

**BARBADOS**

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT  
(Family Division)**

**No. 16 of 2012**

**IN THE MARRIAGE OF:**

**ANNA MARGARET GODDARD      APPLICANT/WIFE**

**AND**

**MICHAEL CHARLES DOHANEY      RESPONDENT/HUSBAND**

**Before the Honourable Madam Justice Kaye Goodridge, Judge of the High Court.**

**2012: September 13**

**December 13**

**Mrs. Beverley J. Walrond Q.C, Attorney-at-Law for the Applicant/Wife.**

**Ms. Zarina Khan for the Respondent/Husband.**

**DECISION**

**Introduction**

- [1] In this application, the applicant/wife has applied for orders for (i) spousal maintenance; (ii) maintenance for the minor children of the marriage and (iii) that she be at liberty to relocate to Canada with the children and that the respondent/husband's consent be dispensed with on the ground that it is being unreasonably withheld.
- [2] The application was supported by affidavits and a statement of financial circumstances. The respondent/husband swore affidavits in response and filed his statement of financial circumstances. At the hearing the parties gave evidence and were cross-examined.

### **The Background**

- [3] The applicant is a Barbadian by birth but is a citizen of Canada, having moved there at the age of three years old. She has lived there for most of her life. She is now 41 years old. The respondent is a Canadian citizen. He is 52 years old.
- [4] The applicant and the respondent started a relationship in 1993. They were married in February 1998. There are two children of the marriage, T born on 26 February 2002 in Canada and C born on 23 September 2008 in Barbados. The children are Canadian citizens.
- [5] In February 2003 the respondent accepted a job with the MTM Group and moved to Barbados. This job provided him with a base salary of US\$120,000 per annum plus a house and car allowance. The matrimonial home in Canada was sold and the applicant and T came to Barbados in August 2003.
- [6] The parties experienced difficulties in the marriage which led to a separation in April 2004. After reconciling in early 2005, the applicant and T moved in with the respondent who was then residing in furnished accommodation in St. Thomas.
- [7] In March 2005 the respondent left MTM because of certain difficulties and he has filed a claim against that company for breach of contract. Thereafter the respondent has held a number of jobs. Between December 2010 and October 2011 the respondent worked with Manulife Barbados where his salary was US\$160,000 per year plus a car and US\$5,000 housing allowance. When he was terminated from that employment the respondent was given 5 months' salary.
- [8] By this time the couple had separated and all indications are that this separation is final. The applicant and the respondent both vacated the matrimonial home in November 2011. The applicant now resides in Millennium Heights St. Thomas. The respondent is residing at a friend.
- [9] According to the respondent's affidavit of 11 September, 2012, the respondent has now found employment with a Japanese firm effective 1 September 2012 and earns a net salary of BDS\$6,800 per month. He has stated that he is unable to provide more than BDS\$1,500 monthly for spousal maintenance and BDS\$1,000 for each child. Now that he is employed, the respondent intends to rent housing of his own as he will be remaining in Barbados for the foreseeable future.
- [10] The applicant's employment history is as follows. In December 2003 she started work with Deloitte & Touche earning BDS\$53,400 a year. In April 2004 she joined Precision Packaging where she earned BDS\$60,000 a year. In November 2006 the applicant obtained a new job at Pan Atlantic Bank & Trust earning BDS\$ 96,000 annually. She left that job in October 2007 and has not worked since that date.

### **The Applicant/Wife's Case**

- [11] In her written submissions on behalf of the applicant, Mrs. Walrond, Q.C drew the court's attention to two cases dealing with relocation issues, namely *Poel v Poel*

- [1970] 1 WLR 1469 and *Payne v Payne* [2001] EWCA Civ 166(*Payne*). She referred to the guidelines suggested by **Thorpe LJ** for dealing with relocation cases which are set out in paragraph [24] of this decision.
- [12] Counsel submitted that the applicant, having given consideration to the family circumstances, the comparative cost of living in Barbados and Canada, and the opportunities for her employment and personal development, has made the decision to return to Canada with the two minor children.
- [13] Mrs. Walrond referred to the applicant's proposals for the move to Canada. She noted that the applicant intended to return to the Kitchener-Waterloo area where she grew up, where the parties lived for several years and which area is approximately 2 hours away from the respondent's family. The applicant intends to complete her Professional Accounting Qualification and has provided the court with internet searches showing available job opportunities. Also, the applicant is prepared to take what job she can get if she cannot get what she wants ideally.
- [14] There is also the evidence of the applicant that her skin has developed some basal cells and the climate in Canada would lessen her health risks. Given the cost of living in Canada, the applicant estimates that her expenses there will be at least 30% less than her expenses in Barbados.
- [15] Mrs. Walrond submitted further that the applicant has formed a genuine decision to move and that it is reasonable for the applicant whose marriage has failed to wish to make a fresh start and to establish herself in Canada so as to be able to resume her career and to begin building for her own and the children's future. The applicant would be devastated at being forced to remain in Barbados.
- [16] It was counsel's final submission that an examination of the applicant's case reveals that she has met all of the criteria outlined in the cases and should be allowed to relocate to Canada with the children.

#### **The Respondent/Husband's Case**

- [17] In her written submissions on behalf of the respondent, Ms. Khan submitted that the welfare of the children is the first and paramount consideration for the court. Counsel drew the court's attention to the cases of *Ian Longslow v Hennig* (formerly Longslow) 1986 2 FLR 382; *In re L (a minor)* 1992 FLR 106 and *H-P Cayman Island Law Reports 2001 108*.
- [18] Counsel submitted that the respondent has a sincere and serious concern that the applicant's plans for the proposed move to Canada are inadequate. The applicant has insufficient economic resources to sustain herself and the children for any reasonable period of time.
- [19] Further, the applicant has not made any real efforts to find employment in Barbados and there is no evidence of the salary which the applicant could earn if she found a job in Canada.

- [20] Counsel submitted that the children have an extremely close relationship with the respondent, and there are no proposals for access for the respondent. The older child had expressed concern about being separated from the respondent. Although the applicant claims that she will be flexible in this regard, it has been difficult to agree on access arrangements for the respondent to take the children out of Barbados as the parties do not speak to each other.
- [21] It is counsel's contention that to put the children in such a situation of uncertainty in another country when they have lived in Barbados for most if not all of their lives; they are settled in Barbados and doing well in school and where they are able to maintain a relationship with both their father and their mother is not in the best interests of the children. The proposed move is ill-conceived, poorly thought out and the application to remove the children from Barbados and allow them to relocate to Canada should be denied.

### **Discussion**

- [22] It must be stated at the outset that this is a very difficult case. The relationship between the applicant and the respondent has been fractured. The marriage between these parties appears to be at an end and there is little hope of reconciliation. The children have been and will continue to be affected by this state of affairs.
- [23] There is no doubt in my mind that both parties love the children very much and want what is best for them. However their wishes in this regard as to their place of residency do not coincide. The applicant wishes to leave Barbados and return to Canada. The respondent opposes this move. Whatever the court decides will have a serious impact on the lives of the applicant, the respondent and the children.
- [24] What should be the court's approach to this application? It is undisputed that the welfare of the children must be the first and paramount consideration. In **Payne, Thorpe LJ** suggested that certain guidelines should be applied by a court when faced with an application for leave to relocate and it is felt that they can be usefully applied in this case. Those guidelines are as follows:-
1. The question to be posed is this: "Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life? Then ask, is the mother's application realistic, by which I mean founded on practical proposals both well researched and investigated? If this application fails either of these tests refusal will inevitably follow.
  2. If however the application passes these tests then there must be a careful appraisal of the father's opposition: is it motivated by

genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and his future relationship with the child or children were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland?

3. What would be the impact on the mother, either as a single parent or as a new wife, of a refusal of her realistic proposal?
4. The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration."

- [25] Essentially the applicant's case is that if she is allowed to relocate to Canada, she would be in a position to achieve a better life for herself and the children. There would be good schools for the children to attend and they would benefit from free quality health care. She wishes to resume her career and complete her qualifications. The applicant would be happier living in Canada and this would impact on her relationship with, and her ability to care for, the children in a positive way. Her health would benefit from the move.
- [26] There is no doubt that these parties enjoyed a comfortable life prior to the demise of their marriage. But there has been a dramatic change in the family's economic fortunes. The family was surviving on accumulated savings while the respondent was unemployed. Those savings have now dwindled. There is difficulty meeting the living expenses.
- [27] The applicant is unemployed. The respondent's own position is uncertain as he is still searching for a certain type of employment both in Barbados and in other countries. The medical insurance has been discontinued by the respondent and he has proposed that the applicant and the children attend the polyclinic. His concern is that the applicant is extravagant.
- [28] On the evidence before me, I find that the applicant's motives for relocation are genuine and are not motivated by a desire to exclude the respondent from the children's lives. Having weighed all the circumstances, the applicant has concluded that it is necessary for her to rebuild her life in Canada, a country with which she is most familiar. The applicant has a degree in psychology and a diploma in accounting. She is seeking to complete her education there. I accept her evidence in this regard. In the court's view her position is not unreasonable.
- [29] The applicant has demonstrated that she has given serious thought to the implications of such a move. The applicant has identified the area in which she

- proposes to reside, which is the area where she grew up and where she lived with the respondent for several years. She has identified available job opportunities and the school which the children would attend. The applicant and the children would be eligible for health care after a brief period. There is no available health insurance here since the respondent's policy lapsed, save and except for the public health care system.
- [30] The applicant would also benefit from a child tax credit of upwards to Canadian \$900 a month. There is a welfare system in place which would be a last resort. She is pursuing job opportunities and it is understandable that further action in this regard would be dependent on whether the court allows her application. Living in Canada would reduce her expenses. All in all her proposals are reasonable.
- [31] I turn next to consider the respondent's opposition to the move. The respondent has no desire to return to live in Canada. According to the respondent, Barbados is their home and he prefers to work here. However, the respondent has been seeking employment in Canada, Asia and Central America including Costa Rica, and has admitted that if he had obtained a job in any of those places he would have taken it. So although his preference is to live in Barbados he would readily relocate if necessary. The respondent's position is that if at some point in the future a move to Canada was being entertained, the applicant should consider Peterborough, Ontario, where his family resides.
- [32] It seems to me that the respondent wishes to dictate where the applicant should reside, while retaining the freedom to choose where he should live. I am not entirely convinced that the respondent's opposition to the move is motivated by genuine concern for the children's welfare, since he has already expressed the view that he would live in Canada if he got a job opportunity. Canada is his birthplace, where he has family ties and where he would be entitled with his children to the same health care and educational benefits.
- [33] It has been argued that because of the close relationship which exists between the respondent and the children, they would suffer emotionally and mentally if they are allowed to go to Canada while he remains in Barbados.
- [34] The relationship between the father and his children is very important. It is recognized that the respondent would not be able to see the children as often as he sees them at present if the application is allowed. Naturally the children would miss seeing the respondent on a regular basis.
- [35] However, the evidence is that the respondent has returned to Canada on each vacation since coming to live in Barbados in 2003. He visits Canada regularly. The applicant has proposed that the respondent have the children for half of all holidays and that she would be flexible with access to the children during the respondent's various trips to Canada. Such arrangements can easily be made the

subject of an order of the court. Further, the opportunities for personal interaction will depend on the fortunes of the parties if they find suitable employment.

- [36] In addition to access during holidays, there are other opportunities for contact between the respondent and the children which would counter any reduction in the respondent's present access. There are various means of communication, for example telephone, email and Skype which can be utilized. It must also be remembered that the children would be closer to the respondent's family and there would be increased opportunities for closer relationships to be developed.
- [37] In her oral evidence the applicant testified that the older child is aware that the respondent will be remaining in Barbados because he has told her that he will not be moving back to Canada. She has spoken to her at length about the proposed move and the daughter is excited and wishes to go. This evidence has not been challenged by the respondent. The second child is 4 years old and there is nothing to indicate that the relocation would affect her adversely.
- [38] The evidence is that the applicant is the primary caregiver of the children, especially since she stopped working in 2007. I am satisfied on the evidence that if her proposals are refused and her plans for the future are frustrated, the effect on her well being would be severe.
- [39] Having weighed all the factors and carefully reviewed the evidence, it is my view that the best interests of the children require that the application for permission to relocate to Canada should be allowed.

### **Disposal**

[40] It is therefore ordered as follows:

1. The applicant/wife and the respondent/husband shall have joint custody of the two minor children of the marriage;
2. The applicant/wife shall have day to day control of the children;
3. The respondent/husband shall have access to the children for half of all holidays, such arrangements to be finalized with the applicant/wife within a reasonable time prior to the commencement of such holidays;
4. The respondent/husband shall be at liberty to communicate with the children by telephone, email, skype or other electronic means;
5. The respondent/husband shall pay to the applicant/wife the sum of BDS\$1,000 per month per child for the two minor children with effect from 30 December 2012 and continuing on the 30<sup>th</sup> day of each succeeding month until further order;

6. The respondent/husband shall pay to the applicant/wife one half of all educational, extra-curricular expenses, and medical, dental, ophthalmic, pharmaceutical expenses relating to the minor children within 14 days of presentation of the bills or receipts;
7. The respondent/husband shall pay to the applicant/wife the sum of BDS\$1,500 per month as spousal maintenance for a period of six months with effect from 30 December 2012;
8. The applicant/wife shall be at liberty to relocate to Canada with the two minor children and shall provide to the respondent/husband details of her address in Canada and telephone contact numbers;
9. The applicant/wife shall discuss with the respondent/husband the details of schooling for the minor children in Canada;
10. The respondent/husband shall deliver to the applicant/wife the passport for the minor child T by 6.00 p.m. on 14 December 2012;
11. The parties have liberty to apply;
12. There shall be no order as to costs.

**KAYE GOODRIDGE,**  
Judge of the High Court.