

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHMT 2010/0128

IN THE MATTER OF
an application pursuant to Section 13 of the Divorce Act 1997

BETWEEN:

OSBERT OVID BROWNE

Respondent/Petitioner

and

JOYCELYN MARIETA PHILLIP BROWNE

Applicant/Respondent

Appearances:

Ms. Sherrie-Ann S. Bradshaw for the Applicant/Respondent
Mr. Lawrence Daniels for the Respondent/Petitioner

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2011: July 15
September 23
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JUDGMENT

[1] **MICHEL, J.:** The Applicant, Joycelyn Browne (who was the Respondent in the divorce proceedings) and the Respondent, Osbert Browne (who was the Petitioner in the divorce

proceedings) were married to each other in December 1997 and were separated in August 2001. In October 2010 the Respondent filed divorce proceedings and, although the Applicant gave notice in November 2010 of an intention to defend, an uncontested divorce was granted on 15th April 2011 on the ground that the marriage had broken down irretrievably by reason of the parties living separate and apart since August 2001. The Applicant was neither present nor represented at the hearing of the divorce proceedings. On 12th May 2011, however, the Applicant filed an application seeking arrears of maintenance from the Respondent on a Magistrate's Court Order made on 5th October 2004 and seeking an order that the Respondent continue to pay to the Applicant the sum of \$175.00 per week by way of spousal support pursuant to section 13 of **the Divorce Act 1997**. The Applicant also sought such further or other relief as the Court deems fit and applied as well for costs.

[2] On 12th May 2011 the Applicant filed an affidavit in support of her application for spousal support (together with her aforesaid application) in which affidavit she gave her employment history, her expenses and her sources of financial support. She also revealed that she was in steady employment until 2004 when she was severed from her employment and received a severance package of about \$35,000.00. She revealed too that since 2004 she has not been in steady employment, except for the period from January 2007 to June 2010 when she was employed as a sales clerk at a lingerie store. Apart from that, she works occasionally for 2 to 3 days per week providing elderly care. She claimed to have expenses of \$1,516.00 per month and to be surviving on assistance from her daughter, from close friends and family and from income of about \$200.00 weekly on those occasions when she is employed for two to three days per week doing elderly

care. She claims that the Respondent earns a substantial salary in excess of \$4,000.00 per month.

[3] The Respondent filed an affidavit in response on 5th July 2011 in which he alleged that he and the Applicant did not live as husband and wife (which the Court understands to mean during the subsistence of their marriage) and that the Applicant did not do "marital" duties for him, such as cooking, washing and providing other such services to him and he had to seek alternative means to have these duties performed. He claimed that the Applicant always worked during the course of the marriage and that he habitually paid utility bills and property taxes for the matrimonial home.

[4] The application for spousal support was heard in Chambers on 15th July 2011, at which time the Applicant discontinued her claim for arrears due on the Magistrate's Court Order and maintained her application for spousal support from the Respondent in the sum of \$175.00 per week. The Court ordered the parties to file written submissions (with authorities) on or before 15th August 2011 in support of or in opposition to the application for spousal support.

[5] Written submissions on behalf of the Applicant were filed on time on 15th August 2011, while written submissions on behalf of the Respondent were filed out of time on 13th September 2011. The Court, however, accepts the late submissions filed on behalf of the Respondent and deems them to have been properly filed.

[6] Section 13 of **the Divorce Act 1997** pursuant to which the application for spousal support was made in this case provides in subsection (5) that “In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse ... including (a) the length of time the spouses cohabited; (b) the functions performed by the spouses during the cohabitation; and (c) any order, agreement or arrangement relating to support of the spouse...” and in subsection (7) that “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 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); (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.”

[7] Having regard to the provisions of subsections (5) and (7) of section 13, the relevant facts in this case which were either agreed to by both parties in their affidavit evidence or alleged by one party (either in the divorce petition or in the affidavits filed in support of this application) and not controverted by the other, are as follows:

- (a) The parties got married to each other on 18th December 1997;
- (b) There is one child of the marriage, who is an adult;
- (c) The parties did not live as husband and wife and the Applicant did not perform functions for the Respondent, such as cooking and washing, and the Respondent had to seek alternative ways to have these functions performed;
- (d) The parties have lived separate and apart from each other since August 2001;

- (e) When cohabitation between the parties ceased in August 2001 the Applicant was employed as a security officer of the Port Authority, having apparently been employed there since 1993;
- (f) The Applicant was severed from her employment at the Port Authority in 2004 and received a severance package of (or in excess of) \$35,000.00, whereupon she went to the United States of America, where the parties adult child lives, and remained there for one year;
- (g) The Applicant has been sporadically employed since then;
- (h) The Applicant sought and obtained a Magistrate's Court Order for spousal support in October 2004, by consent, for the Respondent to pay to her the sum of \$175.00 per week commencing on 26th November 2004;
- (i) The Respondent filed a petition for divorce on 26th October 2010, which petition was granted unopposed on 15th April 2011 on the basis that the parties lived separate and apart from each other since August 2001;
- (j) The Respondent has made ad hoc payments towards the spousal support order, which order is evidently still in effect, as of 25th March 2011 the Respondent was in arrears under the Order in the sum of \$39,725.00 and, as of the date of the filing of this application, there was a pending bench warrant issued in the Magistrate's Court for the Respondent in respect of the arrears due by him on the order of the Magistrate;
- (k) The Applicant lives at the former matrimonial home of the parties and the Respondent has been paying and continues to pay the utility bills for the said home, while residing elsewhere in rented accommodation;
- (l) The Respondent did not, in the course of his marriage to the Applicant, give her any money towards her maintenance.

[8] In light of this undisputed evidence, it is apparent that the parties cohabited as husband and wife for three years and eight months during the course of their marriage; the Applicant did not provide certain services to the Respondent, such as cooking and washing, which he considers, and the Applicant does not dispute, are normal incidents of

marriage; the Applicant was fully employed at the time of the breakdown of the marriage and for at least approximately three years afterwards; in the course of the marriage, the Respondent did not give to the Applicant any money towards her maintenance; in the course of the marriage and up to now the Respondent pays the utility bills for the matrimonial home where the Applicant lives to the exclusion of the Respondent; there is subsisting a Magistrate's Court Order for the payment by the Respondent to the Applicant of the sum of \$175.00 per week; there are no recognizable economic advantages or disadvantages to the spouses arising from the marriage of the parties in December 1997 or its breakdown in August 2001; there are no children of the marriage being cared for by any of the parties; there are no evident economic hardships of the spouses arising from the breakdown of the marriage in August 2001. Bearing all of this in mind, it is impracticable for the Court to seek to promote the economic self sufficiency of either spouse.

[9] The factors enumerated above, being those which the Court must take into consideration in making an order for spousal support pursuant to section 13 of **the Divorce Act 1997**, the application made by the Applicant in May 2011 must be and is hereby dismissed with costs to the Respondent of \$1,000.00 to be deducted from any arrears owed by the Respondent to the Applicant by virtue of the Magistrate's Court Order made in 2004.



Mario Michel
High Court Judge