

BRITISH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(DIVORCE)

Claim No. BVIHCV1999/0025

BETWEEN

TERRENCE BROWN

Petitioner/Applicant

-AND-

BETHEL BROWN

Respondent

Appearances:

Ms. Asha Johnson for the Petitioner/Applicant
The Respondent in person

2009: June 05
2009: June 09, 15

JUDGMENT

Introduction

[1] **HARIPRASHAD-CHARLES J:** Mr. and Mrs. Brown were relatively young when they got married on 22nd June 1985 at ages 24 and 23 respectively. The only child of the marriage, Curtis Brown was born on 28th November 1988. Unpleasant differences arose between the parties and the once harmonious marriage relationship became turbulent and rocky. On 23rd August 1999, Mr. Brown petitioned the court for dissolution of the marriage. A decree nisi was pronounced in his favour on 16th July 2003. Prior to the decree nisi being pronounced, Mrs. Brown filed a notice of intention to proceed with an application for ancillary relief made in the answer.

[2] Matthew J (ag.) heard the application and on 24th May 2002, he ordered that Mr. Brown pays to Mrs. Brown a contribution for her maintenance of \$300 per month and the sum of \$250 towards the maintenance of Curtis.

[3] It is correct to state that since the making of the Order, Mr. Brown has paid maintenance of his wife and son even though he discontinued paying maintenance for Curtis in December 2006 when Curtis turned 18. Since April of this year, Mr. Brown has resumed the maintenance payment of Curtis, albeit at a reduced amount of \$150 monthly. Curtis is now 20 and since 2007, he has been gainfully employed as a Data Entry Clerk with the Customs Department of the Government of the Virgin Islands. He earns a salary of approximately \$1,500. Curtis is also enrolled at the H. Lavity Stoutt Community College pursuing a degree in accounting. He is a part-time student.

The present application

[4] Mr. Brown filed the present application on 3rd October 2008 seeking a variation of the Order made on 24th May 2002 so that he pays a reduced sum of \$100 as spousal support. He premised his application on the following changed circumstances:

1. At the date of the Order, Curtis was a minor attending school and Mrs. Brown was employed as a Junior Company Administrator at Mossack Fonseca & Co. (BVI) Limited earning a salary of \$500 fortnightly.
2. He is no longer a single man as he is married to Doreen Bloomfield.
3. He pays a loan of \$379.16 per month towards a piece of land which he purchased in 2004.
4. He receives a gross monthly salary of in excess of \$4,000 of which his expenses total \$2,692.14.

5. He is currently stationed at Anegada Police Station and as such, he does not pay rent. As a police officer, he is likely to be relocated at the will of the Commissioner of Police, in which case, he will have to rent an apartment.
6. Mrs. Brown is now working full time with Mossack Fonseca and earns a salary of a gross monthly salary of \$2,500¹; much more than she was earning in 2002 when the Order was made.

[5] Mrs. Brown opposes any variation of the Order alleging that even though she is a full-time employee and earning a higher salary, her medical and other expenses have increased. As appears from the letter of Dr. Michael Campbell, Mrs. Brown suffers from hyperthyroidism which she developed in 1996. As a result of this complication, she takes 125 mcg of synthroid daily. She is also expected to travel to Puerto Rico thrice yearly for further medical attention. Mrs. Brown was also diagnosed with hypertension in 2000 and is being treated with *Natrilix SR* daily. Added to these disorders, in 1994, Mrs. Brown had spinal surgery for herniated disc. She takes *Voltaren* injections whenever the pain occurs. It also appears that she has recently developed severe arthralgia of the left shoulder. Dr. Campbell opines that her medical problems are of a chronic nature and consequently, she will require medical management throughout her natural life. This will entail additional medical visits for routine check-ups.

Court's considerations

[6] At first blush, it appears to me that this was the perfect case for the clean-break rule to apply as both parties were relatively young when they got divorced and prospects of remarriage seemed good. In fact, Mr. Brown is now remarried. Mrs. Brown is fair to look at so I presume that her prospects of remarriage are also good, even to this day. Above all, she is also a very intelligent lady and no doubt, will rise in her job.

¹ See letter dated 31st October 2008 from Mossack Fonseca which reflects an increase in salary of \$300 bringing her monthly salary to \$2,500.

- [7] That said, I must consider the application before me. Looking at the judgment, it appears to me that Mrs. Brown's medical problems and her low salary were the two principal factors for the award of spousal maintenance. Indeed, these are the very factors on which she bases her opposition to the reduction of spousal maintenance.
- [8] I observe that many of the health problems which Mrs. Brown suffers from were present when the learned judge made the Order in 2002.² Her salary of \$1,000 monthly was also considered.³ She now earns a gross salary of \$2,500. In 2002, Mr. Brown was earning approximately \$2,000 monthly. Now, he earns in excess of \$4,000.
- [9] It seems to me that although Mrs. Brown has medical problems, it has not prevented her from bettering herself in her job. She is now a Supervisor with a prestigious trust company and chances of her upward mobility are great. In short, I am of the view that Mrs. Brown is now in a better position to care for herself than she was in 2002. Her son, Curtis, who was a minor when the Order was made, is now a gainfully-employed adult. He also lives with his mother and as she says, he assists her financially.
- [10] Mrs. Brown alleges that the 2002 Order should not be varied as Mr. Brown is in contempt of that Order in that he had ceased to pay maintenance for Curtis. Mr. Brown ceased payments only after Curtis had attained the age of 18. The Order does not stipulate a date for the termination of maintenance and therefore, I cannot penalize Mr. Brown in this regard. Indeed, when he learnt that Curtis was attending College, he resumed maintenance payment, albeit at a lesser sum.
- [11] Mrs. Brown also alleges that Curtis has a heart condition and he requires medical attention. It is not disputed that Curtis was diagnosed with a valvular disorder of the heart whereby he requires to see a cardiologist three times annually so that his cardiac status can be adequately monitored. But, Curtis is a working adult and Mr. Brown is under no legal obligation to provide him with maintenance. Curtis should be encouraged, if he has

² See paragraphs 8 -10, 17.

³ See paragraph 11.

not yet done so, to join the BVI Government Medical Insurance which provides fairly decent coverage for its employees.

[12] In the circumstances, I will order that the Order dated 24th May 2002 be varied so that Mr. Brown pays to Mrs. Brown the sum of \$150 as spousal support.

[13] Mr. Brown will continue to pay the sum of \$150 monthly towards the maintenance of Curtis until he completes his first associate degree at the H. Lavity Stoutt Community College.

Postscript

[14] Mr. Brown alleges that Curtis does not speak with him. If this is so, then it is highly regrettable. In those circumstances, I would encourage Curtis to forget the past and to reunite with his father who has maintained him over the years and continues to do despite the fact that he is an adult.

Indra Hariprashad-Charles
High Court Judge