

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHMT 2014/0139

BETWEEN:

EWART NATHANIEL ISAAC

Petitioner/Respondent

AND

DENISE ESTHER RUEBENA DEBORAH ISAAC

Respondent/Applicant

Appearances:

Mr. John Fuller for the Applicant /Respondent

Ms K. Marks of Richards & Company for the Petitioner/ Respondent

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2018: March 27
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JUDGEMENT

[1] **HENRY, J.:** The parties were married on 16th April 2005. In February 2015 the parties were divorced. In November 2016, Denise Isaac (the wife) filed an Application for Ancillary Relief in which she seeks an order that:-

- 1) The Petitioner/Respondent, Ewart Isaac, do pay to the Respondent/Applicant the sum of \$5,000.00 per month as support for the Respondent;
- 2) The Petitioner/Respondent pay the Respondent/Applicant costs of the application in the sum of \$1000.00.

[2] The wife alleges as the grounds of the application that from April 2005, the parties co-habited in what became the matrimonial home until after the divorce when she was forced to vacate the said matrimonial home and find her own accommodation. Since her departure, Ewart Isaac (the husband) has failed and refused to provide any maintenance whatsoever. On the 11th October 2013, the wife suffered severe injuries as a result of a motor vehicle accident on Friars Hill Road which resulted in her being severely handicapped from which she has not fully recovered. About January 2016, she re-started her own dress making business together with a small grocery shop from which she earns a combined income of \$1400.00 per month. She states that her income does not provide sufficient income to pay her expenses which exceed \$3,000.00.

The Law

[3] The application is made pursuant to Section 13 (2) of the Divorce Act which provides:

(2) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums as the court thinks reasonable for the support of

(a) the other spouse;

(b) any or all children of the marriage; or

(c) the other spouse and any or all children of the marriage.

[4] Further, Sections 13 (5) and (7) provide;

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, 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 or child.

(6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(7) 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.

The Condition, Means, Needs and Circumstances of the Wife

- [5] The wife states that for most of the marriage, she was unable to provide for herself and for the household. In her affidavit evidence she states that during the 10 year marriage, the parties resided in the respondent's residence in Bendals village. The respondent paid for all their needs. While she cooked and took care of the home except for window cleaning. According to her evidence she was diagnosed with cervical cancer in 2004 and in 2005 she had a hysterectomy. She was thereafter diagnosed with Graves' disease. During the marriage she also suffered from heart disease. In October 2013, she was involved in a serious motor vehicle accident. According to her the accident left her with injuries to the head, both legs, shoulders and other parts of her body. She states that she was confined to a wheelchair until February 2014.
- [6] The medical certificates submitted confirm that she suffered from a heart condition and has been diagnosed with Graves' disease. Also that she had a hysterectomy for uterine fibroids in 2006, but none of the reports mention cervical cancer. She also has a history of hypertension. The medical report dated 24th January 2015 indicated that she has been suffering from the injuries sustained in the motor vehicular accident for the past year. It noted that she was a seamstress by profession and that her disability rendered her unfit to work and impacted severely on her ability to meet her daily needs independently. It concluded that she had suffered both physically and mentally.
- [7] The most recent medical report is dated 5th July 2016. It noted that the applicant had completed physiotherapy following her left shoulder arthroscopic surgery. At the time of the report the left shoulder was asymptomatic with full range of active motion. The applicant was advised to continue respiratory and chest physiotherapy. It is also noted that the applicant was experiencing episodes of left ankle and foot soft tissue swelling which was likely to persist, representative of early osteoarthritis, which affects her occupation as a seamstress. Her Orthopaedic permanent physical impairment was assessed to be six percent of Lower Extremity and three percent of Whole Person.
- [8] As to her needs, the applicant states that she is presently attempting to restart her dressmaking business from which she now earns an average of less than \$1000.00 per month. She earns an additional \$400.00 monthly from the sale of snack items. She resides at the dressmaking shop. According to her she lived there before her marriage for about nine months, out of necessity. After she was forced to leave the matrimonial home she had to return there with her 18 year old son. The building she states is completely inadequate. She refers to it as a hovel. The Valuation Report states that the structure is over thirty years old and in need of major refurbishment. A

nominal value of the structure was put at \$17,300.00. The value of the land is \$40,000.00, with fencing valued at \$2,500.00, for a total of \$59,800.00.

The Condition, Means and Circumstances of the Husband

- [9] The husband states that at the time of their marriage and during its subsistence both parties were small business owners. He operates a business providing trucking services to companies and to members of the public. The wife operated a grocery as well as a dress making shop in Villa. He describes her as a qualified and talented dress-maker/seamstress.
- [10] According to the husband, during the subsistence of the marriage these jobs provided their source of income. However, they kept their finances separate. The wife earned significantly from her businesses to provide for herself and she was also able to extend her two bedroom house in Villa by extending the bathroom and the kitchen. From his income he would pay all of the utilities for the home and also purchased groceries for the home. The wife would cook occasionally on Sundays. Other domestic chores, such as doing the laundry and ironing he performed himself.
- [11] He acknowledges that in or about 2013, the wife was involved in a motor vehicle accident when a truck collided with the Toyota Rav 4 jeep she was driving. Although they were no longer living as man and wife, he truly sympathize with her situation and tried his best to support her in whatever way possible. This included meeting some of her medical costs, running errands for her and assisting her to move around the home. According to him, the wife recovered from her injuries and was able to move around on her own. She went back to her businesses at Villa in or about early 2014.
- [12] The driver of the truck that collided with her, accepted liability for the accident and he is aware that State Insurance gave her a cheque for the replacement of her motor vehicle. She has since replaced the 1998 Toyota Rav 4 which was written off, with a 2002 Toyota Rav 4. However, he is unaware as to what sums she may have received from State Insurance for her injuries since after she became mobile there was no need for him to communicate with her insurance on her behalf.
- [13] After the divorce was finalized on 21st March 2015, he asked her to return to her house in Villa. They each had separate homes prior to the marriage so there was always reasonable alternative.
- [14] Further, he is very much aware that she continues to operate her grocery shop in Villa and provide dress making services. The home in Villa comprised two bedrooms, living room, kitchen and bathroom. In fact the living room was converted into her grocery shop.
- [15] He states emphatically that he does not accept that the wife is no longer able to meet her monthly financial commitments as her financial situation has not changed as a result of the divorce. In fact her financial situation may very well have improved since the divorce upon receipt of payment from her injuries from State Insurance.

[16] In any event, he is adamant that his own financial circumstances do not allow him to contribute EC\$5,000.00 monthly for an indeterminate period, as requested by her. He operates E. Isaac Trucking Ltd a company incorporated in Antigua from which he says he earns a basic monthly income of EC \$6,000.00. He is the father of three children, two reside in England one resides in Antigua. He also pays a caretaker, Ms Dawn Fearon, about \$2,000.00 monthly for looking after his mother.

[17] He outlines his monthly financial commitments as follows:

Electricity	\$300.00
Water	\$300.00
Internet	\$224.25
Telephone	\$34.50
Cable	\$86.25
Children Maintenance	\$2,400 [400.00+ EC\$1,000.00]
Care taker of elderly mother	\$2,000.00
Tithes & Offering	\$600.00
TOTAL	\$5,945.00

[18] The husband denies allegations by the wife that he has overstated his expenses and grossly understated his income and assets. He states that the wife has incorrectly sited assets belonging to his employer, E. Isaac Trucking Ltd as the husband's personal assets. E. Isaac Trucking Ltd is a limited liability company. He admits to being a shareholder of the company. But does not disclose the extent of his shareholding. He states that the company remains heavily indebted to the bank and so he has never received any dividends. According to him, the two tractor trailers, forklift, crane and other trailers mentioned by the wife are owned by the company. Also the account at Scotiabank referred to by the wife is the company's account. He admits to maintaining a savings account at Royal Bank of Canada and CIBC First Caribbean. The latest bank statement from RBC showed a balance of just over \$10,000.00.

[19] The husband also admits to owning three parcels of land not previously disclosed. The property which served as the matrimonial home is valued at \$300,000.00 with a forced sale value of \$240,000.00. It is subject to a charge in favour of RBTT Bank in the principal sum of \$91,000.00. The parcel of land located in Buckleys Block 51 1986A Parcel 99, is valued at \$216,000.00 with a

forced sale value of \$173,000.00. It is also subject to a charge in favour of RBTT Bank in the principal sum of \$92,000.00. The parcel of land located in Bathlodge Block 51 1888A Parcel 473, is valued at \$50,000.00 with a forced sale value of \$40,000.00. A second parcel of land also located in Bathlodge Block 51 1888A Parcel 474 is also valued at \$50,000.00. Both parcels are free of any encumbrances.

[20] He is of the view that the wife has not put forward any evidence as to her alleged monthly expenses which she alleges that she is unable to meet or any evidence that the divorce has placed a financial burden on her. The wife has also intentionally withheld from the court the fact that she has or is likely to receive a substantial cash award from State Insurance for her injuries.

[21] The husband is of the view that the wife has suffered no disadvantage, financial or otherwise, arising from the breakdown of the marriage and in any event he submits that he is not in a position to pay her maintenance as requested.

Discussion and Conclusions

[22] Paragraphs 3, 4, 5 and 9 of the wife's Affidavit will be disregarded as they deal with allegations of misconduct by the husband in relation to the marriage.

[23] The wife presents a picture of herself as a person recovering from physical and emotional trauma. The court accepts that the wife was not totally candid with the court and may have attempted to overstate her medical issues. However, those medical conditions that have been corroborated by medical reports do reveal a woman suffering from genuine medical problems. Notwithstanding that significant improvement has been made, the last report indicates some permanent disability.

[24] With regard to the injuries sustained by the wife in the motor vehicle accident, the husband submits that these injuries ought not to be considered by the court for a determination in this application. He asserts that the wife may be entitled to compensation for her injuries sustained in the accident from the party involved in the accident. Her claim for loss of income is better suited and can be properly explored in any claim for personal injury. Furthermore, such injuries or alleged consequential loss cannot be said to be as a result of the breakdown of the marriage.

[25] This is not a claim for loss of income. The wife in her application is not asking for the husband to compensate her for injuries sustained as a result of the accident. It is undeniable that the accident occurred during the marriage. The injuries sustained impacted her health during the course of the marriage. As long as the marriage subsisted the husband provided her need for housing and met her basic needs such as food. Once the marriage ended and she was forced to vacate the matrimonial home, these expenses became her expenses. The wife is asserting hardship in meeting these needs. The state of her health is a factor that affects her ability to be immediately self-sufficient, and to that extent the impact of the injuries on her present health is relevant.

[26] The husband on the other hand, sought to portray the wife as totally independent and self-sufficient, both during and after the marriage. The record however shows that the husband

contributed to the wife's upkeep and maintenance of the home. He paid the utilities and provided food for the home. When she became ill he assisted in payment of the bills as well as assisting her physically when she was in need.

[27] The wife has returned to her former residence. The valuation report makes it clear that the premises are in dire need of refurbishment. The minimal value placed on it is indicative of the real situation.

[28] The court is convinced that the wife's income from her dressmaking and the sale of snacks, at this time, is insufficient to take care of her needs. The court accepts that the wife failed to submit a detail list of her expenses, but the court accepts the evidence of her earnings and finds that it is insufficient to take care of her basic needs. Her basic needs include sufficient funds to meet her monthly expenses and having a decent place to live.

The Husband's Ability to Pay

[29] The husband submits that although he owns several properties, his financial position cannot be described as liquid. He states that he maintains small savings accounts and his properties are subject to certain mortgages at financial institutions in Antigua. Furthermore, that these assets do not form matrimonial assets, and the order sought is not a property adjustment order. He therefore submits that his real property is not directly relevant to determining the issue at hand. According to his submission, in order to make any order for monthly payments what must be examined is the income that is readily available to the husband on a monthly basis, to do otherwise will inevitable prejudice the husband.

[30] The provisions of the Matrimonial Causes Rules 1937 are still applicable to Antigua. Section 48 (2) provides:

(2) Where a husband is served with a notice of an application for alimony pending suit, permanent alimony, maintenance, maintenance of the children, a secured provision, periodical payments or securing periodical payments to a wife he shall within 14 days after service of the notice upon him or if he has not at the time of such service entered an appearance within 14 days after entering an appearance file an affidavit setting out full particulars of his property and income, unless in the case of any such application other than an application for alimony pending suit the wife at the time of service of the application therefor gives notice to him or to his solicitor of her intension to proceed with the application upon the evidence already filed on her application for alimony pending suit.

[31] The court is of the view that the husband has sought to undervalue his income and assets. It was only after the wife indicated that he was the owner of certain lands that he disclosed ownership of three additional parcels. He has declared a salary from E Isaac Trucking Ltd of \$6,000.00 with expenses totalling \$5,945.00. The company was incorporated in December 2008, during the subsistence of the marriage. The company accounts for 2015 shows total revenue of \$632,855.00

with total operating expenses, including salaries and wages, of \$594,074.00. Comprehensive income for the year after taxation was \$38,781.00. The husband claims that he has never received dividends. He has failed to disclose whether he is the sole shareholder of the company. The company has considerable assets in the form of equipment. Even making allowances for the mortgage on the equipment, the company has worth. Furthermore, the account at Royal Bank of Canada in the name of the husband has a balance of over \$10,000.00, notwithstanding his claim that after his commitments he is left with only \$55.00. The husband is certainly in a position to provide reasonable maintenance to the wife, until she becomes self-sufficient. The wife has admitted that she is due to receive compensation for the accident but is unable to say when that will occur. Until such time as she is in receipt of those funds she is in need of assistance.

Conclusion

- [32] The court's finding is that the wife has suffered hardship arising from the breakdown of the marriage at a time when she was vulnerable due to her injuries. Her prior home needs refurbishment in order to make it liveable and her income is insufficient to meet her needs. She is in need of assistance until such time as she can provide totally for herself. The husband has means to provide that maintenance for a specific period until the wife becomes self-sufficient. This will provide the assistance needed at this time and will promote economic self-sufficiency within a reasonable time.
- [33] Accordingly, the application by the Respondent/Applicant, Denise Esther Isaac for an order pursuant to section 13 (2) of the Divorce Act is granted. The Petitioner/Respondent Ewart Nathaniel Isaac is to pay to the Denise Isaac as maintenance the sum of \$3,000.00 per month starting 30th April 2018 and continuing on the last business day of each month for a period of two years or until such time as she is in receipt of settlement from the insurance company, whichever is earlier. Cost to the Respondent in the sum of \$800.00.

Clare Henry
High Court Judge

By the Court

Registrar