

EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: SLUHMT 2009/0154

BETWEEN:

YANELDIS BOULLON ANTHONY

Claimant

and

PHILIP JAMES ANTHONY

Defendant

Appearances:

Veronica Barnard for Petitioner Applicant
Mark Maragh for the Respondent.

2011: July 26th,
2013: October 17th

JUDGMENT

- [1] **BELLE J.:** On 10th February, 2011 The Petitioner Yaneldis Anthony filed a Notice of Application for Ancillary Relief in which she asked among other things for Custody of the Minor children of the family namely Gabriela de la Caridad Anthony and Renatta Marcella Anthony Boullon. The Application asserted that the Respondent have access to the children of the family at all reasonable times.
- [2] The Petitioner also applied for monthly maintenance from the Respondent in the sum of \$500.00 per child together with one of half of the expenses incurred for their educational dental and medical expenses.

- [3] The Petitioner also asked for a declaration that the court is satisfied with the arrangements that have been made for the welfare of the said minor children Gabriella de la Caridad Anthony and Renatta Marcella Anthony Boullon. Finally the Petitioner asked for the costs of the proceedings to be awarded to her.
- [4] The main bone of contention between the parties was the matter of maintenance for the children.
- [5] Both parties agreed that the application before the court was made pursuant to section 23 (1) and (2) of the Divorce Act, 1973 and the court must consider the application having regard to all the circumstances of the case including the following matters stated under section 25 (1) of the Act:
- (a) The income earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
 - (c) The standard of living enjoyed by the family before the breakdown of the marriage;
 - (d) The age of each party to the marriage and the duration of the marriage;
 - (e) Any physical or mental disability of either of the parties to the marriage;
 - (f) Contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or earning for the family.
- [6] In relation to the child the parties agree that under section 23 of the Divorce Act and pursuant to section 25 of the Act the court would have to have regard to all the circumstances including the following matters:-
- (a) The financial needs of the child;

- (b) The income, earning capacity (if any), property and other financial resources of the child;
- (c) Any physical or mental disability of the child;
- (d) The standard of living enjoyed by the family before the breakdown of the marriage;
- (e) The manner in which he or she was being and in which the parties to the marriage expected him or her to be educated or trained;

[7] Other relevant language from the section states that the court should so exercise those powers as to place the child, so far as is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in subsection (1) (a) and (1) (b), just to do so, in the financial position in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards him or her.

[8] Counsel for the Respondent also argued that the section of the Divorce Act requires that the parent maintains a child until the child acquires the age of 18 years. The requirement to support the child through tertiary education is not automatic.

[9] The Petitioner's counsel argued that the Respondent could afford the sum of \$500.00 demanded by the Petitioner since he was able to pay \$1000.00 towards the maintenance of a car every month and accumulated savings of \$663.00 per month after expenses.

[10] Counsel for the Respondent argued that the Petitioner had not submitted any evidence about the family's standard of living before the divorce and the expectations of the children therefore are not established by the evidence.

[11] I find that both parties could possibly allocate more funds toward the maintenance of the children if they chose to, by juggling expenses.

[12] No other authorities were cited by the parties other than the statutory provisions.

[13] In my view both parties make good points about the position of the other. The evidence shows that the Petitioner earns more than the Respondent. It is therefore not unfair for her to contribute more to the upkeep of the children. However her share need not be substantially more.

[14] I do not agree that because the respondent pays \$1000.00 per month for a car that this means that he should pay \$500.00 towards the maintenance of the children. The car should be an asset that is of benefit to the entire family. I would therefore be reluctant to make an order that forces the respondent to give up his car.

[15] However it seems to me that the Respondent is able to pay a bit more towards the maintenance of the children. He now pays \$200.00 monthly per child. I therefore order the Respondent to pay \$175.00 more towards the maintenance of each child so that he would pay \$750.00 toward the maintenance of the said children until they reach the age of 18 years or complete tertiary education if the parents agree on the need for the children to obtain tertiary education. Clearly tertiary education cannot be imposed by the court if the parties cannot afford it.

[16] I do not agree that the Petitioner should be restricted from taking the children out of the jurisdiction. However the Petitioner should inform the Respondent if she intends to do so and provide the respondent with all necessary contact information at that time.

[17] The formal order of the court therefore is that:

The respondent is ordered to pay the maintenance to the Petitioner in the monthly sum of \$375.00 per child or \$750.00 per month for both children along with one half of the expenses incurred for their educational dental and medical needs until

the children attain the age of 18 years or until they complete tertiary education if the parties agree that such education is desirable.

[18] The Petitioner is to have custody of the minor children of the family with reasonable access to the respondent.

[19] The Court declares that it is satisfied with the arrangement made for the welfare of the children and that the said arrangements are satisfactory pursuant to section 41 of the Divorce Act.

[20] The Petitioner is awarded the costs of the proceedings in the sum of \$1000.00


Francis H V Belle
High Court Judge