mainly active during the winter months and sailing week.

[8] At paragraph 13 of his affidavit the Respondent deposes as follows:

"I respectfully am not of the view that the Applicant is entitled to any support from me. As to maintenance for the sole child of the marriage, I was ordered on the 6th day of April to pay maintenance for the benefit of the said child in the sum of EC\$750.00 per month, which I pay every month. In addition to the \$750.00 which is paid to the Applicant monthly for the benefit of the child I also pay \$1,200.00 per term for her school fees and \$200.00 per month for extra classes. Additionally I buy all the clothing for our child and pay for any extra pence relating to the child of the marriage".

[9] In their submissions to the Court on the Application learned counsel on both sides addressed the contents of the respective affidavits and urged the Court accordingly. In particular Charlesworth Brown for the Applicant indicated that his client is willing to accept an interim order given her dire circumstances. Learned counsel also made reference to paragraph 6 of the Respondent's affidavit which reads in part as follows: "The Applicant's sole reason for resigning from her employment at the High Court was that she thought it was difficult for her to work and raise our child at the same time. To depose that she resigned to dedicate her full time to the business could not be further from the truth. The Applicant did absolutely nothing so far as Ocean Inn was concerned".

[10] On the other hand, Hollis Francis, learned counsel for the Respondent submitted that the order should not be made given the Respondent's position as reflected in his affidavit. He also made reference to the payments made or being made by the Respondent including a payment of \$1000.00 per month with respect to a vehicle used exclusively by the Applicant.

[11] In this narrow issue the relevant law is to be found in sections 2 and 13 of the DIVORCE ACT NO. 10 OF 1997 ("the Act").

[12] In section 2 (1) of the Act "spouse" is defined to mean "either of a man or woman who are married to each other"

[13] Section 13 in its entirety reads thus:

"13 (1) In this section and section 14, "spouse" has the meaning assigned by subsection 2 (1) and includes a former spouse.

(2) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums as the court thinks reasonable for the support of

- (a) the other spouse;
- (b) any or all children of the marriage; or
- (c) the other spouse and any or all children of the marriage.

(3) Where an application is made under subsection (2), the court may, on application by either or both spouses, make an interim order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lumps sum and periodic sums, as the court thinks reasonable for the support of

- (a) the other spouse;
- (b) any or all children of the marriage; or
- (c) the other spouse and any or all children of the marriage, pending determination of the application under subsection (2).

(4) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by the spouse during the cohabitation; and
- (c) any order, agreement or arrangement relating to support of the spouse or child.

- (6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.
- (7) An order made under this section that provides for the support of a spouse should-
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouse 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);
 - (c) relieve any economic hardship of the spouse arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable amount of time.
- (8) An order made under this section that provides for the support of a child of the marriage should
 - (a) recognize that the spouses have a joint financial obligation to maintain the child; and
 - (b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation".

[14] The clear and obvious purpose of the foregoing provisions is to prescribe specific rules to orders for support of children and a spouse, or both in the interest of certainty in such matters.

[15] It will be recalled that section 13 (5) of the Act mandates the Court in making an order to take into consideration the conditions, means, needs and other circumstances of each spouse and if any child of the marriage for whom support is sought. To state the obvious this must necessarily come from the evidence adduced.

[16] That said, the Court accepts that the separation of the parties has brought about hardships especially on the Applicant given the fact that her net income is only \$1,663.85. At the same time a question must be raised in relation to the Applicant's monthly deficit of \$2,600.00. This immediately invites the question whether this action is deliberate or necessary to this extent.

- [17] Great emphasis is placed by the Applicant on the fact that the separation has caused her standard of living to fall drastically. But although section 13 (7) (c) of the Act stipulates that an order for the support of a spouse should relieve any economic hardship of the spouses arising from the breakdown of the marriage, this must be taken and applied in the particular context and on the evidence.
- [18] On the whole it may be said that the section contemplates or requires the sufficiency of evidence before the Court given its detailed provisions.
- [19] This cannot be said with respect to the present application for it cannot suffice for the Applicant to say that: "...our business became increasingly successful, we applied for and obtained a further loan in the sum of \$600,000.00 from the Antigua Commercial Bank, which sum was used to expand the business by building 4 cottages, a swimming pool, a bar and a bathroom".
- [20] Given the foregoing and given the legal context in issue, the question is: how does the expansion of 'our business' translate into an economic advantage of the Respondent over the Applicant so as to assist the Court in making an order?
- [21] In so far as the support of the child is concerned, the law recognizes or establishes joint responsibility and apportionment of that responsibility between spouses.
- [22] The contributions made in this regard have been identified above and in real terms the Respondent makes a contribution in excess of \$1,500.00 per month. These contributions on the evidence touch and concern several, if not all, aspect of the child's life. But the Applicant also has a contribution to make under the law.
- [23] In all there is no evidence before the Court which would warrant the making of the orders sought. In this context the Court does not interpret the legislation as authorizing the Court to create hardship on one spouse in order to attenuate that circumstance in another.

[24] The Application is therefore dismissed. No order as to costs.

Errol L. Thomas
Judge