

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

Claim No. DOMHMT2014/0040

BETWEEN:-

DERWIN MELROSE PELTIER

Petitioner/Respondent

JACINTA PELTIER nee JNO LEWIS

Respondent/Applicant

Appearances:

Mrs Gina Dyer Munro of Dyer and Dyer for the Petitioner/Applicant

Mrs Heather Felix Evans of Optimum Legal Services for the Respondent

2018 December 31

2019 June 13

DECISION

[1] STEPHENSON J.: This is an application of maintenance pending suit brought by the respondent. I have heard evidence, arguments and reviewed submissions presented to the court by counsel for both parties.

[2] At the outset I would say that these proceedings have been very acrimonious, unnecessarily so, which has to some extent contributed to this matter lingering in the system and taking some time

for the hearing to reach a conclusion on this aspect of the proceedings¹. There was of course the passage of Hurricane Maria which affected the sitting of the court for over a year and which also according to the evidence of the petitioner has impacted his financial position.

- [3] It is noted also that since the commencement of these proceedings the respondent has been visited with unfortunate serious personal circumstances negatively affecting her health causing her to endure serious invasive medical procedures. The petitioner has alluded to being similarly challenged but has provided this court with no proof of same. This court wishes both parties full recovery.
- [4] Great effort was made to move the parties towards settlement but in vain. I have endeavored to come to an understanding of the financial affairs of each of the parties before the court so as to do justice between them.
- [5] Alimony pending suit is a provisional order and not a final order or judgment and is a privilege available to an applicant for his or her subsistence during litigation to be granted before the decree Nisi.
- [6] On a petition for a divorce a wife is entitled to seek an order for periodical payments for her maintenance for such term being a term beginning on the date the petition is presented or the date her application was made and ending where the proceedings are determined as the court deems reasonable. Re: Smith –v- Smith².
- [7] In making a decision on such an application the court is to make a broad assessment of the **parties' financial circumstances and should make an order which will seek to ensure that the party's interim needs are met pending a more extensive** inquiry which is really meant to take place at the substantive hearing. Re: F-v-F (A maintenance pending suit)³

¹ After many hearings and adjournments at the end of the cross examination of the parties closing submissions were ordered to be filed on the 31 December 2018

² (1923) P 191 @ page 204 Per Scrutton LJ

³ 1983 4 FLR 382, 13 Family Law 16

[8] In the case of F-v F⁴ Balcombe J having to deal with evidence given in great detail about the financial transactions between the parties had this to say *“I do not think it is necessary to deal with those matters at all; they are not appropriate to be dealt with at this stage. They will be dealt with if at all, when the full financial application is heard”*⁵

[9] The evidence adduced to this court in the case at bar **went into quite details of the parties’ means**, with multiple affidavits being presented and extensive cross examination particularly of the applicant wife by counsel for the husband. I do not think it is necessary to deal with all the matter in great detail at this stage of the proceedings at all. I am in full agreement with the aforementioned statement of Balcombe J.

[10] A party is entitled to make an application for maintenance pending suit pursuant to section 22 of the Matrimonial Causes Act 1973. On such an application the court is to take a broad view of the means and income of the parties, taking into account the income and earning capacity of the parties and such other matters as might be appropriate to the individual case

[11] In the case at bar should the court exercise its discretion to make the maintenance order pending suit the respondent will be required to make to the applicant such periodical payments for her maintenance and for such term, being a term beginning not earlier than the date of the presentation of the petition and ending with the date of the determination of the suit, as the court thinks reasonable.

[12] The test that is laid down has been **stated** “as the court thinks reasonable”⁶. (*Emphasis mine*)

[13] *IN the case of TL v ML* ⁷ LJ Nicholas Mostyn QC in addressing the issue of maintenance pending suit after considering *F v F (Ancillary Relief: Substantial Assets)* 1983 4 FLR 382, *G v G (Maintenance Pending Suit: Legal Costs)* [2002]3 FCR 339, and *M v M (Maintenance Pending*

⁴ *ibid*

⁵ *ibid* at page 384

⁶ Per Balcombe J in RE: F-v-F *ibid* at page 384

⁷ [2005] EWHC 2860 (Fam)

Suit) [2002] 2 FLR 123 laid down what is considered to be the criteria in these matters. He stated as follows:

"i) The sole criterion to be applied in determining the application is "reasonableness" (s22 Matrimonial Causes Act 1973), which, to my mind, is synonymous with "fairness".

ii) A very important factor in determining fairness is the marital standard of living (F v F). This is not to say that the exercise is merely to replicate that standard (M v M).

iii) In every maintenance pending suit application there should be a specific maintenance pending suit budget which excludes capital or long term expenditure more aptly to be considered on a final hearing (F v F). That budget should be examined critically in every case to exclude forensic exaggeration (F v F).

iv) Where the affidavit or Form E disclosure by the payer is obviously deficient the court should not hesitate to make robust assumptions about his ability to pay. The court is not confined to the mere say-so of the payer as to the extent of his income or resources (G v G, M v M). In such a situation the court should err in favour of the payee.

v) Where the paying party has historically been supported through the bounty of an outsider, and where the payer is asserting that the bounty had been curtailed but where the position of the outsider is ambiguous or unclear, then the court is justified in assuming that the third party will continue to supply the bounty, at least until final trial (M v M)."⁸

[14] The Court should not apply a fixed arithmetical calculation or apply a fixed arithmetical rule to the issue at bar. *Re: Horniman v Horniman*,⁹ *Chichester v Chichester* ¹⁰

[15] **I am conscious of the view as expressed by Asquith LJ that when considering 'judicial discretion'** two different judges can arrive at widely different decisions based on the same evidence.

Bellenden (formerly Satterthwaite) v Satterthwaite [1948] 1 All ER 343, 345, CA per Asquith LJ. In

⁸ **Ibid at paragraph 124**

⁹ [1933] All ER Rep 790, [1933] P 95;

¹⁰ [1936] 1 All ER 271, [1936] P 129.

other words I am aware that when I having considered the circumstances, evidence, heard and considered the submissions of counsel for both parties I may come to a decision that may be considerably different from similar cases.

[16] Having reviewed the application, the evidence adduced, the law as submitted by both parties and taking into consideration all the circumstances and account of the factors as laid down in *In the case of TL v ML* aforesaid and having noted that there is a pending order against the wife for maintenance of the children of the marriage which has to be addressed separately from this matter it is the order of this court that the husband pay to the wife in this matter the sum of EC\$500.00 per month commencing at the time of the application and continuing until there is an order for ancillary relief or the final order is made in the matter. (Emphasis mine)

[17] There is no order as to costs.

M E Birnie Stephenson
High Court Judge

[SEAL]

By the Court

Registrar