

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

No. 438 of 2007

BETWEEN:

ANNETTE WILLIAMS

APPLICANT/WIFE

AND

TYRONE ATHLONE WILLIAMS

RESPONDENT/HUSBAND

Before the Hon. Madam Justice Margaret A. Reifer, Judge of the High Court.

2013: October 21, 28

2014: January 8

March 4

March 11

April 14

**Ms. Cicely Chase QC, in association with Mr. Anthony D. Francis-Worrell
Attorneys at law for the Applicant/Wife**

Mr. Derek H. Ricky Boyce, Attorney at law for the Respondent /Husband

DECISION

The Nature of the Claim

[1] These parties divorced in November 2007 when both sections 27 and 42 Orders were granted by Crane-Scott J. (Ag.). The parties had been married for fourteen years (1993 to 2007).

- [2] An Application for settlement of the matrimonial property filed in November 2008 remains unresolved and the issue of payment by the Respondent/Husband of spousal maintenance pending settlement of the parties' interests in the matrimonial property remains a live issue.
- [3] Two Interim Orders for maintenance have been made to date. The last such Order was made on the 19th April 2009 when Worrell J. recorded a Consent Order in this matter in which the Respondent/Husband herein agreed to pay to the Respondent /Wife "the increased sum of \$2,150.00 a month in urgent maintenance commencing 15th December 2009 and continuing on the 15th day of each succeeding month until further order".
- [4] The application presently before this Court was filed on July 6th 2012 and seeks an increase of \$1,000.00 per month to \$3,150.00

Principles to be Applied

- [5] Section 50 of the Family Law Act establishes by statute the right to spousal maintenance, each party being liable to maintain the other "to the extent that the first-mentioned party is reasonably able to do so."

[6] Section 53 sets out clearly the considerations or criteria to be taken into account by the Court, both in determining whether to order maintenance and the amount of maintenance to be ordered. These matters are as follows:

- “ (a) the age and state of health of each of the parties;
- (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- (c) whether either party has the care or control of a child of the marriage or union other than marriage, who has not attained the age of 18 years;
- (d) the financial needs and obligations of each of the parties;
- (e) the responsibilities of either party to support any other person;
- (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;
- (g) where the parties have separated or the marriage has dissolved a standard of living that in all the circumstances is reasonable;
- (h) the extent to which the 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;
- (i) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity property and financial resources of the other party;
- (j) the duration of the marriage or union other than marriage, and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;

- (k) the need to protect the position of a woman who wishes only to continue her role as a wife and mother;
- (l) if the party whose maintenance is under consideration is cohabiting with another person, the financial circumstances relating to the cohabitation;
- (m) the terms of any order made or proposed to be made under section 57 in relation to the property of the parties; and
- (n) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.”

[7] All relevant criteria have been taken into account.

[8] Section 62 of the Family Law Act empowers this Court to vary, by increasing or decreasing, the amount ordered to be paid.

The Case for the Applicant/Wife

[9] The Applicant/ Wife has advanced a case of need. She is now 67 years of age and unemployed. Age and medical issues (hypertension, degenerative osteoarthritis, osteoporosis among other ailments (see Report of Dr. Evelyn)) prevent her from engaging in income earning activity. Her only source of income is from the maintenance paid by the Respondent/Husband and a small monthly pension of \$152.00 per month.

[10] Her Statement of Financial Circumstances filed May 2013 shows a shortfall in annual income of just under \$10,000.00 (income of \$27,626.76 and expenses of \$36,885.59). Her motor vehicle is 21 years old and becoming prohibitively expensive to maintain. A minimum of \$2000.00 per year has to be spent merely to get the Roadworthy Certificate.

- [11] She lives in the former matrimonial home but is financially unable to carry out routine maintenance or much needed repairs. The only maintenance she can afford is to paint the house, which she does herself whenever she can afford the paint. She alleges that the property is depreciating in value.
- [12] After payment of utilities and her monthly medical expenses she is left with \$300.00 to spend on food for the month. She has no money for clothes or entertainment; all the appliances and furnishings in the house are over 20 years old.
- [13] Her health continues to worsen as her arthritis and pain grows more intense. She suffers from insomnia and anxiety.
- [14] She has mostly exhausted her savings which over the years has been used to cover the shortfall in income over expenses (See Statement of Financial Circumstances filed 2007 and compare same with Statement of Financial Circumstances filed May 21st, 2013). She cannot afford to go home to Germany.

The Case for the Respondent

- [15] The Respondent is 69 years of age, a former restaurateur and cook/chef in the hotel industry. For the last six (6) years he has been running a bar in St. Lawrence Gap which he alleges has been hard hit by the economic depression. He receives a monthly sum of approximately \$5,500.00 from the

sale of a restaurant some 12 years ago. This payment is expected to terminate sometime in 2015. He also has a small National Insurance Pension of \$730.00 per month, a pension of \$273.00 per month from Clico and a pension of \$73.00 per month from Sagicor.

[16] His expenses are as set out in his updated Statement of Financial Circumstances.

[17] At 69 he suffers from hypertension which is controlled by medication and three monthly doctor's visits to monitor his health. He takes medication for a seizure he suffered approximately three (3) years ago. Otherwise he appears to be in good health. He expects that he will be able to work for another two years.

[18] His Statement of Financial Circumstances filed June 2013 shows an annual disposable income of approximately \$67,000.00 (income of \$88,296.00 and expenses of \$21,190.00). However, his oral evidence to the Court conflicts with this documentary evidence.

[19] Neither of the parties has any children or other persons that they have to support financially.

Findings and Disposal

[20] I am satisfied that the Applicant/Wife has established a real financial need.

[21] I am also satisfied that the Respondent/Husband has the financial resources to address that need in part, by the payment of an increased monthly maintenance. I have not found the Respondent/Husband to be entirely truthful about his financial resources and have concluded that he has sought to downplay the success of his bar at the Salt Ash Apartments and the income that he derives there from. There is also significant evasiveness about the proceeds of sale from the restaurant sold 12 years ago for in excess of \$1.7 million.

[22] I have estimated his base income at \$6,576.00 (made up of mortgage of \$5,500.00, NIS pension of \$730.00, CLICO pension of \$273.00 and Sagicor pension of \$73.00). To this is added the income derived from the Respondent's bar in St. Lawrence Gap which in his Statement of June 2013 he estimates at a further \$2,000.00 per month. While this Court accepts in all likelihood that the downturn in the economy has impacted this business and that he no longer takes a monthly salary, it does not accept, as alleged by the Respondent, that he derives no income from it.

[23] It is therefore ordered that with effect from 15th April 2014 and continuing monthly until further order, the Respondent shall pay to the Applicant/Wife the increased sum of \$3000.00.

[24] This Court is always mindful of its duty to make such orders as will finally determine the financial relationships between parties to a marriage. This Court is also alert to the fact that in or around 2015 the Respondent/Husband's income from the mortgage proceeds will cease. The parties are therefore urged to move with dispatch to address and complete the Application filed in 2008 for the determination of the property interests.

Margaret A. Reifer
Judge of the High Court