

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2018/0010

IN THE MATTER OF THE PETITION OF MICHELLE CARLITA BYNOE NÉE MC DOWALD FOR THE
DISSOLUTION OF MARRIAGE

BETWEEN:

MICHELLE CARLITA BYNOE NÉE MC DOWALD

PETITIONER

AND

HEADEN ROGER BYNOE

RESPONDENT

Appearances:

Mrs. Zhing Horne-Edwards of counsel for the petitioner.
The respondent unrepresented, absent.

2019: Jul. 1
Jul. 15

JUDGMENT

INTRODUCTION

[1] Henry, J.: Mrs. Michelle Bynoe petitioned the court for a divorce from Mr. Headen Bynoe in 2018. A decree nisi of divorce was made on 23rd April 2018. Mrs. Bynoe has since filed¹ an Application for joint custody and maintenance of the two children of the marriage - Heamic and Heamio. They were born respectively on 8th January 2000 and 23rd July 2001. Mr. Bynoe has not responded to the proceedings and has been absent throughout. He lives outside of the State of Saint Vincent and the Grenadines.

¹ By Summons filed on 25th June 2018.

[2] Mrs. Bynoe testified about her means and described the provision that Mr. Bynoe has made towards **the children's welfare since the breakdown of their marriage. She has asked the court for an order that Mr. Bynoe be required to pay \$1100.00 per month towards the children's maintenance.** She also sought an order for joint custody, with care and control to her, until an unspecified date the children are expected to travel to the United States to live with their father.

[3] Mrs. Bynoe provided affidavit² testimony regarding her salary as a pre-school teacher but was unable to say what if any income Mr. Bynoe earns. The parties are granted joint custody of the younger child until he attains the age of 18 years later this month. No order of custody is made in respect of the other son as he is an adult. Mr. Bynoe is ordered to make a lump sum payment **towards his sons' maintenance to reimburse Mrs. Bynoe** for shouldering those responsibilities on her own over an extended period.

ISSUE

[4] The issue is what order should be made for Heamic's **and** Heamio's custody, care, control and maintenance?

ANALYSIS

Issue – What order should be made for Heamic's **and** Heamio's custody, care, control and maintenance?

[5] Mrs. Bynoe averred that as at 25th June 2018, Heamic and Heamio were both attending the Emmanuel High School in Mesopotamia. On the date of the hearing, she did not state whether the young men were still in school. I am unable to make a finding regarding this. Heamic turned **18 years old in January 2018. Heamio's 18th birthday** is just one week away.

[6] Mrs. Bynoe attested that she has sole physical care of her sons who reside with her in rented accommodation at Belair. She stated that Mr. Bynoe migrated to the United States of America around 2011 and has not returned.

[7] Mrs. Bynoe earns \$800.00 from her employment. She indicated that this amount is supplemented with financial assistance from her mother and sisters who contribute when they can. Her monthly

² Filed on 25th June 2018.

expenses total \$2,041.00³. She testified that she incurs periodic expenses in relation to her sons' school fees and school book loan scheme of \$300.00 each year. She estimated that she expended the annual sum of \$800.00 for their clothing and school supplies. She added that she is often over-extended financially and owes arrears on her utility and refrigerator loan.

[8] Mrs. Bynoe acknowledged that her expenses exceed her income. She indicated that she has no **information regarding Mr. Bynoe's living arrangements, employment status or expenses**. She expressed the belief that he makes a living cleaning vehicles, and operating a taxi service and transporting goods.

[9] Mrs. Bynoe explained that she had a difficult time as a single parent and has had the sole financial **'burden'** for the children for a number of years. She did not say for how long this has been the case. She admitted that since the divorce and after speaking with Mr. Bynoe he has started to contribute to their care. In this regard, she stated that he is making a more regular contribution than in the past. She acknowledged that he recently sent a barrel containing food stuff and clothing for their sons and the sum of \$322.50 to cover Customs and import charges.

[10] Mrs. Bynoe said that since April 2018 she has received from Mr. Bynoe about \$240.00 to \$300.00 every 2 or 3 weeks and the sum of \$247.00 around mid-June 2018. She accepted that on **occasions he has transmitted to her as much as \$400.00 towards the children's care and maintenance**. Mrs. Bynoe stated that Mr. Bynoe is in the process of filing papers for the children to emigrate to the United States of America. She said that she was unsure when this would materialize.

[11] The Court is required to take a number of factors into consideration in arriving at a determination as to what if any order of maintenance should be made. Its primary consideration when making orders **regarding a child's welfare**, is the best interests of the referenced child. The Court must remain **mindful that each parent has an equal obligation to contribute to their child's maintenance and care**, based on their respective means and the needs of the child. It must also look at other factors including the circumstances of each parent, the child and the standard of living to which the family

³ Inclusive of \$400.00 for rent, electricity charges of \$130.00, water bill of \$40.00; Gas of \$37.50; internet of \$134.00, payment for a refrigerator - \$134.00, transportation \$360.00 and food -\$800.00.

was accustomed during the currency of the marriage. The evidence does not touch on all of those factors. I will consider what has been presented.

Age, physical and mental health, income, earning capacity, standard of living

[12] Mrs. Bynoe is 42 years old while Mr. Bynoe is 42 years of age. No information has been provided regarding their level of education or the standard of living to which they or the family has been **accustomed. I glean from Mrs. Bynoe's account that they** have had their struggles.

[13] It appears that Mr. Bynoe might have encountered some difficulties of his own adjusting to life **abroad. I draw this inference from Mrs. Bynoe's reference to the type of work he might have obtained and also from his reported willingness since April 2018 to contribute to the children's** welfare and to make arrangements for them to travel to the United States of America to live with him. This demonstrates his apparent interest in their well-being. Conceivably, he was unable to be as supportive prior to that due to his circumstances. I hasten to add that this does not absolve him of his obligation to support them financially and to contribute to their needs. In drawing that inference, I reminded myself that the court is precluded from drawing an unfavourable inference if a favourable one is permissible.

Contributions to the family welfare

[14] No information has been given **regarding Mr. Bynoe's contributions to the household prior to the breakdown of the marriage in 2011 or between the birth of the children and Mr. Bynoe's departure** from the State. The dearth of such details makes it impossible for me to conclude that one or the other parent was neglectful of their duty to maintain the children during those periods. I make no such finding against Mr. Bynoe.

[15] The Matrimonial Causes Act⁴ (**'the Act'**) empowers the Court to make maintenance orders in respect of a child until he or she attains the age of 16 years. The Court may extend the order to **cover the period from the child's 16th to his 18th birthday**, if it appears to the court that he is attending an educational institution, undergoing training for a trade, profession or vocation; or for other special circumstances including mental or physical disability. Mrs. Bynoe has not ascribed any disability to either Hearnic or Hearnio.

⁴ Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 38 (1) and (2).

- [16] Mrs. Bynoe did not say whether either or both young men were still pursuing studies on a full time or part time basis as at July 1st 2019. I make no assumptions about this. Heamic has passed the age beyond which the court may make an order of custody in relation to him. I therefore dismiss Mrs. **Bynoe's** application for an order regarding **Heamic's** custody. Any custody order made in respect of Heamic will lapse on the eve of his 18th birthday. He remains a minor until July 22nd 2019. It is therefore ordered that Mr. and Mrs. Bynoe will share joint custody of Heamio until July 22nd 2019.
- [17] Legal practitioner Mrs. Horne-**Edwards submitted that Mrs. Bynoe's affidavit of means was served** on Mr. Bynoe some time ago. She argued that he has taken no action to clarify anything stated in the affidavit. She contended that the Court has discretion to make an order of maintenance which is adequate for Mrs. Bynoe to maintain the children. She submitted that if Mr. Bynoe is unable to meet the obligation, there are means by which he may proceed to seek redress. She invited the **Court to proceed based on the children's needs.**
- [18] I note that the burden of proof remains on Mrs. Bynoe to establish not only the reasonable needs of the children, but also that Mr. Bynoe is in a position to make the specific contribution towards maintenance that she is seeking. In the absence of information regarding his means, I am unable to find on a balance of probabilities that he can pay \$1100.00 towards their maintenance each month.
- [19] Mrs. Bynoe did not apply for a lump sum payment in respect of the children. However, the Court is mindful that it may make an order for the payment of a lump sum for the benefit of a child of the family, to cover any period before the making of the order, for the purpose of enabling any liabilities **or expenses reasonably incurred for that child's benefit to be met**⁵. The Court may include in its order, provision for such lump sum payment to be made by installments⁶. Such orders are usually made on application by one party. In the particular circumstances of this case, it seems to me that **Heamic's and Heamio's best interests and the interest of justice demand that an order be made for** Mr. Bynoe to contribute to their maintenance by making a lump sum payment. This is in pursuance **of the Court's duty** to grant such relief as appears to arise between the parties so as to bring finality

⁵ Section 31 of the Matrimonial Causes Act.

⁶ Section 31(3)(c) of the Matrimonial Causes Act.

to the issues between them⁷.

[20] I accept that from April 8th 2011⁸ to April 2018, Mrs. Bynoe has been largely responsible for meeting **Heamic's and Heamio's needs with support from her relatives. Mr. Bynoe has been missing in** action. His obligation to support his sons did not cease when he migrated. It appears to me that the justice of this case and the best interests of the children would be best served by the making of an **order for a lump sum payment to Mrs. Bynoe to cover Mr. Bynoe's maintenance obligations** towards Heamic and Heamio for those respective periods.

[21] In the absence of critical information **regarding Mr. Bynoe's means, that approach seems** advisable. I note that the figures provided by Mrs. Bynoe relate to recent expenditure and would likely have increased incrementally through the relevant years. It is impossible to arrive at a scientific or **arithmetic calculation of the total sums she would have paid towards the children's upbringing over** and above her own obligations or determine the exact period where Mr. Bynoe did not contribute. I believe that a lump sum reflecting at least one and a half **year's expenses would provide some** relief and meet the justice of the case. Having regard to the uncontroverted details as to Mr. **Bynoe's recent contributions to the children's needs, I have no doubt that he can meet such a** payment through monthly installments of \$400.00, which match his recent remissions to Mrs. Bynoe.

[22] Mr. Headen Bynoe is accordingly ordered to pay to Mrs. Michelle Bynoe a lump sum of:

1. \$3,500.00 to cover expenses reasonably incurred by Mrs. Bynoe **on Mr. Bynoe's behalf** between January 1st 2016 and June 26th 2018 towards the maintenance, care and general welfare of Heamic Bynoe; and
2. \$4,000.00 to cover expenses reasonably incurred by Mrs. Bynoe **on Mr. Bynoe's behalf** between January 1st 2016 and July 22nd 2019 towards the maintenance, care and general welfare of Heamio Bynoe;

by equal monthly installments of \$200.00 in respect of each lump sum payment, commencing on August 30th 2019 and continuing thereafter on the last Friday of each and every month until the

⁷ In accordance with section 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Revised Edition 2009.

⁸ Paragraph 9 of petition filed on 26th January 2018.

respective payments are paid in full.

Costs

[23] This was a simple and short proceeding. I do not depart from the usual order in such matters. Each party is required to pay his or her own costs.

ORDER

[24] It is declared and ordered:

1. Mrs. Michelle Bynoe's **application** for an order of joint custody of Heamic Bynoe is dismissed.
2. Mrs. Michelle Bynoe and Mr. Headen Bynoe are granted joint custody of Heamio Bynoe until he attains the age of 18 years or sooner dies, primary care and control to Mrs. Bynoe.
3. Mr. Headen Bynoe shall pay to Mrs. Michelle Bynoe a lump sum of:
 - a) \$3,500.00 to cover expenses reasonably incurred by Mrs. Bynoe **on Mr. Bynoe's behalf** between January 1st 2016 and June 26th 2018 for the maintenance, care and general welfare of Heamic Bynoe; and
 - b) \$4,000.00 to cover expenses reasonably incurred by Mrs. Bynoe **on Mr. Bynoe's behalf** between January 1st 2016 and July 22nd 2019 for the maintenance, care and general welfare of Heamio Bynoe;those respective amounts to be paid by equal monthly installments of \$200.00, commencing on August 30th 2019 and continuing on the last Friday of each and every month thereafter until paid in full.
4. Mrs. Michelle Bynoe shall serve a copy of this judgment on Mr. Headen Bynoe on or before August 8th 2019 with proof of service.
5. Mrs. Michelle Bynoe and Mr. Headen Bynoe shall bear his or her own costs.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar