

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

CLAIM NO: ANUHMT 2006/008

BETWEEN:

PETER BIRD

Petitioner

And

ANGELINA EVAGELINE PIPER

Respondent

Appearances:

C. Debra Burnette of Henry & Burnette for the Petitioner

Dr. David Dorsett of Watt & Associates for the Respondent

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2007: December 06

2008: March 07
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JUDGMENT

[1] **Harris J:** This is an application by Ms. Angelina Evangeline Piper for an Order for spousal support under section 13 of the Divorce Act No. 10/1997 (the "Act"). She is asking for an order that she be granted (i) payment of \$4,000.00 per month for a period as the court deems fit and just and for (ii) a lump sum payment in an amount that the court deems fit and just.

[2] The application is opposed essentially on the ground that Mr. Bird, the Petitioner/Respondent does not have sufficient means to support Ms. Piper he being a 64 yrs old pensioner, and that Ms. Piper has an economic advantage over him in that she is 10 yrs his junior with the ability to seek gainful employment and does in fact have her own business and home.

[3] The application was heard in Chambers. Both parties filed Affidavits and both were present in Chambers. Cross-examination of the parties was declined by the parties. Counsel submitted written addresses on which they relied together with very brief oral submissions in Chambers. There is no interim order in place pending judgment.

The Divorce Act

[4] Section 13 (2) of the Act empowers the Court to make an order requiring one spouse to pay such lump sum and/or periodic sum for the support of the other spouse as the court thinks reasonable. Section 13 (4) enables the Court to limit the order to a definite or indefinite period or until the happening of a specified event and may impose other such items ... as it thinks fit and just.

[5] The Act continues, and in Section 13 (5) sets out the criteria which the court must consider in making its determination as follows:-

“In making an order under this section the court shall take into consideration the conditions, 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 cohabitation**
- (c) any order, agreement or arrangement relating to support of the spouse or child.”**

[6] Section 13 (7) is also provides further guidance and read as follows:-

“An order made under this section that provides for the support of a spouse should:

- (a) recognize any economic advantages or disadvantages to the spouse arising from the marriage or its breakdown;**
- (b)**
- (c) relieve any economic hardship of the spouses 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.”**

THE EVIDENCE

- [7] The parties were married on the 3rd of May, 2000 and the dissolution of the marriage became effective on the 27th day of November, 2006. The marriage was dissolved on the ground of separation from May of 2000 the same month the parties were married.
- [8] The evidence of the Applicant/Respondent is that she resided at the matrimonial home during the marriage when the Petitioner provided for her living expenses and funds to pay her mortgage for a property she owns at Cedar Valley.
- [9] Further, she said that prior to marriage to the Petitioner for a period of 5 years she received support from Mr. Bird in an amount no less than \$3000.00/mth and he paid her rent of \$2000.00/mth. Ms. Piper say that now the mortgage¹ on her home at Cedar Valley is in default.
- [10] During the subsistence of the marriage Ms. Piper ran her own business; an advertising business from the matrimonial home at Crosbies. Mr. Bird accepts this but says that she operated there during the day when he had gone to work and would be out of the premises by the time he returned. Mr. Bird said Ms. Piper used his home to run her business because she needed to use his phone and she did not have one at her home.
- [11] There is no agreement between the parties as to the residence of Ms. Piper during the marriage. Ms. Piper says in her affidavit that “during the marriage I lived in the matrimonial home²”. Mr. Bird on the other hand said that “the Applicant never lived in my house at Crosbies and was often living with her daughter at Friars Hill Road. Further, he said that she ceased working out of his house in 2005.
- [12] Mr. Bird says that he never paid to Ms. Piper any maintenance as she alleges³ in para.4 of her Affidavit but that between 2000 and 2005 Ms. Piper extorted over \$40,000.00 from him

¹ \$1,700.00 per month according to the applicant’s affidavit evidence at para 8

² Para 5 of the Affidavit of the applicant filed November 23, 2006

³ From the evidence of Ms Piper in her affidavit, Mr. Bird spent no less than half of his salary on her during their relationship prior to marriage. See para 9 above

and on a few occasions at her request assisted her with her mortgage with the promise that she would repay him. For what it is worth Ms. Piper has not refuted this last allegation.

[13] There is no evidence that Ms. Piper's house at Cedar Valley was ever rented out and it appears that it was, during the subject period, available to her for her use and occupation or to lease out. If she lived at Crosbies with her husband I expect to see the accounts or other proof of rental income or other use of Mrs. Piper's house during this period.

[14] I accept that the Petitioner owns a house in Crosbies, £60,000.00 in a provident fund in the UK and £69.33 in an account in Jersey. These facts are substantially supported in the exhibits to Mr. Bird's affidavit and that of Ms. Piper.

[15] Further, I accept that Mr. Bird has a pension of \$2,050.00 from Social Security, a contributory scheme.

[16] Mr. Bird is a retired man and at the time of filing his affidavit was 64 yrs old. On 5th December, 2007 Ms. Piper filed an affidavit in the matter indicating that the Petitioner informed her recently that he now works for Norman Aviation for the sum of \$4,000.00/mth. Mr. Bird has not now denied this.

[17] I accept as true that from the first month of the marriage the parties lived separate and apart. That Ms. Piper did use the house at Crosbies to operate her business and did use the telephone there. I note, her business, by her evidence consists of four (4) clients and her business expenditures suggest that her business was a one (1) one person, self operated business with minimal overheads.

[18] The Applicant has itemized her recurring expenditures and it is just \$788.84 more than that of the Petitioner itemize list of his expenses.

[19] Ms. Piper is not of retirement age and indeed I accept the unrefuted evidence that she is 10 years junior to Mr. Bird. She has an adult daughter, owns a home in Cedar valley –

albeit with a defaulting mortgage, runs her own business and earns from the business an income roughly equivalent to that of Mr. Bird's pension and the court notes, with a potential like any other business to generate a larger income.

[20] The Social Security Pension to which Mr. Bird said he contributed to would have been so contributed to for many years for in the expectation he would receive the fruits of his labour and investment in his retirement years, an option Ms. Bird could have exercised both before and during the marriage.

[21] Mr. Bird stated further that the near £60,000.00 in the Provident Fund has his children named as his beneficiary and is payable only on his death. This fact does not necessarily follow. The fund may well be able to be accessed by him at any time notwithstanding that the named beneficiaries would take upon his death. This information is peculiarly within the knowledge of the Petitioner and he is under an obligation to produce evidence of the workings and status of the account to satisfy his assertions. In the absence of this evidence the court may draw an inference adverse to him¹. In this case, hold that the sum is not unavailable to the Petitioner but is a fund available to him from which he can draw to maintain himself or any other purpose during his pensionable years.

[22] Whereas the Petitioner is now employed, his diminished salary² is indicative of his deteriorating position on the job market. This recent job can only be seen as a temporary state with an imminent end.

[23] The \$50,000.00 terminal lump sum payment from the Petitioner's last pre-retirement employment is as he says, for his retirement years.

[24] During the marriage whether it be viewed as 1 month or 5 years Ms. Piper's functions, even by her own evidence, did not include domestic endeavour to the detriment of her independent commercial endeavour. Further, there is no evidence that Ms. Piper's

¹ Payne v Payne [1968] 1 All ER 1113(1117) per Willmer L.J., Ette v Ette [11965] 1 All ER 341 per Lloyd-Jones J.

² He now works for \$4,000.00/mth. Prior to his retirement he worked for \$10,000.00 per month

business required the use of Mr. Bird's house at Crosbies to continue to operate. Indeed she has not claimed that her economic self sufficiency is dependent on use of the Petitioner house or indeed even dependent on his spousal support.

[25] The applicant needs to double her efforts and make provision for herself and future. I am unable to find that her present circumstances can be accounted for by her marriage or its breakdown.

[26] In considering the Petitioner's self sufficiency¹ and economic disadvantage in his terminal income earning years I am unable to relieve him of any of his accrued benefits none of which, I can, on the evidence, attribute to the marriage or the applicant's role in the marriage. All his benefits appear to be benefits substantially if not entirely acquired prior to his marriage² or in any event, notwithstanding the marriage.

[27] The applicant has not established any economic disadvantage to her generated by the circumstances of marriage. She did not cease working during the marriage to take care of the Petitioner or to assist him in any other endeavour thereby putting her income earning activity on hold or at risk. Neither does the evidence disclose her foregoing business or educational opportunities during or because of the marriage. The evidence suggests the contrary; she continued her business activities apace.

[28] Likewise, the breakdown of the marriage has not produced any economic disadvantage. In my view economic disadvantage of a party is not tantamount to one party merely being in a better (or worse) financial position than the other. Disparity in economic fortunes between persons is an acceptable fact of life. If the marriage was a purely or substantially commercial arrangement commonly intended to elevate Ms. Piper fortunes the parties would have in the circumstances entered into a legally binding contract to reflect that intention. This was not done in this case. Further, there is no evidence before me that Ms.

¹ The applicant suggests that the exhibits in the matter evidence a lavish lifestyle - several dinners at "Le Bistro" restaurant. I disagree. These expenditures may, taken at its highest, reflect recklessness on the part of the Petitioner rather than affluence.

² Not that this fact is conclusive on the issue of Ms. Piper's claimed entitlement to spousal support.

Piper expended any of her monies or assets or efforts on sustaining any aspect of the lifestyle of the Petitioner or on his property. Nor is there any evidence that she was lulled into a false sense of security rendering it unnecessary to make provisions for herself or to abandon any previous pension or other financial security scheme she may have had. In giving effect to the “Act” and in all the circumstances, to treat Mr. Birds pension¹ funds as a *treasure trove* from which the applicant can endlessly draw from would tend to the degradation of his economic self sufficiency and impose on him unwarranted economic hardship both presently and for the future. I accept that there might be an initial adjustment period for Ms. Piper during which some financial support would promote (albeit ever so slightly) an increased self sufficiency. For this I award the equivalent of the periodic payment of \$1,000.00 a month for the next eight (8) months to be paid as a lump sum of \$8,000.00 payable on or before the expiration of 21 days of the date of this order.

ORDER

[29] In the circumstances, it is hereby ordered that:

- (i) Judgment for the Applicant /Respondent, Ms. Angelina Piper. The Respondent /Petitioner, Peter Bird to pay the Applicant/Respondent the lump sum of \$8,000.00 on or before the expiration of 21days of the date of this order.
- (ii) That success on this application being divided, there be no order as to cost.

DAVID C. HARRIS
Judge
The High
Court of Justice
Antigua and Barbuda

¹ This does not include his additional employment income such as the \$4,000.00/month presently earned.