

**BARBADOS**

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**Family Division**

Family Suit No: 0067 of 2010

**BETWEEN**

**S.L.L.**

**APPLICANT/WIFE**

**AND**

**R.S.L.**

**RESPONDENT/HUSBAND**

*Before The Honourable Madam Justice Maureen Crane-Scott,  
Judge of the High Court*

[In Chambers]

**2011: March 9, 16, April 20  
May 4, 18, June 8 and July 6**

**2013: March 13**

**Appearances:**

**Mrs. Peta-Gay Lee-Brace, Attorney-at-Law for the Applicant/Wife**

**Mrs. Paula S. Lett (nēe Jemmott), Attorney-at-Law for the  
Respondent/Husband**

## DECISION

[1] **Crane-Scott J:** This is an application filed by the Applicant/Wife in Family Suit No. FL 67 of 2010 for spousal maintenance pursuant to *section 50(2)* of the *Family Law Act, Cap. 214 of the Laws of Barbados*.

[2] By her Application, the Applicant/Wife seeks the following relief:

1. *That the Respondent/Husband be ordered to pay the Applicant/Wife a reasonable sum per month in spousal maintenance until such time as she is able to maintain herself or find employment;*
2. *That the Respondent/Husband be ordered to return to the Applicant/Wife the motor vehicle MR-844 which was used by her or, in the alternative, provide the Applicant/Wife with transportation for her use;*
3. *That the Respondent/Husband be ordered to pay the costs of these proceedings; and*
4. *Such further or other order as the Court deems fit.*

[3] Pursuant to **Rule 29(2)** of the *Family Law Rules, 1982* the Respondent/Husband filed a Supplemental Affidavit dated July 1, 2011 in which he urged the Court to make orders different to those sought by the Applicant/Wife. These orders being as follows:

1. *An order discharging the interim order granted herein on the 1<sup>st</sup> day of March, 2010;*
2. *An order dismissing the Applicant/Wife's Application filed on the 3<sup>rd</sup> day of February, 2010; and*
3. *Such further or other orders as the Court shall deem necessary or fit.*

[4] *The Interim Order:* On the 1<sup>st</sup> day of March, 2010, the Respondent/Husband was ordered by this Court to, *inter alia*, pay to the Applicant/Wife, as urgent interim maintenance, the sum of \$1,000.00 with effect from the 31<sup>st</sup> day of March, 2010 until further order.

[5] *The Evidence:* The evidence in support of the case for the Applicant/Wife was set out in numerous affidavits and documents. These are as follows:

- (i) The initial Affidavit of the Applicant/Wife filed on February 3, 2010 with accompanying exhibits;
- (ii) Applicant/Wife's Statement of Financial Circumstances filed on February 3, 2010;
- (iii) Applicant/Wife's Affidavit in Reply filed on April 16, 2010;
- (iv) Affidavit of the Applicant/Wife filed on March 2, 2011 with exhibits;
- (v) Further Affidavit of the Applicant/Wife filed on March 7, 2011; and
- (vi) Further Affidavit of the Applicant/Wife filed on March 29, 2011 with exhibits.

[6] The Respondent/Husband filed the following affidavits and documents opposing the application:

- (i) Affidavit of the Respondent/Husband filed on February 25, 2010;
- (ii) Affidavit of the Respondent/Husband filed on February 23, 2011;
- (iii) Respondent/Husband's Affidavit to Produce filed on February 23, 2011 with accompanying exhibits; and
- (iv) Supplemental Affidavit of the Respondent/Husband filed on July 1, 2011.

- [7] The Court also had before it the Respondent/Husband's Statement of Financial Circumstances filed on March 30, 2010 in the dissolution proceedings which were consolidated with the current proceedings pursuant to the Order of the Court made on the March 9, 2010.
- [8] **The Hearing:** At the trial, and with the leave of the Court, the Applicant/Wife and the Respondent/Husband were each cross-examined at length regarding aspects of their affidavits considered relevant to the issues before the Court for determination. The Accountant responsible for preparing the financial statements exhibited by the Respondent/Husband in his Affidavit filed on February 23, 2011 was also summoned before the Court and cross-examined on the statements he had prepared.
- [9] Learned counsel for the respective parties also filed written submissions and made oral submissions for and against the relief sought.
- [10] **The Factual Background:** The parties met at a dental clinic in Barbados where the Applicant/Wife was then employed as a dental assistant and where the Respondent/Husband worked as a dentist. He was Canadian in nationality, while she was Barbadian. At the time of their meeting, the Applicant/Wife was a single woman of 17 years, while the Respondent/Husband, already twice divorced, was approximately 47 years in age.
- [11] Despite their differences in age and nationality, love blossomed and the parties were married at the Windjammer Landing Villa Beach Resort in Castries, St. Lucia on the 19<sup>th</sup> day of March, 2004.
- [12] Following their marriage, the couple resided at an apartment in St. Michael owned by the Respondent/Husband. During the marriage it was agreed by the parties that the Applicant/Wife would not work on a full

time basis. With the Respondent/Husband's financial support and encouragement, she instead embarked on a course of studies at the Barbados Institute of Management and Productivity (BIMAP) to make herself more marketable and put herself in a position to contribute more meaningfully to the family's finances. While pursuing her studies, the Applicant/Wife worked part-time as a Tour Coordinator, Travel Director and Legal Assistant.

- [13] During the marriage the parties enjoyed a very comfortable standard of living. The Applicant/Wife had access to two credit cards paid for by the Respondent/Husband and had the use of his array of luxury vehicles, including a Peugeot convertible, a BMW convertible, a Mercedes Benz motor car, a Suzuki Grand Vitara and a Toyota Yaris.
- [14] The couples' marital bliss was relatively short lived and they began experiencing serious matrimonial difficulties in and around September, 2006. The Applicant/Wife eventually vacated the matrimonial home in September, 2008.
- [15] On March 30, 2010, the Respondent/Husband filed for dissolution of the marriage in Family Suit No. FL 216 of 2010. On the 11<sup>th</sup> day of June, 2010 **Roberts, J. (acting)** issued an order under **sections 27 and 42** of the **Family Law Act** dissolving the marriage. There were no children of the marriage.
- [16] **The Applicable Law:** The statutory provisions governing applications for spousal maintenance in this jurisdiction are contained in **sections 2(2), 50, 52 and 53** of the **Family Law Act, Cap. 214**.
- [17] By **section 2(2)**, the expression "*party to a marriage*" is defined to include "*a person who was a party to a marriage that has been dissolved or annulled in Barbados or elsewhere*".

[18] In light of *section 2(2)* the Court was satisfied for jurisdictional purposes that notwithstanding the grant by *Roberts J (ag)* on the 11<sup>th</sup> day of June, 2010 of an order in Suit No: FL 216/2010 dissolving the marriage between the parties, the Applicant/Wife was in law “*a party to a marriage*” and thus a person who could properly make the application for maintenance in accordance with *section 50* of the Act.

[19] The law governing the liability of one party to a marriage to maintain the other, and consequently, the right of the latter party to be maintained by the former, is provided for in *section 50* of the *Family Law Act* which states:

“*50(1) A party to a marriage...is subject to subsection (2), liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so.*

*(2) The liability of a party under subsection (1) arises only where the other party is unable to support herself or himself adequately, whether by reason of having the care and control of a child of the marriage... who has not attained the age of 18 years, or by reason of age or physical or mental incapacity for appropriate gainful employment, or for any other adequate reason, having regard to any relevant matter set out in section 53(2) [Emphasis added].”*

[20] It is well settled that the right of a party to the spousal maintenance which is provided for in *section 50* of the Act, is dependent upon two conditions being satisfied. [See *Anthony Dickey-Family Law, 5<sup>th</sup> Edition @ pp. 358-366 discussing section 72 of the Family Law Act of the Commonwealth of Australia which is in pari materia with section 50 of the Family Law Act of Barbados.*]

- [21] Before a Court may grant an order for spousal maintenance pursuant to *section 50*, the Court will firstly need to satisfy itself on the evidence before it that the spouse seeking maintenance (in this case the Applicant/Wife) is “*unable to support herself adequately*” for one of the reasons set out in that section. Provided that the first condition is fulfilled, the Court will, secondly, also need to be satisfied that the other spouse (in this case the Respondent/Husband) is “*reasonably able*” to maintain the Applicant/Wife.
- [22] In short, unless both of these statutory conditions are met, maintenance liability between the spouses and the right to spousal maintenance will not arise. [*See In the Marriage of Kajewski (1978) F.L.R. 500 at 501.*]
- [23] In order to determine whether a spouse is unable to adequately maintain herself, the Court does not look at whether the spouse receives sufficient funds, but whether she can generate funds from her own resources and/or earning capacity so as to be able to enjoy a standard of living that is reasonable in all the circumstances. [*In the Marriage of Murkin [1980] FLC 90-806 at 75, per Nygh, J. and In the Marriage of Nutting (1978) 30 FLR 555, per Lindenmayer, J.*]
- [24] To assess the capacity of a spouse to reasonably support the other, the Court is required to have regard not only to income, but to all financial and personal resources including any earning capacity, current expenditure and all property of that spouse. [*In the Marriage of Beck (No. 2) [1983] FLC 91-318*]
- [25] Finally, in considering both whether the spouse seeking maintenance can adequately maintain herself and whether the other spouse can reasonably support her, as well as the amount of any maintenance to be awarded, the

Court has to have regard to the factors set out in *section 53(2)*, in so far as they are relevant.

[26] **The Issues for the Court's Determination:** Against the foregoing statutory framework, the following legal issues arose for the Court's determination on the application, namely:

- a) Has the Applicant/Wife established that she is "*unable to support herself adequately*" by reason of any of the statutory matters set out in *section 50(2)* of the Act?; and
- b) If so, is the Respondent/Husband "*reasonably able*" to maintain her?

[27] **Exercise of the Court's Discretion (with reasons):** Applying the statutory tests, the Court firstly considered whether the evidence established that the Applicant/Wife is "*unable to support herself adequately.*"

[28] At the outset, the Court was satisfied that this is not a case where the Applicant/Wife is unable to support herself adequately by reason of having the care and control of any minor children of the marriage.

[29] This is also not a case where the Applicant/Wife is unable to support herself adequately by reason of her being incapable of obtaining appropriate gainful employment due to her age or any physical or mental incapacity.

[30] The Court was, however, satisfied that the evidence clearly showed that the Applicant/Wife was unable to support herself adequately having regard to the following facts and circumstances which the Court found to have been established:

- a) **Re: Section 53(2)(a) - the parties' relative age and state of health:** The Court found that the Applicant/Wife is currently 26

years in age while the Respondent/Husband is 56 years. On the one hand, the Court accepted the Applicant/Wife's evidence (un-challenged under cross-examination) that she is anaemic, has problems with her eyes and suffers from panic attacks and was satisfied that, apart from these relatively minor health challenges, the Applicant/Wife is in reasonably good health. On the other hand, as no evidence was adduced in relation to the Respondent/Husband's state of health, no findings of fact could be made regarding his health.

- b) **Re: Section 53(2)(b)- the parties' respective income, property and financial resources and their physical and mental capacity for gainful employment:** The Court was satisfied that on each of these matters, the scales weighed very heavily against the Applicant/Wife and much more favourably towards the Respondent/Husband.
- c) As it pertained to their respective incomes, for example, the Court found that the Applicant/Wife is in effect under-employed and has no long-term, sustained employment or means of income. According to the Applicant/Wife's Statement of Financial Circumstances, which was not seriously challenged under cross-examination, her total annual income as at February 3, 2010 was \$2,400.00.
- d) The evidence also disclosed that between December, 2010 and February, 2011, the Applicant/Wife earned \$2,000.00 from her temporary job driving "*on a needs basis*" for the "*Weisers on the Bay*" Beach Bar and Restaurant.
- e) The Court accepts the evidence of the Applicant/Wife that it is impossible for her to subsist on her salary alone and viewed as

highly persuasive the evidence of the Respondent/Husband, who agreed under cross-examination that the Applicant/Wife could not survive on her earnings from “*Weisers on the Bay*” alone.

- f) The Court was satisfied that the Applicant/Wife’s weekly income from her temporary driving job with “*Weisers on the Bay*” depended upon the number of hours per week which her employers required her to work and was therefore largely outside the Applicant/Wife’s control. The Court accordingly completely rejected as without any evidentiary foundation, Mrs. Lett’s suggestion that if the Applicant/Wife really wanted to work every day on her current temporary job as a driver with “*Weisers on the Bay*”, she was capable of earning about \$1,500.00 per month.
- g) In stark contrast, the Respondent/Husband’s Statement of Financial Circumstances declared his total annual income in 2010 from salaries and wages to be the sum of \$254,616.00. The Court also notes that the Respondent/Husband conceded in cross-examination that, despite the economic conditions, he has suffered no downturn in his business and, thus, sustained no loss in income. This is clear from the tax returns that he has exhibited to his Affidavit dated February 23, 2011.
- h) Turning to the parties’ respective property and financial resources, notwithstanding that the evidence showed that the matrimonial home at Banyan Court is vested in the Respondent/Husband’s company, Donnavin Inc since 1998, the Court accepted his evidence that his assets consisted of real estate (condominium) with a value of \$615,000.00; shares and debentures totaling \$900.00; a motor vehicle valued at

\$40,000.00 and household effects valued at \$20,000.00. In contrast, the Court found that the Applicant/Wife had no property or financial resources of her own.

- i) With respect to the physical and mental capacity of the parties for appropriate gainful employment, the Court was satisfied that both parties are physically and mentally able to undertake gainful employment. However, unlike the Respondent/Husband who is a qualified dental surgeon with a substantial annual income from services offered to three dental practices, the Applicant/Wife has no readily marketable skills and needs further certification to enable her to find sustainable employment.
- j) **Re: Section 53(2)(d) - the financial needs and obligations of each of the parties:** The Court concludes that while the Applicant/Wife does not earn enough to satisfy her financial obligations, the Respondent/Husband has sufficient financial resources to be able to satisfy not only his needs and obligations, but to also simultaneously provide financial assistance to the Applicant/Wife.
- k) Following the discovery process and the evidence elicited under cross examination, the Court was satisfied that the Respondent/Husband had in fact structured his financial affairs using a limited liability company, Donnavin Inc, in which he was the sole shareholder and director, in order to reduce his tax liability. It finds that the company was incorporated by him on January 10, 1997 solely for this purpose.
- l) Accordingly, the Court found that while the Respondent/Husband's assessable income for the year 2007 was

declared in his Individual Income Tax Return to be \$64,500.00, Donnavin Inc's revenue for the year ended September 30, 2007 was declared as \$277,433.00.

- m) A review of the Financial Statements of Donnavin Inc which were provided for the period 2007 to 2009 showed steady increases in the company's revenue which moved from \$277,433.00 in 2007 to \$303,507 in 2008 and \$316,760,00 in 2009. These statements further revealed that despite total expenses of \$218,039 for 2007, \$214,726.00 for 2008 and \$273,826 for 2009, Donnavin Inc. carried forward \$120,349.00 in 2007, \$187,130 in 2008 and \$217,064 in 2009, reflecting its increasing revenue and a corresponding increase in profits.
- n) The Court accepts the Respondent/Husband's evidence that he is substantially indebted to a number of different lending institutions, at least the ones for which he has provided some evidence i.e. RBTT Barbados Ltd, First Caribbean International Bank (Barbados) Ltd and DaCosta Mannings Ltd, the latter two having instituted legal proceedings against him. The Respondent/Husband has also provided evidence that Consolidated Finance Ltd has repossessed his Mercedes Benz due to arrears, but is unable to say whether and for what this vehicle was sold and therefore whether he remains indebted to them.
- o) The Court is also satisfied that the Respondent/Husband's single largest expense is the sum of \$4,919.36 paid monthly towards the RBTT mortgage over the matrimonial home, which he is committed to paying for the next 12 years, but finds that

he has, at least on paper, no difficulty in paying this sum or any of his listed expenses.

- p) In contrast, the Applicant/Wife in her Statement of Financial Circumstances filed in February 3, 2010 disclosed an annual expense of \$46,670.00, which was twenty times that of her annual income of \$2,400.00. The largest of the expenses listed was rent at \$14,400.00 and then food and household supplies and \$10,400.00 per annum. While the Court is satisfied that the Applicant/Wife has significantly reduced her current expenses by her sharing a home with the family of Mr. Andrew Denny, it has also found that her income has not increased and has already concluded that this income is unable to effectively sustain her.
- q) Accordingly, given the above findings, the Court is unable to accept the submission of Mrs. Lett that the Respondent/Husband is, by reason of his substantial debt, unable to maintain the Applicant/Wife and is instead satisfied that he would have no financial difficulty in providing the assistance which the Applicant/Wife desperately needs.
- r) *Re: Section 53(2)(f) - the eligibility of either party for a pension, allowance, or benefit under any Act or rule, or under any superannuation fund or scheme, or the rate of any such pension, allowance or benefit being paid to either party:* It is clear that the Applicant/Wife is not eligible for any pension plan or other benefit and the Court also accepts the evidence of the Respondent/Husband that he too is not part of any pension plan or savings scheme.

- s) **Re: section 53(2)(g)** – where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable: The Respondent admitted in cross-examination, albeit somewhat reluctantly, that by entering into a relationship with and then marrying the Applicant/Wife he had introduced her to a much higher standard of living than that to which she had been previously enjoyed. It is undisputed that during the course of their marriage the Applicant/Wife had access to the luxury vehicles owned by the Respondent/Husband, as well as to the use of two credit cards. It is also undisputed that she was able to enjoy fine dining, music festivals and was treated to trips abroad.
- t) The Court found that on separation from the Respondent/Husband, the Applicant/Wife experienced a significant drop in the standard of living to which she had become accustomed. While she is not automatically entitled to the luxuries she would have enjoyed as the wife of the Respondent/Husband, the Court finds that she is entitled to a comfortable standard of living that enables her to, at the very least, have her own place of residence rather than relying upon the generosity of friends and their families. The Court is not persuaded, however, that she is reasonably entitled to a motor vehicle and the expenses associated thereto.
- u) **Re: section 53(2)(h)** – the extent to which payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or

*otherwise to obtain an adequate income* – Having already found that the Applicant/Wife needs further certification in order to obtain secure employment, which fact the Respondent/Husband has readily accepted, the Court is satisfied that the Applicant/Wife is conscious of the need to increase her employability by obtaining further qualifications and is prepared to enroll in the Bachelor of Business Administration (BBA) to achieve this aim.

v) Although the Court is not convinced that the Applicant/Wife had done all she could have done to secure the funds necessary to complete the Tourism Management programme in which she was previously enrolled, the Court is nonetheless satisfied that the Applicant/Wife is not only now fully aware of the importance of obtaining this further qualification but is prepared to expend the requisite time and effort to do so, having already made some effort to obtain further qualifications after her separation from the Respondent/Husband.

w) ***Re: section 53(2)(j) – the duration of the marriage or union other than a marriage, and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration:*** The marriage between the parties was relatively short, lasting less than 5 years in duration. The Court finds, however, that, despite its length, the marriage eroded the earning capacity of the Applicant/Wife who, with the agreement and support of the Respondent/Husband, left her position at the dental clinic and removed herself from full-time employment for its entire duration.

x) **Re: section 53(2)(l) - if the party whose maintenance is under consideration is cohabiting with another person, the financial circumstances relating to the cohabitation:** The Court has found that, despite the unsubstantiated allegations of the Respondent/Husband to the contrary, the Applicant/Wife is neither cohabiting with nor in an intimate relationship with Mr. Andrew Denny, although she does reside with him and his family in their home and clearly receives crucial support from him. The Court is also satisfied that there was no actual evidence adduced of the Applicant/Wife cohabiting with any other person.

y) **Re: section 53(2)(n) - any fact or circumstance that, in the opinion of the court the justice of the case requires to be taken into account:** The Act empowers the Court to take in to consideration any other fact or circumstance, which is broadly economic in nature, and which it is just for it to consider. The Court finds that fairness requires it to have regard to the significant disparity in the living conditions of the Applicant/Wife and the Respondent/Husband, as well as the fact that according to the evidence of the Respondent/Husband, the Applicant/Wife left the matrimonial home when the Respondent/Husband began to act in accordance with an unexecuted Agreement drafted by his attorney-at-law under which the Respondent/Husband proposed to pay the sum of \$3,500.00 towards the maintenance of the Applicant/Wife.

[31] Having regard to the totality of the evidence, the respective arguments, the applicable law and the foregoing findings of fact, the Court is

satisfied that it is clear that the Applicant/Wife is “*unable to support herself adequately.*”

[32] The Court is further satisfied that, despite his own financial obligations, the Respondent/Husband possesses significant financial resources and generates sufficient income so as to be “*reasonably able*” to financially contribute towards the maintenance the Applicant/Wife.

[33] ***Disposal & Order:*** In the result, the Court hereby orders that the Respondent/Husband contribute the sum of \$3,500.00 per month towards the maintenance of the Applicant/Wife until she is able to maintain herself (or 2 years from the date of this Order) or until further order.

[34] The Court also finds that the circumstances of this case justify a departure from the general rule set out in *section 94(1)* of the *Family Law Act, Cap. 214* and hereby orders that the Respondent/Husband is to bear the costs of the Applicant/Wife in this matter certified fit for one counsel.

**Maureen Crane-Scott  
Judge of the High Court**