

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)
A.D. 2014

CLAIM NO. NEVHMT 2013/0123

In the matter of an application by Lorna Paton
pursuant to Section 6 of the Domestic Violence Act
No. 3 of 2000 of the Laws of Saint Christopher and
Nevis

BETWEEN:

LORNA PATON
Applicant

- and -

ULMER EVERTON PATON
Respondent

Appearances

Ms. Kalicia Isaac of Myrna R. Walwyn & Associates for the Applicant
Mr. Jeffery E. Nisbett for the Respondent

2013: November 19, 26
December 4

2014: January 13
February 3
June 30

Domestic Violence – Application for Protection Order – Powers of the High Court – Matters for the Court's Consideration – Scope of Protection Order – Only as wide and for such duration as is necessary to ensure protection without unduly affecting property rights.

DECISION

- [1] **RAMDHANI J. (Ag.)** This is an application brought under section 6 of the **Domestic Violence Act** No. 3 of 2000 for a protection order by the applicant who has complained that the respondent, her husband (at the time the application was made), has been engaged in conduct which constitutes domestic violence and that she is afraid that he would continue his violence towards her. She states that the respondent has physically assaulted her on two occasions, once in 2008 and most recently in June 2013. She also complains that he has made threats of violence against her in June 2013, and that he has been engaged in conduct of an offensive and harassing nature inclusive of the cutting off the utilities, playing loud music late at nights, and changing the locks and locking her out of the house. She also complains that he has intimidated her by threats and other actions that have actually caused her to become confined in her bedroom on occasions.
- [2] The court granted an interim ex parte order on this application that was originally made without notice, and when the matter was made *inter partes*, the order was continued until the hearing and determination of the matter.
- [3] On the *inter partes* hearing, the respondent denied all the allegations and while he accepted that the marriage had broken down, he states that it has not been because of his conduct but it has been because of the two children of the applicant from a previous marriage, one of whom continues to live with the applicant in the matrimonial home. He states that the conduct of these children has caused serious conflicts between the parties and that the applicant has taken sides against him. This, he asserts, is the primary reason for the problems.
- [4] By the time this matter was heard on the 14 January 2014, the pending divorce proceedings came on for hearing, and a divorce order was granted in favour of the Applicant on the grounds of the irretrievable breakdown of the marriage. Those divorce proceedings were uncontested.

- [5] In this matter, the applicant is not only seeking a protection order, but she is also seeking injunctions and an occupation order of the former matrimonial home.

The Powers of the Court under the Domestic Violence Act Cap 12.04

- [6] By virtue of section 6 the **Domestic Violence Act** ('the Act') provides that where the court is satisfied that the respondent is engaged or is about to engage in conduct which would constitute domestic violence, and it is necessary in all the circumstances of the case to ensure the protection of the applicant or a prescribed person, it is entitled to grant an injunction and or a protection order in favour of an applicant. Such an order may, pursuant to section 6(2) prohibit the respondent:

- (a) from entering or remaining in the household residence of any prescribed person;*
- (b) from entering or remaining in any area specified in the injunction or protection order, being an area in which the household residence of a prescribed person is located;*
- (c) from entering the place of work or place of education of any prescribed person;*
- (d) from entering or remaining in any place where a prescribed person happens to be;*
- (e) from subjecting a prescribed person to any conduct which constitutes domestic violence.*

- [7] An interim protection order or an injunction may also be made ex parte where the court is satisfied that the delay which would be caused by providing notice to the respondent would or might entail some risk to the personal safety of, or serious injury to, a prescribed person including the applicant.

- [8] Under section 8 of the Act, the court is empowered to grant an occupation order granting the applicant the right to live in the household residence of the respondent if it is necessary for the protection or is in the best interest of a prescribed person including the applicant. Such an order may be granted for a particular period and on such terms and conditions as the court considers fit. If the court sees fit to make an occupation order, the court may also grant the applicant the use of any furniture, household items and other effects, which may belong to the respondent.

[9] The Act contemplates and expressly gives the court powers to exclude a respondent from his residence even though he may own either solely or jointly with the respondent if it is for the protection of the applicant or any prescribed person or in that person's best interest. In the UK, the courts, interpreting similar legislation, have considered that such an order would be proper against the respondent who is joint owner of the residence "if his conduct is so outrageous as to make it impossible for them to live together".

Earlier Proceedings in the Magistrate's Court

[10] When the matter first came before the court, the applicant disclosed that a previous application for a protection order had been made on the 25 September 2013 to the magistrate sitting at the District C Magistrate's Court in Nevis and that after an ex parte hearing, a protection order had been granted in favour of the applicant for a period of seven days. It would appear that there is an accepted practice founded on a literal reading of the Act that once the original ex parte order granted by the magistrate has expired, there is no power given to the magistrate to extend this order. A new application is required on every occasion the protection order expires.

[11] I find this a startling and unnecessarily narrow interpretation of the Act. Section 6 of the Act gives a right to apply for an injunction protection order if the court is satisfied that the respondent has engaged or is about to engage in conduct that would constitute domestic violence and such an injunction or protection order is, in all the circumstances of the case, necessary for the protection of the application. Section 6 contemplates an *inter partes* hearing, as section 7 of the Act makes express provisions for an ex parte interim application for the same injunction or protection order.

[12] In fact, section 7(2) makes it clear that "[a]n injunction or protection order granted under subsection (1) of this section shall be of an interim nature, and the respondent may at any time apply to the court to have the injunction or protection order, as the case may be discharged."

- [13] The section 7 interim orders are premised on a finding that the delay that would be caused by giving notice of the application might entail risk to the personal safety of a 'prescribed person' or serious injury or undue hardship to the prescribed person.' This is clearly a mechanism created by the Act to allow the court to make temporary orders to give protection even when the other side has not been heard. Section 7 and section 6 must be read to together. Where there is an urgency, the applicant is entitled to move under section 7, and then, whether or not an interim order is granted, the same application is then heard by the court under the powers given by section 6 to make a final order, which really means to extend the life of any interim order which it may have made under section 7. This is in fact the essence of an 'interim' order.
- [14] The Domestic Violence Act Cap 12:04 was enacted to provide protection to persons from domestic violence. The circumstances that give rise to such violence, and or the risk of violence will often require the court to act swiftly to give meaningful protection. The Act is designed to be applied in a summary manner, and if on every occasion, when the life of an interim order expires, the applicant must file a new and separate application, it would make nonsense of the express provisions of the Act.

The Evidence of the Parties

- [15] The parties to this application are both from Guyana, and began a relationship in 2004 and were married in 2005. The applicant had been previously married and has two children, Michelle and Mickell, from that first marriage. After they got married, the applicant's younger child, Mickell who was then about 11 years old, came to Nevis and began living with his mother and stepfather. The daughter followed from Guyana some time after.
- [16] At that time the parties were renting premises and later a home was acquired and a loan was obtained. (I wish to state clearly that I am not making any findings as to who owns this home and who made contributions and what were the contributions made towards its acquisition. This is unnecessary for me to do on this application before me).

- [17] It is the applicant's case that on or about 2008, the respondent began physically, mentally and emotionally abusing her. She states that as a result she is now very afraid of the respondent and is afraid for her life.
- [18] She has deposed that over the last several years beginning 2008, their marriage has broken down irretrievably and that on the 17 June 2013, she filed for a divorce in the Nevis High Court. (Following the hearing of this matter that divorce came on for hearing and was granted).
- [19] Among the incidents she described was one which she states took place in 2008 in which the respondent abused her in public and then later at home repeatedly boxed her in her head.
- [20] It would seem, at least from the stance that the respondent took during these proceedings, that one of the sources of contentions between these parties has been the applicant's children, to the point where the respondent even sent a letter written by his solicitor, to her children, advising that they cease to visit and occupy the premises. She states that she believes that the respondent's intention was to isolate her so he could continue to abuse her. She says that she has no other family in St. Kitts and Nevis.
- [21] On the other hand the respondent has asserted that when he attempts to discipline the younger child, she would get angry with her and the result is that the child is also disobedient. He states that he has attempted to be a father to the child but she has undermined his authority with regard to the elder child
- [22] She stated that she had her own solicitor respond to this letter advising that the respondent's request could not be complied with as she considered herself a joint owner of the property.

- [23] She said that on or about June 2013, the respondent went to Guyana on a vacation but before he left, he disconnected the electricity supply to the matrimonial home. She said that he later re-wired the electricity so that only his bedroom could have a supply of electricity. She said on about the same time, he removed all her frozen food items from the refrigerator and moved the refrigerator to his room, and as a result all her food items perished. She had communicated with the electricity company NEVLEC who advised her that she would have to install a separate meter.
- [24] She stated that he would also disconnect the water supply to the home even when he is not there, and that she would have to get water from the neighbours for her personal use.
- [25] She stated that before the respondent went to Guyana in June of 2013, he told her that: 'when I come back [from Guyana] you would see what I am going to do to you.' She said that she became afraid and has since installed locks on her bedroom as well as on the door of the room occupied by her son.
- [26] She said that after he returned from Guyana, he continued to act in a manner to harass and intimidate her. She described one occasion when he 'rushed' at her in such a manner, she became afraid and when then he stood there staring at her refusing to speak, when she asked him 'what happen?'
- [27] She says that beginning last year, the respondent has been operating both the stereo and the television at a high volume until the wee hours in the morning and that whenever she would ask him to turn down the volume, he would threaten and abuse her. She said that she had gone to the police for assistance but had received none. She now lies in bed waiting for him to lower it when he feels like. She said that in September 2013, he changed the locks on the main entrance without her knowledge, and then refused to give her a key for that main entrance; she is now forced to use a back entrance via a bushy, unlit pathway and she has to climb onto some loose fitting blocks to get into the house.

- [28] She said that from all this her health has suffered, and she is now 'very nervous' and has problems sleeping. She said that she went to the magistrate court on the 30 October 2013, for a protection order. That order only lasted for seven days. She states that she is afraid of the respondent and believes that he will harm her physically.
- [29] The respondent swore to an affidavit on the 25 November 2013. He has deposed that since 2000, the Government of St. Kitts and Nevis in the St. Kitts and Nevis Fire and Rescue Services have employed him. He is stationed in Nevis.
- [30] He claims that he is the sole owner of the matrimonial home. He states that he has always treated the younger child, Mickell as his son but that the applicant has encouraged the boy to be disrespectful to him. He states that he has spoken to the child about his 'bad company' on many occasions and that the applicant permits him to do as he pleases. He states that in 2012, Mickell was arrested and charged for larceny and at that time the police visited the home and searched for stolen goods. He states that he was embarrassed. He said that Mickell was tried and convicted of the offence.
- [31] He states that the applicant's daughter, Michelle, is married and lives on her own and that it was he, the respondent who arranged for her to come to Nevis. He states that Michelle came to his home and abused him and called him an invalid referring to an illness he had suffered. She told him that he was handicapped. He said that he reported her to the police station. These are the reasons he states that caused him to decide to send them a letter from his lawyer.
- [32] He states that Michelle wanted to make an addition to the matrimonial home and that she had started nailing up material to the house when the Building Board discovered the illegal structure and pulled it down. He said that he also told her to remove the illegal structure and that made her angry. He said that the applicant became even more furious with him and told him that 'if I did not want her children around me I did not want her around me too'.

- [33] He said that the applicant told him that she was going to 'get even with' him and said 'this time you going dead'. He said that he understood her to be referring to the fact that he had been previously ill and had to undergo emergency surgery to bypass a blocked blood vessel in his neck.
- [34] He said that after he sent the letters to the children, the Applicant stopped cooking for him.
- [35] He said that he was good to the applicant and her children. That he had a stable job with the government and this allowed him to be able to bring Michelle to St. Kitts and Nevis where she now makes her home. He had provided for the son as a father would; essentially he had done what he could in the relationship.
- [36] He denied that he has ever abused the applicant either physically, mentally or emotionally. He states that he has done nothing to her which could cause her to fear for her life. He has never threatened her.
- [37] He states that he never rewired the house as the applicant claims. He states that the house always had a temporary connection. He states however, that he accepts that in June of 2013 he disconnected the utilities when he was abroad. He said that he did so because Michelle had a connection using a drop cord from the matrimonial home to her house. He said that they abused the electricity and the bills were in excess of \$200.00 per month. He said that as he was not going to be in the Federation to monitor the situation and he could not depend on the applicant to ensure that there was no abuse of the electricity supply by Michelle, he gave instructions for the supply to be disconnected. He said that he also did this with the water supply.
- [38] He said that he did change the front door lock because on many occasions when he returned he would be unable to enter the house. He said that he left a key for the applicant but she refused to collect it. He said that the back entrance is not at all unsafe and he has exhibited a photograph to show the back of the house.

- [39] He requested that the court should not make a possession order as he would be rendered homeless.
- [40] I have also seen and heard the parties when they were submitted to cross-examination. The applicant brought one witness, Mr. Orin Vaughan her son-in-law. He gave evidence of an incident which occurred in June of 2013.
- [41] Mr. Nisbett, Counsel for the respondent submitted to this court that I should reject the evidence of the applicant and accept the evidence of the respondent. He stated that many of the underlying allegations involved the applicant's children, Michelle and Mickell and that the applicant's failure to call either of these persons should lead to an irresistible inference that their evidence would not have helped the case of the applicant. He goes to argue that in this regard this 'court could take that into account against the applicant for two purposes, namely (a) in deciding whether to accept any particular evidence, which has been given, either for or against, and which relates to a matter with respect to which the person not called as a witness could have spoken; and (b) in deciding whether to draw inferences of fact which are open upon the evidence which have been given, again with respect to matters to which the person not called could have spoken.' He relies on the case of **O'Donnel v Reichard** [1975] VR 916 at 929 (referred to in Cross on Evidence 5th ed. at page 53)
- [42] He states that their absence should lead this court to conclude that it was the children who were the disruptive influence on the relationship in the first instance. That is why the respondent had had a solicitor write to them. If the children were called, he argues, it would have established that Michelle was abusive to the respondent, and that Mickell was often out of order, rude, disobedient and that there were good reasons why the respondent was forced to have his solicitor write to them asking them not to come on the premises or leave as the case may be.
- [43] Mr. Nisbett's submission may have carried some force, except that by the respondent's own evidence, he has accepted that he was told by the applicant in June 2013 that he had

hit her before, and that he was not going to do it again. To my mind this was a statement blurted out by the applicant during the incident, and nothing was said by the respondent to deny that he did not hit her before. If he had not hit her before why did he not immediately say or deny that or say something in response? This is significant and leads me to believe that he did not say anything in response because he was violent to her before, and there was really nothing to say about this. I believe that this was during that incident that the son-in law describes when he came over and saw both parties holding on to each other.

[44] This respondent has also by his own admission stated that he did turn off the electricity when he went to Guyana, and also the water in another occasion. I do not accept his reasons for so doing. To my mind, if he was concerned about the water and the electricity charges, there were other ways to approach this. I find that he was being deliberately malicious. He even threatened her with violence. He denied that he would play the television at a high volume all night long, but he admitted that on one occasion he did have it on and that the applicant did speak to him. I do not find that he was being a witness of truth, and I believe that he had set out on a course of conduct designed to torment this applicant; this is conduct amounting to psychological abuse. He also accepted that he had changed the locks on the front door but claimed that it was because he was locked out of the house before. I do not believe him.

[45] I agree with counsel for the respondent, that the applicant is a victim of domestic violence and that it is highly probable that if cohabitation were to continue, she would be subject to even further domestic violence from the respondent. This respondent has been violent in this relationship and if they continue to live under the same roof, I am satisfied that there is a real risk that that he would commit further acts of torment and violence. I believe that he would sit and deliberately brood in the nights on ways to torment this applicant. I am further satisfied that if he continues to be under the same roof he will continue this conduct consisting of acts of physical violence and psychological abuse. His conduct is outrageous and it is impossible for her to continue to live in the same house with him.¹ To my mind, excluding him is the only sure means of preventing her from being abused in her home. I

¹ Gurasz v Gurasz [1969] 3 All ER 822

do not see any real risk that he would attempt to abuse her in any public place as I am satisfied his conduct arises from the tension of these two parties living under the same roof.

[46] I have not only considered the conduct of the respondent but also the financial means of both parties.² I am of the view that the respondent has the means to seek alternative accommodations. I will therefore grant a protection order in favour of the applicant and grant her an occupation order in terms set out below.

[47] Mr. Nisbett has argued in his closing written submissions that in any event, an order granted under sections 6 and 7 of the **Domestic Violence Act 2000** that seeks to restrict the respondent's freedom of movement is unconstitutional. His arguments are essentially that I should declare that section 6 and 7 of the Act is unconstitutional. Now there has been no application before this court for a declaration that these provisions of the **Domestic Violence Act** are unconstitutional; there is in fact a presumption that all Acts of parliament are constitutional until declared otherwise. If the respondent is seeking such an order, he needs to make the proper application. In any event, I am of the view that the restrictions imposed by the Act are reasonably required in the interest of public safety and or public order, as any of the threatened acts is likely to lead to a breach of the peace. I am of the view that the case of **Elliott v Commissioner of Police**³ which has been relied on by the respondent is not relevant to the issue at hand.

[48] I have considered that any order made by this court must be structured in such a way that it does not get in the way of affecting property rights at all, and when they interfere with such rights, they must be only as wide and for such period as is necessary to provide the required protection. In the circumstances the order that this court now makes is as follows:

² Richards v Richards [1984] AC 174

³ [1997] 3 LRC 15

The respondent:

- (a) shall not intimidate, abuse or threaten the applicant, Lorna Paton, in any way whatsoever neither shall the respondent engage in any conduct of an offensive or harassing nature, including but not limited to molesting, assaulting or having any physical contact with Lorna Paton.
- (b) Shall not engage in any conduct with regard to Lorna Paton which constitutes an offence under the Act.
- (c) Is prohibited from entering or remaining in the matrimonial home for the period of six months from the date of this order. In the event either party makes an application to the court for a declaration relating to the rights, title or interest of the matrimonial home, this part of the order shall continue until the determination of those proceedings.
- (d) The respondent is to pay the sum of \$1500.00 as costs of these proceedings.

[49] Finally, the court wishes to express its gratitude to both Counsel for their written submissions.

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Darshan Ramdhani
Resident Judge (Ag.)