

ANTIGUA AND BARBUDA

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

CLAIM NO ANUHMT2015/0130

BETWEEN:

PEACH HALLPIKE-HODGE

Applicant

AND

EUREL HODGE

Respondent

Appearances

Mr Cosbert Cumberbatch for the Applicant

Mr Dane Hamilton Jr for the Respondent

2016: April 19

2017: March 7

**JUDGMENT**

**Introduction**

[1] **LANNS, J, [AG]:** In the application before the court, the Applicant, Peach Hallpike-Hodge, (Mrs Hodge) seeks the following ancillary reliefs:

1. That the parties be granted joint custody of the children *of* the marriage, namely, Ethan Daniel Hodge, born on the 24th August, 1999; Gabrielle Abigail Peach Hodge, born on 7th October 2004; and Akayla Isabella Monica Hodge, born on 3rd December, 2010; with their care and control remaining with their Mother, with liberal access to granted to their Father

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2. That the Respondent Eurel Hodge (Mr Hodge) make periodic monthly payments of \$3000,00 for the education and maintenance of the children until they each attain the age of 18 years, or until they complete full time education whichever is later.
  3. That Mr Hodge make monthly payments of \$1000,00 to the Applicant for a period of six years for the support of Mrs Hodge pursuant to section 13 of the Divorce Act.
  4. That the cost of this application be provided for by Mr Hodge in the sum of \$500.00.

[2] . Mrs Hodge swore to and filed an Affidavit In support of her applicatio.n, and Mr Hodge filed an Affidavit in Response thereto. Mr Hodge also filed two Supplemental Affidavits.

### **Background**

- [3] Mrs Hodge and Mr Hodge are husband and wife. They were married on the 3rd August 2003. There are three children of the marriage as noted above.
- [4] Matrimonial difficulties arose between the parties, and Mrs Hodge filed a Petition for divorce, on the 12th October 2015, and Mr Hodge filed a Counter Petition. on the 24th December 2015. The marriage has not yet been dissolved.
- [5] On the 5th June 2015, on the application of Mr Hodge, the Learned Magistrate Mrs Joan Walsh made an Order in the following terms:

### **"IT IS ORDERED BY CONSENT That:**

1. The Applicant and the Respondent shall share joint custody of the three children of the marriage, namely Ethan Hodge age 15 years; Gabrielle Hodge, age 10 years and Akayla Hodge age 4 years. All decisions relevant to and relating to the health, education, travel and general maintenance of the children, not including routine physical checkups and arrangements for after care services or extra lessons/classes, shall be taken only on agreement between the parties.
2. The children are to reside with the Mother; the Father shall have physical custody, care and control of the children from Fridays after school to Sundays at 6:00pm when school is in session ; during school vacation, the Father and the Mother shall share physical custody of the said children of the marriage equally. Further, on weekends that the Mother is attending classes until evening, the Father shall have custody of the children until the Mother's classes are finished for that evening.
3. Effectivethe first day of June 2015, the Applicant shall pay to the Collections Officer of the Magistrate's Court, the monthly sum of \$150,00 per child for food plus \$100.00 per month for clothes (for a total of \$550.00 per month) for the benefit of Peach Monica Hall-Pike Hodge for the maintenance of the three children of the marriage namely Ethan Hodge age 15 years; Gabrielle Hodge, age 10 years

and Akayla Hodge age 4 years, until they attain the age of 18 years or complete their education whichever comes first.

4. The responsibility for the payment of school fee for the child Akayla Hodge is to be shared between the Applicant and the Respondent. The Applicant shall pay two thirds (2/3) and the Respondent shall pay one-third (1/3) of the school fee for the said minor child, Akayla Hodge.
5. The Applicant and the Respondent shall equally share the cost or any cost incurred for after class or extra lessons for the children of the marriage.
6. The Applicant Eurl Hodge shall keep the children covered by medical insurance and is responsible for 100% medical expenses incurred by the children.
7. The cost of extracurricular activities is to be borne by the Parent who registers the child of children in the said activity
8. Parties are at liberty to apply."

[6] There has been no appeal from that Order, nor has there been any application to the Magistrate's Court to have the Order varied. It is apparent that Mr Hodge has been meeting his obligations under the said Order.

### **Issues**

[7] The issues which arise for the determination on the Application before this court are:

- 1.. Whether the court has jurisdiction to determine the application
- 2.. Whether reasonable arrangements have been made for the support of the three children of the marriage.
3. Whether Mrs Hodge has established that she is entitled to spousal support, and if so, whether Mr Hodge has the means to pay.

### **Whether the court has jurisdiction to determine the application**

#### The submissions

[8] Learned counsel for the Respondent (Mr Hamilton) has challenged the court's jurisdiction to determine the Application. As far as counsel was concerned, "this Court has no jurisdiction to make a further Order in respect of these matters.". The general rule, argued counsel, is that 'a Consent Order is based on a contract between the parties and may only be set aside on grounds of fraud or mistake'. Counsel's further submission was that the court has no jurisdiction to vary a matrimonial consent order.

- [9] Mr Hamilton pointed to paragraph 8 of the Magistrate's Court Order which gives the parties liberty to apply. He says there has been no appeal against the Order and there has been no application for to set aside or to vary pursuant to the Maintenance and Access to children Act under which the Order was made. Mr Hamilton seems to be suggesting that Mrs Hodge ought to invoke paragraph 8 of the Consent Order and apply to the Magistrate's Court to have the Order varied.
- [10] Assuming that that is what Mr Hamilton is suggesting, the question is, does paragraph 8 bar Mrs Hodge from applying to the High Court for the maintenance and custody order sought. Is Mrs Hodge compelled to move the Magistrate's Court for a variation of the Maintenance and custody aspects of the Consent Order in a case, like this where both parties have petitioned for Divorce under the Divorce Act? Where a consent order of the Magistrate's Court is in place, should that Consent Order be deemed to stand as an Order of the High Court, for purposes of Divorce proceedings; If so, can that order be varied on an application to the High Court? I note that each of these questions has been a bone of contention among lawyers, and the positions taken by counsel on those questions tend to vary, without any authority cited in support of the arguments the points raised.
- [11] Mr Cumberbatch has not offered any submission on the jurisdiction issue<sup>1</sup> In fact, the issue was not canvassed by the parties before the court. it was never raised in the Affidavits filed in support of or in opposition to the Application.. It arose for the first time in the written submissions put forward on behalf of Mr Hodge.

Discussion respecting jurisdiction

- [12] I agree with Mr Hamilton that a consent order is often described as a contract which evidences the terms by which the consenting parties intend to be bound. Such contract can only be varied on grounds of mistake, fraud or misrepresentation. As counsel has correctly pointed out, the Consent Order has not been appealed or set aside, Nor has it been challenged by way of a fresh action. for fraud or mistake or misrepresentation. However, it would seem that whether a court has jurisdiction to entertain a consent order depends on whether the order is a final order.
- [13] It is the law that "final agreements that are agreed upon between the parties for the purpose of receiving approval and being made subject of a consent order by the court, once they have been made subject of the court order, no longer depend on the agreement. of the parties as the source from which their legal effect is derived. Their legal effect is from the court order. If their legal effect is derived from the court order, it must follow that they must be treated as orders of the court and dealt with, so far as possible, in the same way as non-consensual orders" <sup>2</sup> It is noteworthy that the court in *Jessel v Jessel* <sup>3</sup>opined that it is against public policy that maintenance order in the

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<sup>1</sup> It is imcertain whether the parties exchanged submissions.

<sup>2</sup> Per Lord Diploch in *delasala v de Lasela* [1972] 2 All ER 1146

<sup>3</sup> [1979] 3 All ER 645

agreement should be unalterable. There will be times when changes in circumstances will make it just to vary such an order for periodical payments, especially where the welfare of the child is concerned.

[14] As I see it, based on the authorities cited herein, courts have power to entertain applications to vary a consent order in the same way as they can deal with applications to vary non-consensual orders. If the order is final, in the sense that it is a 'once and for all' order, the court would have no jurisdiction but if it were not, the court retains jurisdiction.<sup>4</sup>

[15] In the present case, the Order of the Magistrate's Court was not a once and for all order. Paragraph 8 of the said Order is to that effect. It is alterable and variable based on circumstances. So, it is apparent that the Magistrate retains jurisdiction in respect of that Order.

[16] The present application concerns an application for maintenance, custody and spousal support. It purports to be an application under the Divorce Act. The applicant has framed it as an application for ancillary relief under the Divorce Act, sections 13, 14 and 15. It does not expressly ask the court to vary any aspect of the Order of the Magistrate. However, it would appear, on the face of it, that the relief sought in respect of maintenance is essentially an attempt to vary paragraph 3 of the Order of the learned Magistrate. All that being said, I am of the view that the court can assume jurisdiction to entertain the application under sections 10, 13, 14 and 15 of the Divorce Act. Section 15 of the Divorce Act, to my mind, empowers the Court to vary a maintenance Order made by a court of competent jurisdiction such as the Magistrate's court.

**Whether reasonable arrangements have been made for the support of the three children of the marriage.**

[17] Section 10 (1) (b) of the Divorce Act 1997 imposes a duty on the court to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made. Section 10 does not expressly give the court the power to vary the Order of the Magistrate. Section 10 (1) (b) is normally satisfied by the parties drawing/executing a Deed of Family Arrangement embodying the Maintenance and or Custody Order of the Magistrate, (where that Order is in place); or where not in place, embodying the terms of the agreement of both parties as to arrangements made between them for custody and for the support of the child or children of the marriage. Normally section 10 is normally satisfied by an order of the court made under sections 13, 14, or 15 of the Divorce Act

[18] Counsel for both parties have drawn my attention to the extant Order of the Magistrate's Court which essentially contains arrangements for the maintenance and support of the children of the marriage, as well as for custody of, and access to the children of the marriage. That Order has been made by a court of competent jurisdiction which is the Magistrate's Court.

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<sup>4</sup> Jessel v Jessel [1979] 3 All ER 645.

[19] Is this court satisfied that reasonable arrangements are being made or are in place for the support of the children of the marriage? The court is far from satisfied. Both parties have filed for divorce; so it is incumbent upon them to satisfy the court not only that there are arrangements in place, but also that those arrangements are reasonable. Sections 15 (1) and (4) of the Divorce Act become relevant.

[20] Section 15. (1) of the Divorce Act gives the court power to vary an order whether it be consensual or non-consensual. Section 15 (1) reads

1115(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively, (a) a support order or any provision thereof on application by either or both former spouses; or (b) a custody order or any provision thereof on application by either or both former spouses or by any other person."

[21] And section 15 (4) of the Divorce Act 1997 reads as follows:

"4. Before the court makes a variation order in respect of a support order the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either spouse or of any child of the marriage for whom support is or was being sought since the making of the support order or the variation or the last variation order made in respect of that order as the case may be, and in making the variation order the court shall take into consideration that change."

#### The evidence .

[22] In her affidavit filed in support of her application, Mrs Hodge does not expressly give detail of change in circumstances: She merely states in paragraph 11, "The Respondent is presently paying \$550.00 per month for the three (3) children under an Order of the Magistrates Court, ... but this sum is totally inadequate for the support of the children."

[23] Mr Hodge also deposed to the fact that she and the children live in a property over which there is an RBC mortgage for which she pays \$1,504.00 per month; that she is employed by A.S. Bryden & Sons, and earn a monthly gross salary of \$3405.00 and a net salary of \$2746.24 to \$2905.000. A breakdown of her alleged 'average monthly recurring expenditure' was provided, together with copies of receipts. Mrs Hodge deposed that during the subsistence of her marriage, she purchased clothes and shoes for the children, and paid for their transportation costs, and utility bills which together amounted to \$350.00 monthly. She postulated that should the court grant the divorce, she will have additional basic monthly subsistence expenses that her income cannot meet.

[24] Mrs Hodge states that Mr Hodge is a Human Resources manager at the West Indies Oil Company Limited, and she believes he earns a monthly salary of approximately \$10,000, plus allowances.

- [25] By letter dated 1st October 2015, the Applicant caused her lawyer to write to the Respondent expressing the serious inadequacy of the \$550.00 being paid for the support of the children, and enquired whether the Respondent would be willing to increase the amount to \$3000.00.per month. The Respondent did not respond to the letter.
- [26] On the 18th November 2015, Mr Hodge filed an Affidavit in Response to the Application for Ancillary Relief. In his Affidavit, Mr Hodge acknowledged that he and Mrs Hodge had three children together. He went on to state that he has two other children, namely Faith Katia Vanessa Hodge, born on 14th May 2003, and Camille Hope Ashley Hodge, born on 27th July 2015. He accepted that he was employed by the West Indies Oil Company Limited, and explained that his basic salary was \$11,000.00 plus travel allowance of \$1200.00 monthly. His net salary is of \$9,609.45 is distributed to three financial institutions as follows: (a) Antigua Commercial Bank, EC\$4000.00; (b) Scotia Bank, \$4154.45; and (c) Community First Corporate Credit Union, \$1455.00 for a total net income of \$9609.45. A breakdown of income and expense reflects a deficit of \$138.39. Mr Hodge states that Mrs Hodge paid two utility bills only -- that of Karibe Cable, as well as her personal APUA telephone bill. As regards transportation, Mr Hodge says that they both shared pick up and drop off of the children to and from their various schools. Mr Hodge states in accordance with the Order of the Magistrates Court's, Mrs Hodge receives \$881.25 per month. He says he uses his box hand monies to cover unscheduled expenses.
- [27] Mr Hodge states that he does not own a house or a parcel of land. His current residence is owned by his 95 years old great aunt. He is allowed to live there because he assists with her health care and upkeep of the property. At one time, he used his box hand money to purchase paint and other supplies to upgrade his great-aunts residence so that his children can be more comfortable during week-end visits. He alleges that the Applicant's expenses suggest double counting and exaggeration.
- [28] Mr Hodge asserts that Mrs Hodge's request for \$1000.00 per month per child seeks to garnish about 30% of his net income. If that request is granted, he states, it would severely disadvantage his current financial situation, the care of his children, as well as college funds, the care and upkeep of his great aunt, and other financial investments established. He is prepared to adjust the disbursement for maintenance to \$700.00, with all other terms remaining unchanged. The additional \$150.00, he stated, will bring Mrs Hodge's maintenance receipts to \$1031.00 per month for the three children.
- [29] Notably, Mr Hodge's response failed to address Mrs Hodge's application for spousal support in the amount of \$1000.per month for six years.
- [30] On the 10th February 2016, Mr Hodge filed a second Affidavit wherein he stated that on 1st February 2016, after a dispute with his employer he resigned his post as part of a mutual agreement between him and his employer. The Agreement provided for a separate non

disclosed separation package agreement to be executed by the parties. Mr Hodge stated that he was seeking alternative employment.

[31] On the 4th October 2016, Mr Hodge filed a third Affidavit in which he disclosed that his circumstances had changed in that he had obtained employment with the Employer's Federation as a Senior Labour Relations Officer earning a Gross Salary of EC\$5,250.00 per month. He provided documentary evidence (salary stubs and letter) in support of the facts deposed in his third Affidavit.

[32] It would seem that Mr Hodge is affected by his conscience because he has offered to increase the amount for maintenance (food and clothing) from \$550.00 per month for the three children, to \$700.00 per month for the three children, with all other arrangements remaining unchanged" Here is how Mr. Hodge expressed his willingness:

"I love my children so I am prepared to sacrifice and adjust the cash disbursements to a reasonable sum. i.e. EC\$700.00 monthly with all other terms remaining unchanged."

[33] As I see it, this willingness on the part of the Respondent amounts to an express or implied consent to the variation, by this court of paragraph 3 of the Order of the Magistrate's Court, a court of competent jurisdiction. The question remains, is this reasonable?

[34] The Court has serious reservations about the proposed adjustment for maintenance and clothing. I think that \$550.00 per month per child (or at the least, \$500.00), is more reasonable, taking all the circumstances into consideration. There is not one child of the marriage. These are three growing children whose needs change as they grow. I accept the account of the Applicant as to the amounts spent on food and snacks. As Mr Cumberbatch has submitted, on behalf of Mrs. Hodge, the children have no immediate need for College Funds. Their needs are immediate. They need shelter. They need food; including snacks which are costly. They grow out of their clothes at a fast pace. It would make good sense to me if Mr Hodge were to apply the funds that he is allegedly putting towards College Funds at this point and time, towards the support of the children so as to satisfy the court that the arrangements made for the support of the said children are reasonable. To my mind, the Applicant has manipulated his finances /accounts in a way that is not as favorable to the immediate maintenance needs of the children, as they ought to be. Prior to him being terminated from his employment with West Indies Oil Company Limited, he was drawing a decent salary; while the Applicant was only working for a fraction of what he was drawing, and paying for a roof over her head of the heads of the children.

[35] Accordingly, I propose to make an order that the Respondent do pay to the Applicant the additional sum of \$950.00 towards maintenance and support of the three children of the marriage so as to increase the monthly payment for food and clothes to \$1500.00 commencing on the 31st day of March 2017 and continuing on the last business day of each and every month thereafter until further order. The payments are to be made at the Chambers of Cuthbert Cumberbatch, Upper Long Street, St John's, Antigua.



## **Custody**

- [36] As previously stated, an application for custody and access is provided for under Section 14 of the Divorce Act. An order in respect of custody and access is already in place under the Magistrate's Order. So this is not a new application in the sense that there is no application to have that Order varied .
- [37] In any event, Mr Hodge has no objection in relation to Mrs Hodge's application for custody and access. This is made clear by paragraph 12 of his Affidavit in Response, and paragraph 4 of the submissions of Mr Hamilton.
- [38] Accordingly, the application by Mrs Hodge for custody and access is granted in the terms prayed for in the Application. This brings me to the Application for spousal support

### **Whether Mrs Hodge has established that she is entitled to spousal support, and if so, whether Mr Hodge has the means to pay?**

#### The submissions

- [39] As previously stated, Mr Hodge has not addressed the issue of spousal support in his affidavit. However, Mr Hamilton in his written submissions urged the court not to make any order for spousal support. because
- (1) Mrs Hodge's financial disclosures show double counting and exaggeration, and she has provided no documentary proof of her expenses.
  - (2) Mrs Hodge has not explained why her deficit amounts to \$6000, 00 or how she finances her deficit.
  - (3) The deficit of \$6000.00 is evidence of an extravagant lifestyle which is unreasonable as promoting the economic dependence of Mrs Hodge.
  - (4) The breakdown of the marriage did not expose Mrs Hodge to financial hardship, as she was paying her mortgage and her loans prior to the breakdown of her marriage.
  - (5) The mortgaged property was occupied by Mrs Hodge's father, but since the breakdown of the marriage, Mrs Hodge decided to forego rental income earned from the property thereby increasing her expenses.
  - (6) Mr Hodge owns no property. Mrs Hodge owns the property in which she lives
  - (7) Mr Hodge's new circumstances are such that he now earns half of what he used to earn, and therefore suffers from an economic disadvantage
  - (8) Mrs. Hodge has disclosed no special need or requirement which requires Mr Hodge to supplement her income. there is no evidence *of* any matter which may operate to reduce

her earning capacity. She is not disabled on the job market and is independently able to improve her circumstances if she so wishes.

- (9) Mrs. Hodge is gainfully employed. She fails to make the necessary and reasonable adjustments to become self sufficient. There is no suggestion that Mrs Hodge's financial issues arise out of any indebtedness referable to the maintenance and support of the family during the marriage.

[40] Mr Cumberbatch has offered no submissions in respect of the application for spousal support, and Mrs. Hodge has not detailed the reasons why she needs spousal support. She simply says in paragraph 9 of her affidavit in support that "should the court grant our divorce, I will have additional basic subsistence expenses that my income cannot afford."

### Discussion

[41] In deciding whether to make an order for spousal support, the court has to consider 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 spouse during the cohabitation; and (c) any order, agreement or arrangement relating to support of the spouse (Section 13 (5))

[42] Additionally, the court has to - (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. (Section 13 (7)).

[43] All factors under s. 13 (5) must be carefully considered by the Court in light of the objectives of spousal support listed in s. 13 (7). The objectives must be balanced in the context of the facts of the case. The Court must exercise its discretion in order to relieve the adverse consequences and economic hardship that results from marriage or its breakdown. No single objective, including economic self sufficiency, is paramount.

[44] This is a 13 year marriage, with a period of cohabitation for about .12 years. Both parties share child care responsibilities, with Mrs Hodge bearing greater responsibilities. Mrs Hodge continues her employment with Brydens. Mr Hodge lost his job as Human Resource Manager with WIOC during the course of these proceedings, and has taken up new employment at a reduced salary. Mrs Hodge has been looking after her own needs, albeit on a tight budget. I find there was no implied or expressed agreement whereby Mr Hodge promised that he would provide Mrs Hodge with spousal support.

- [45] Mr Hodge is 44 years old. Mrs. Hodge is 38. They have both listed their financial expenses to which I have already alluded. Suffice it to say, during cohabitation, Mrs Hodge earned a gross salary of \$3405.00 with a net of about \$2905.00 per month. Mr Hodge, during cohabitation earned \$12,200, with a net of \$9,609.45. Post separation, Mr Hodge earned a gross of \$5250.00. Given their respective age, it is highly likely that their earning capacity would be enhanced in the future.
- [46] Mr Hamilton has laid much store on the fact that Mrs. Hodge has decided to live in her house rather than keeping it as an income earning asset. Mr Hamilton cannot seriously be making such a submission, even as Mr Hodge is said to have asked Mrs Hodge to leave the matrimonial home, and even as Mr Hodge has deposed to repairing, renovating, upgrading and up-keeping a house that he says does not belong to him, and even as Mrs. Hodge has been providing a home for herself and the three children of the marriage, at her own expense. It is apparent that Mr Hodge does not accept or recognise that he has a parental obligation to contribute to the parental obligation of providing shelter for the children of the marriage. And there is still a common law responsibility of providing a home for his wife.
- [47] Curiously, Mr Hamilton has submitted that there is no evidence of any matter which may operate to reduce her earning capacity. She is not disabled on the job market and is independently able to improve her circumstances if she so wishes, submitted Mr Hamilton. Mr Hodge is not disabled on the job market, his earning capacity has not been impaired, yet he is drawing a reduced salary which does not improve his circumstances as he would have wished. It is on this basis that he says he is unable to increase child maintenance and pay spousal support.
- [48]. I am in agreement with Mr Cumberbatch that Mrs. Hodge has little or no margin outside the \$1504.00 per month that she pays for her mortgage, and the amount she pays for living expenses for herself and the children. It would have been helpful if she had disclosed the mortgage balance. However, I do not agree with Mr Hamilton that Mrs. Hodge is a squanderer, or an extravagant person. She is entitled to maintain a certain standard of living. I do not discount the fact that Mr Hodge shares school fees, after class fees, and is responsible for all medical expenses for the children. Nor I discount the fact that the children are with him on weekends. But, this application was made before he lost his job, and during the time that he was drawing a relatively good salary. Circumstances that prevailed at the time the application was made must be considered by the court, at least partially. (See Kovac v. Kovac, 2013 ONSC 4593 (Canll))
- [49] As I have said, it is apparent that the parties cohabited for approximately 12 years. During the period post cohabitation, Mr Hodge received severance pay of \$85,000. which he said he invested in several accounts, and over which he has sole control and administration. He told the court; that he used some of the money to pay up credit card debts, and pay a debt allegedly owing to his father for his car. I do not believe Mr Hodge is being forthright with the court in his account of this car loan. As I said before, Mr Hodge has a way of manipulating his finances, and this alleged 'car loan' from his father seems to be one way of doing so. There is evidence on file showing that his educational and economic advancement was facilitated, to some extent by Mrs. Hodge, whilst he

- contributed a mere US50.00 towards her educational advancement in the context of her CXC classes.

[50] I note the affidavit evidence of Mr Hodge suggesting that he had been involved in an extra marital relationship: Marital fault is not a consideration that should determine spousal support but the functions performed by the spouses during cohabitation is a relevant consideration. It has not been said that Mrs. Hodge was not a dutiful wife. It has not been said that she performed no functions during the period of cohabitation. She looked after the children and she has provided a home for them.

[51]- But the court is hamstrung by the absence of detailed affidavit evidence in support of the application for spousal support on the grounds as set out under section 13 of the Divorce Act. The affidavit is hollow and need fleshing out to sufficiently establish entitlement to spousal support. Additionally, Mr Cumberbatch has not offered any submissions pertaining to the application for spousal support. And as I have said before, Mr Hodge's Affidavit in response, did not specifically address the issue. However, Mr Hodge stated under cross-examination, that he cannot afford to pay spousal support, based on his present income. I have already alluded to the fact that the court cannot look only at his present income, but is also required to look at the position that prevailed at the time the application. was made.

[52] However, a careful review of the condition, means, needs and other circumstances of each party in this case, (based on the limited evidence before it) along with the objectives of spousal support results in a finding that Mrs Hodge is entitled to spousal support on both a compensatory and a non-compensatory basis, but certainly not on a contractual basis, as there was no agreement between them about spousal support.

[53] Before I conclude and go on to make the required orders, I would wish to note that neither party complied with the Order of this court made on the 19th April 2016 wherein it was ordered as follows:

1. That the respondent shall within 14 days file and serve documentary proof of the College Funds Accounts in favour of Ethan; Gabriella and Akayla which he says is held at the Community First Cooperative Credit Union. The statement of account must show the balance which stands on those accounts.
2. That both parties are to provide statements of accounts held in their bank Accounts<sup>5</sup> wheresoever held for the period 4th November 2015 and to 19th April 2016

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<sup>5</sup>Mrs Hodge stated that her accounts were held at Royal Bank of Canada and Caribbean Union Bank; and Mr Hodge said his accounts were held at Bank of Nova Scotia, Antigua Commercial Bank, First Community Bank and Eastern Caribbean Amalgamated Bank (ECAB)

3. Thereafter, the parties are to file and serve closing submissions 10 days after receipt of the bank records.
4. That the Applicant will have carriage of this order
5. That the Decision is reserved pending receipt of the submissions.

[54] Notwithstanding the odds, including the limited evidence, the court will do the best it can with what is before it.

[55] Pursuant to the Divorce Act, section 13 (7), the objective of a spousal support order should recognise any economic advantages or disadvantages to the spouses from the marriage or its breakdown, relieve any economic hardship, of the spouses arising from the breakdown of the marriage, and in so far as practicable, promote the economic self sufficiency of each spouse within a reasonable period of time. The evidence, as well as Mr Hamilton's submissions reveal that it is after the breakdown of the marriage that Mrs Hodge resorted to living in her own house, thereby foregoing rental income.

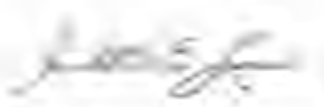
[56] I believe that a satisfaction of the objectives of a spousal support order in the circumstances can be achieved, by ordering Mr Hodge to pay Mrs Hodge \$500.00 per month for two years to meet the need to repay her mortgage. This should help alleviate some of her economic dependence, and help her to achieve self sufficiency, especially after she has completed her car loan and her mortgage payments, and with a little penny-pinching here and there. I believe Mr Hodge has the ability to pay, and has the skills to manage his funds in way that would allow him to make the monthly payment, especially since his car loan will be finished in June 2017.

### **Conclusion**

[57] IT IS HEREBY ORDERED AS FOLLOWS:

1. Mr Hodge and Mrs Hodge shall continue to share joint custody of the three children of the marriage, namely Ethan Hodge; Gabrielle Hodge, and Akayla Hodge. All decisions relevant to and relating to the health, education, travel and general maintenance of the children, not including routine physical checkups and arrangements for after care services or extra lessons/classes, shall be taken only on agreement between the parties.

2. The children are to continue to reside with the Mother; the Father shall have physical custody, care and control of the children from Fridays after school to Sundays at 6:00pm when school is in session; during school vacation, the Father and the Mother shall share physical custody of the said children of the marriage equally. Further, on weekends that the Mother is attending classes until evening, the Father shall have custody of the children until the Mother's classes are finished for that evening.
3. Mr Hodge, shall now pay to Mrs Hodge the monthly sum of \$1500,00 for the support and maintenance of the three children of the marriage namely, Ethan Hodge, Gabrielle Hodge, and Akayla Hodge until they attain the age of 18 years or complete their education whichever comes first. Payments are to be made at the Law Offices of Cumberbatch & Associates, Chambers, Upper Long Street, St John's, Antigua beginning on the 1st day of April 2017.
4. The responsibility for the payment of school fee for the child Akayla Hodge is to be shared between Mr Hodge and Mr Hodge. Mr Hodge shall continue to pay two-thirds (2/3) and Mrs. Hodge shall continue to pay one-third (1/3) of the school fee for the said minor child, Akayla Hodge.
5. Mr Hodge and Mrs. Hodge shall continue to share equally the cost or any cost incurred for after class or extra lessons for the children of the marriage.
6. Mr Hodge shall continue to keep the children covered by medical insurance and is responsible for 100% medical expenses incurred by the children
7. The cost of extracurricular activities is to be borne by the Parent who registers the child or children in the said activity.
8. Mr Hodge shall pay to Mrs. Hodge spousal support of \$500.00 per month for a period of two years beginning on the 1st day of April 2017. Payments are to be made at the Law Offices of Cumberbatch & Associates.
9. Each party shall bear his/her own costs
10. The Parties are at liberty to apply for directions or otherwise.



PEARLETTA E. LANNS  
High Court Judge [Ag] .