

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Family Division

[Unreported]

Suit No: 603 of 2008

BETWEEN

E. D. B

-

APPLICANT

AND

H. A. B

-

RESPONDENT

*Before The Honourable Madam Justice Maureen Crane-Scott, Q.C.
Judge of the High Court
(In Chambers)*

2009: November 4 and 25

**Ms. Dawn Shields-Searle for the Applicant/Wife
Mr. Vincent Watson for the Respondent/Husband**

DECISION

- [1] **Crane-Scott J:** This is an application filed by the Applicant/Wife on October 17, 2008 pursuant to the *Family Law Act, Cap. 214*, seeking orders in relation to the custody, care and control, access and maintenance of 2 minor children of the marriage who at the date of the application were aged 11 and 10 years respectively.
- [2] **The Interim Order:** When the application first came on for hearing on December 11, 2008, the Court was advised that the parties had been unable to reach agreement on the level of maintenance to be provided by the Respondent/Husband to the Applicant/Wife in respect of the 2 minor children of the marriage.
- [3] In the absence of agreement, the substantive maintenance application was adjourned for a date to be fixed for hearing as a contested matter. The Court then made an interim order for maintenance of \$600.00 per month to be paid to the Applicant/Wife in respect of the said children pending the disposal of the substantive application.
- [4] In exercising its discretion under s. 59(i) of the *Family Law Act* to make the interim order, the Court had been satisfied on the evidence then before it, that both parties had clearly acknowledged in their respective affidavits that the Respondent/Husband had been contributing to the Applicant/Wife the sum of \$600.00 per month in respect of the minor children of the marriage.
- [5] Additionally, since it appeared from the affidavits that the Applicant/Wife and the Respondent/Husband were both claiming to have paid the medical and dental bills in respect of the children, the Court also made an interim order requiring the Respondent/Husband

to pay to the Applicant/Wife within 14 days of the presentation of invoices or receipts, one half of the medical, dental, educational and ophthalmic expenses incurred by her in respect of the said children.

[6] Following the interim order in December 2008, it appears that the substantive application was listed for hearing and adjourned on a number of occasions during the early part of 2009. On October 27, 2009, due to the time which had elapsed since the application was first filed, both parties were ordered to file updated Statements of Financial Circumstances. The application was also fixed for final hearing and was heard on November 4, 2009.

[7] **The Evidence:** At the hearing, the Applicant/Wife relied on the following documents:

- 1) Affidavit of E. D. B filed October 17, 2008;
- 2) Applicant/Wife's Statement of Financial Circumstances filed October 17, 2008; and
- 3) Further Affidavit of E. D. B. filed December 18, 2008.

[8] The application was opposed by the Respondent/Husband who relied on the following documents:

- 1) Affidavit in Response of H. A. B. filed November 25, 2008;
- 2) Respondent/Husband's Statement of Financial Circumstances filed November 25, 2008;
- 3) Respondent/Husband's up-dated Statement of Financial Circumstances filed October 30, 2009;
- 4) Supplemental Affidavit of H. A. B. filed October 30, 2009;
and

5) Affidavit of D. O. C. filed November 2, 2009.

- [9] Counsel for the Applicant/Wife, Mrs. Shields-Searle informed the Court that it had not been necessary to file an updated Statement of Financial Circumstances on her client's behalf as there had been no change in her client's financial situation which remained the same as had been disclosed in the Applicant/Wife's Statement of Financial Circumstances and affidavits filed in 2008.
- [10] Mrs. Shields-Searle also informed the Court that it was her intention to challenge aspects of the Respondent/Husband's evidence regarding his financial circumstances and leave was granted to her to cross-examine him on his affidavits and Financial Statements.
- [11] Under cross-examination, the Respondent/Husband clarified that the discrepancy in his residential address between his affidavits of November 2008 and October 2009 was due to the fact that at the time he filed his November 2008 affidavit and Statement of Financial Circumstances, he had been living at the matrimonial home with his wife. He stated that he had subsequently left the matrimonial home and now lives in rented accommodation which he shares with his girlfriend and for which he pays rent.
- [12] Mrs. Shields-Searle then cross-examined the Respondent/Husband about the allegation in his October 2009 affidavit and Statement of Financial Circumstances that his financial situation had deteriorated between October 2008 and present.
- [13] The Respondent/Husband stated that his October 2009 Statement of Financial Circumstances reflected his reduced earnings since November 2008. He testified that he had not had a salary increase

- since November 2008 and that it was only his overtime income which had been reduced.
- [14] Re-examined by his Counsel, Mr. Vincent Watson, the Respondent/Husband explained that his monthly income fluctuates depending on overtime actually earned. According to him, the fluctuation in his income has been evident from around May/June 2009. He now works on weekends only sometimes and works sometimes if someone is not well. Whether he works overtime or not depends on the discretion of his supervisor. Overtime, he said, adds to his basic pay. Since his November 2008 affidavit it was clear that the company was cutting back on overtime payments as sometimes he works overtime and sometimes he does not. This he said was substantiated by his pay slips for May, July and August, 2009 *vis-à-vis* his March 2008 pay slip which had been exhibited in his affidavit of November 2008.
- [15] In answer to a question by Mrs. Shields-Searle, the Respondent/Husband testified under cross-examination that the girlfriend with whom he now lived also worked. He testified that while she did not contribute to the rent, she contributed to their expenses for food and water. He agreed with Mrs. Shields-Searle that his October 2009 Statement of Financial Circumstances had not reflected his girlfriend's contribution to food and water.
- [16] In re-examination, he explained that his girlfriend was a baby-sitter and that he believed she earned \$200.00 plus per week, but that in any event her earnings did not exceed \$300.00 per week.
- [17] Questioned about the outstanding credit card balances due to the various banks listed on his October 2009 Statement of Financial

- Circumstances which were higher than the outstanding balances for these cards shown on his November 2008 Statement of Financial Circumstances, the Respondent/Husband testified that he had made monthly payments to the Barbados National Bank since November 2008 and was still making payments of \$300.00 per month towards the balance. He agreed that the October 2009 balance (\$6,041.92) for the BNB card was in fact higher than that (\$6,000.00) shown in his November 2008 Statement.
- [18] Re-examined by his Counsel, Mr. Watson, the Respondent/Husband explained that the outstanding credit card balances shown in his November 2008 Statement had not been reduced due to the fact that he had not been keeping up-to-date with the monthly payments for the cards. According to him, whether or not he was able to make a payment depended on the amount of overtime which he worked for each month.
- [19] Counsel for the Applicant/Wife also questioned whether the Respondent/Husband in fact had a First Caribbean Bank credit card as stated in his October 2009 Statement of Financial Circumstances. The Respondent/Husband then testified that he did not hold a First Caribbean Bank credit card and was not in fact making payments of \$85.00 per month towards the same as suggested in his October 2009 Statement.
- [20] Under re-examination by his Counsel, he swore that this was an error and that the card balance and monthly payment had not been included in the 2009 Statement in an attempt to deceive the Court.
- [21] Cross-examined as to whether his motor vehicle was off the road as he had alleged in his affidavit of October 30, 2009, the

- Respondent/Husband confirmed that it was still off the road and that it had been off the road going on 2 weeks. Under re-examination he reiterated that his car remained off the road as he could not afford the \$600.00 required to purchase the computer which was necessary to repair it. Paragraph 15 of his October 30, 2009 affidavit also indicated that he now takes public transport to and from work.
- [22] The Respondent/Husband was also cross-examined regarding his statement at paragraph 7 of his October 2009 affidavit that he continues to pay the telephone bill at the former matrimonial home and that the July bill amounted to \$109.00. During the course of cross-examination he stated that “*Exhibit HB 6*” which had been exhibited to support the monthly amount of \$109.00 related to his mobile service and not the land line at the matrimonial home. He did not have a landline at the house where he now lives but testified that he in fact pays \$68.00 a month for internet service and also for part of the discounted telephone service to the matrimonial home. The Respondent/Husband also stated that if he failed to pay the bill his wife would call him and he would settle the outstanding amount.
- [23] Re-examined by his attorney-at-law, Mr. Watson, he clarified that the \$109.25 was not the full land line bill but a combination of the balances due for both his mobile service and the land line bill at the former matrimonial home. He also drew attention to the August 2009 receipt which had been superimposed on “*Exhibit HB 6*” and which, he said, confirmed that amounts had been paid to Cable and Wireless in respect of 2 items.
- [24] Mrs. Shields-Searle then cross-examined the Respondent/Husband about the 4 loan balances which were shown as expenses on his 2008

- and 2009 Financial Statements. The Respondent/Husband was unable to give the current balance remaining due on the ZM van loan with the Bartel Credit Union, but testified that none of the 4 loans had been paid off to date.
- [25] Finally Counsel for the Applicant/Wife turned her attention to the Respondent/Husband's minibus and the earnings he reportedly received from it. She pointed out that according to his Financial Statements, he paid \$1,200.00 per month on the van loan, and \$3,573.23 and \$2,301.00 annually for insurance and road tax. She observed that there was an apparent discrepancy in his income from the minivan and noted that the average monthly income which he claimed to have received during the 8 month period between April and October 2009 was \$855.00, whereas in his 2009 Statement he had declared his monthly income from the minivan as \$900.00.
- [26] She also observed that he claimed to make less than \$1,000 per month from the operation of the van and suggested that it did not make financial sense for him to keep the van on the road, if his outgoings on the van exceeded his income as he had deposed.
- [27] In answer to Mrs. Shields-Seale's question as to why he continued to keep the van on the road in such circumstances, the Respondent/Husband testified that when he first started out in the van business, he thought he could get more money, but that he nevertheless still tries to keep it on the road in the hope that things will get better.
- [28] In re-examination, the Respondent/Husband stated that his average income for the 8 month period between April and October 2009 was indeed \$855.00. However, he explained that the figure of \$900.00 per

- month shown in his 2009 Statement was in fact an estimate of his takings for the entire year. He stated that the correct figure for his income from the van is \$900.00 per month.
- [29] Counsel for the Applicant/Wife cross-examined the Respondent/Husband about his income tax returns. He admitted that he would sometimes receive refunds of between \$4,000.00 to \$5,000.00. Mrs. Shields-Searle noted that he had not disclosed any income tax refunds he had received in his Financial Statements. The Respondent/Husband explained that his returns had been filled-out and submitted by someone on his behalf and that he had not retained copies.
- [30] Mrs. Shields-Searle enquired whether he had made a claim for gas for the minivan in his income tax returns. The Respondent/Husband stated that he had not submitted a claim for gas, and had only claimed for the costs of maintaining and servicing of the vehicle. He also stated that the driver of the minivan was responsible for putting gas in the vehicle but was not also responsible for maintaining the vehicle.
- [31] In an attempt to contradict his testimony on this point, Mrs. Shields-Searle referred the Respondent/Husband to the affidavit which had been filed on his behalf by the driver of the minivan which indicated that the weekly takings after gas and general maintenance were rarely over \$400.00. This, she said, clearly suggested that the driver maintained the vehicle. The Respondent/Husband explained that as owner, he was responsible for maintenance of the vehicle and also for the cost of servicing the vehicle.
- [32] In re-examination, the Respondent/Husband clarified that the driver of his minivan only did minor maintenance of the vehicle such as

- repairing a flat tyre and so on, but that it was his responsibility, as owner, to service the vehicle or to fix mechanical problems.
- [33] **The Case for the Applicant/Wife:** In her address, Counsel for the Applicant/Wife observed that the Respondent/Husband had filed his Supplemental affidavit on October 30, 2009 in order to reflect what he termed his deteriorated financial situation between 2008 and the present. She also observed that at paragraph 3 of his Supplemental affidavit the Respondent/Husband had deposed that prior to and including October 2008, the income which he had derived from overtime generally was in the region of \$2,000.00 per month but had since last year been reduced by approximately 50%.
- [34] This assertion, she submitted, was not borne out by the evidence since his monthly income from Bartel (including overtime) had been stated in his 2008 Statement of Financial Circumstances to be \$6,292.00 whereas his monthly income (including overtime) has been reflected in his 2009 Statement of Financial Circumstances to be \$6,247.00 which showed a reduction in income of a mere \$45.00!!
- [35] Mrs. Shields-Searle submitted that there was a clear contradiction between what the Respondent/Husband had deposed in his 2008 Statement of Financial Circumstances, in his 2009 Statement of Financial Circumstances and in his affidavit of October 2009 regarding his income from overtime. She suggested that if his income from overtime had indeed been reduced by 50% as the Respondent/Husband had asserted, then he did not tell the truth in November 2008 when his 2008 Financial Statement and affidavit in support had been filed. Alternatively, she stated, his October 2009 Statement is untrue.

- [36] She asked the Court to take note of the monthly amount of income tax (\$1,809.11) which the Respondent/Husband claims to have paid in 2008 on a declared monthly income from Bartel of \$6,292.00 *vis-à-vis* the monthly amount of income tax (\$1,000.00) shown in the expense column of his 2009 Statement of Financial Circumstances in circumstances where the monthly income from Bartel in 2009 (\$6,247.00) had only been reduced by a mere \$45.00.
- [37] She urged the Court to find that the Respondent/Husband's evidence about his financial situation had been discredited upon cross-examination. She contended that in a matter as simple as a telephone bill the Respondent/Husband had come into Court and told a complete lie. She referred specifically to his claim at paragraph 7 of his affidavit of October 2009 to have paid the sum of \$109.00 towards the telephone bill for the land line at the matrimonial home. This claim, according to her, was unsubstantiated by the Cable and Wireless bill ("**Exhibit HB 6**") which clearly referred to mobile service and not a land line service.
- [38] Turning to the Respondent/Husband's testimony under cross-examination that his girlfriend contributed to his expenses for food and the water bill, Mrs. Shields-Searle referred the Court to the receipts exhibited as "**Exhibits 11-12**" evidencing payment by him of rent for the months of April, May and June, 2009. Mrs. Shields-Searle submitted that the receipts clearly indicated that the payment of \$800.00 per month had been made in respect of rent and utilities.
- [39] She asked the Court to refer to the Respondent/Husbands's October 2009 Statement of Financial Circumstances and to observe the sum of \$32.62 per month which had been included as a monthly expense

- payable by him. She reminded the Court of the Respondent/Husband's testimony under cross-examination that his girlfriend pays for water. She asked the Court to conclude from the evidence that from the very start, the Respondent/Husband's true financial situation had not been placed before the Court.
- [40] She urged the Court to examine "*Exhibit HB 4*" which was a page from a Calendar showing the Respondent/Husband's earnings from the minivan business. She observed that the figures which had been written down were all round figures.
- [41] She referred to the Respondent/Husband's testimony under cross-examination regarding the expenses claimed for maintenance of the ZM minivan and to the driver's affidavit evidence which stated that the driver was responsible for maintenance of the van.
- [42] In closing, Mrs. Shields-Searle contended that the Court ought not to accept the Respondent/Husband's evidence regarding his financial affairs and submitted that the evidence which he had submitted could not be used to determine his true financial position. She submitted that the Respondent/Husband has the means to pay more than the amount of the interim order and urged the Court to make a final order for maintenance for the two minor children in the sum of \$800.00 per month.
- [43] *The Case for the Respondent/Husband:* Counsel for the Respondent/Husband, Mr. Watson submitted that analysis of his client's 2008 and 2009 Statements of Financial Circumstances would establish that all of the Respondent/Husband's expenses were incurred on his family while he was still living in the matrimonial home.

- [44] He drew attention to the fact that the Respondent/Husband continues even after the separation to pay his share of the mortgage payment due in respect of the matrimonial home.
- [45] Additionally, Mr. Watson drew the Court's attention to the fact that although the Respondent/Husband no longer resides there, he continues, as he has always done, to pay the light bill at the matrimonial home as well as the full cost of the telephone line and internet service at the matrimonial home.
- [46] Mr. Watson also pointed out that the Respondent/Husband pays, as he has always done, the sum of \$600.00 per month to the Applicant/Wife as maintenance for the 2 minor children of the marriage.
- [47] Counsel for the Respondent/Husband urged the Court to pay attention to his client's pay slips which, he said, were not handwritten but printed by Bartel, the Respondent/Husband's employer, and represented a true reflection of his client's earnings from his employment. According to Mr. Watson, the Respondent/Husband's pay slips supported his client's contention that his income from overtime had been reduced by approximately 50%.
- [48] Mr. Watson submitted that although his client had evidently had an increase in his basic salary since 2008, as reflected in his 2009 pay slips, it was clear from those same pay slips that the Respondent/Husband's income from overtime had been reduced.
- [49] Mr. Watson rejected any suggestion that the Respondent/Husband's credibility had been in any way reduced during his cross-examination or that he had deliberately set out to mislead the Court. He submitted that the Court had had the opportunity of examining his client's demeanour during his oral testimony and stated that in his simple way,

- the Respondent/Husband had given his version of the facts as he believed them and provided all information available to him.
- [50] In relation to the apparent disparity in the level of income taxes deducted by his employer from his salary during the year 2008 and 2009, Mr. Watson submitted that this was beyond his client's control as tax was deducted and reflected in his pay slips which he obtained from his employer.
- [51] Turning to the suggestion by Counsel for the Applicant/Wife that his client had not disclosed his income from the minivan, Mr. Watson submitted that the minivan had been acquired during the marriage and over 2 years ago when his client still resided in the matrimonial home. His client, he said, had testified that he kept a record of his takings on a calendar and this had not been seriously questioned under cross-examination. Furthermore, he argued, there was the affidavit evidence of the van driver which corroborated the Respondent/Husband's evidence as to the level of his earnings from the van and whose evidence had gone unchallenged.
- [52] Mr. Watson urged the Court to take into account paragraph 9 of the Respondent/Husband's affidavit of November 25, 2008 and the fact that the matrimonial home was also occupied by the Applicant/Wife's 2 adult children both of whom are 34 years of age and whose contribution to the Applicant/Wife's household expenses was unknown and had not been placed before the Court. The adult children, he urged, should be expected to make a substantial contribution to the living expenses at the former matrimonial home.
- [53] Turning to the Respondent/Husband's current living circumstances, Mr. Watson submitted that his client ought to be permitted some modicum

- of a decent standard of living. He submitted further that it was demeaning for his client not to be in a position to find \$600.00 to repair his car and to have to resort to taking the bus to and from work.
- [54] Counsel for the Respondent/Husband submitted that it was beyond dispute that his client had 3 outstanding credit card bills.
- [55] Referring to copies of the past due reminder letter which his client had received from the BNB credit card collections unit (“***Exhibit HB 8***”) and a letter from the Insurance Corporation of Barbados threatening to cancel the insurance policy on his minivan for breach of his premium credit agreement (“***Exhibit HB 12***”), Mr. Watson described the Respondent/Husband as a person who was doing the best he could do in trying circumstances and who was struggling to get his expenses paid.
- [56] Mr. Watson submitted that his client could pay no more than the sum of \$600.00 which he was currently paying under the interim order as maintenance for the 2 minor children and urged the Court to make and order in that amount.
- [57] **Exercise of the Court’s discretion:** It is not disputed that the parties to this application are lawfully married and that the substantive application filed by the Applicant/Wife was brought under the ***Family Law Act, Cap. 214*** for the provision of maintenance in respect of 2 minor children of that marriage.
- [58] Section 51 of the ***Family Law Act***, sets out the general principle which governs the parties’ statutory obligation to maintain their children and provides:
- “The parties to a marriage,...are liable, according to their respective financial resources, to maintain the children of the*

marriage...who are unmarried and have not attained the age of 18 years.”

[59] Section 52 confers a statutory discretion on the Court to determine the appropriate maintenance to be provided and provides, *inter alia*, that:

“In proceedings with respect to the maintenance of ... a child of the marriage..., the court may make such orders as it thinks fit for the provision of maintenance in accordance with this Part.”

[60] Section 53 provides the manner in which the discretion is to be exercised by the Court and mandates as follows:

“(1) In determining the amount of maintenance, if any under section 52, the court shall take into account only the matters set out in subsection (2).”

[61] Broadly, the matters required by section 53(2) to be taken into account by the Court in determining maintenance include, *inter alia*, the following:

- *The age and state of health of the parties;*
- *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;*
- *whether either party has the care or control of a child of the marriage...who has not attained the age of 18 years;*
- *the financial needs and obligations of each of the parties;*
- *where the parties have separated..., a standard of living that in all the circumstances is reasonable;*

- *any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.*

[62] Section 54(1) of the Act also provides that in determining whether to make an order for the maintenance of a child of the marriage, the Court shall take into account, in addition to the matters set out in section 53(2),

- *“the income, earning capacity, property and other financial resources of the child,*
- *the financial needs of the child; and*
- *the manner in which the child is being, and in which the parties to the marriage...expected the child to be, educated or trained.”*

[63] Against the background of the foregoing statutory provisions and having considered the evidence before it, together with the submissions of Counsel for both parties and having had the benefit of the Respondent/Husband’s testimony under cross-examination and upon re-examination, the Court has reached its decision with respect to the level of maintenance to be provided to the Applicant/Wife by the Respondent/Husband for the 2 minor children of the marriage.

[64] In arriving at its decision and in the exercise of its discretion, the Court has accepted and/or determined the following facts and found that the justice of the case dictates that the following facts and circumstances should be taken into account:

- (a) the parties are both in their early fifties, the Applicant/Wife being 52 years and the Respondent/Husband 51 years of age;

- (b) Both parties are gainfully employed and in receipt of incomes from full-time employment which are more particularly disclosed in their respective affidavits and Statements of Financial Circumstances;
- (c) In addition to his income from full-time employment, the Respondent/Husband operates a minivan business from which he derives additional income as shown in his various affidavits and Statements of Financial Circumstances;
- (d) The quantum of the Respondent/Husband's income from the operation of the mini van was hotly contested by Counsel for the Applicant/Wife who, while unable to suggest what the true or suggested income might be, was clearly skeptical about the net income from the mini van business declared in the Respondent/Husband's Statements of Financial Circumstances;
- (e) In short, while Counsel for the Applicant/Wife challenged the accuracy of the net income which the Respondent/Husband claimed to have earned from the operation of the mini van business, in the absence of an application for or discovery or evidence to the contrary, the Applicant/Wife was unable to effectively rebut the Respondent/Husband's evidence clarified under cross-examination and corroborated by the affidavit evidence of the mini van driver that he makes a monthly income of approximately \$900.00 from the ZM van;

- (f) In the circumstances, the Court has accepted and holds that the Respondent/Husband's income from the ZM business is an average of \$900.00 per month;
- (g) The minivan was purchased by the Respondent/Husband during the marriage and prior to the separation, and a credit union loan was taken out by the Respondent/Husband in connection therewith;
- (h) During the marriage, both parties assumed joint financial obligations with a commercial bank in respect of a mortgage taken out on the matrimonial home.
- (i) The Applicant/Wife's contribution to the mortgage payment is \$7,248.00 per annum, while the Respondent/Husband's contribution is \$725.00 per month;
- (j) During the marriage and prior to the separation in December 2008, the Respondent/Husband had also incurred loan obligations to 2 other credit unions and a commercial bank as shown on his 2008 and 2009 Statements of Financial Circumstances.
- (k) The Respondent/Husbands loan and mortgage obligations to the 3 credit unions and the 2 commercial banks are paid by direct debit from his income from his full-time employment as appears from his pay slips for March 2008, May 2009, July 2009 and August 2009 exhibited with his affidavits;
- (l) The Court is satisfied that the Respondent/Husband's total monthly loan commitments to the 3 credit unions and the 2 commercial banks amount to \$2,895.00.

- (m) Additionally, the Court is satisfied that the Respondent/Husband continues to carry 3 credit card balances which have not been reduced since his 2008 Statement of Financial Circumstances and are still outstanding debts to be serviced by him from his income;
- (n) Prior to their separation in December 2008, both parties resided in the matrimonial home together with the 2 children of the marriage and 2 other adult children of the Applicant/Wife;
- (o) The minor children aged 12 and 11 respectively and in respect of whom maintenance has been claimed, continue to reside with the Applicant/Wife in the former matrimonial home;
- (p) Following matrimonial difficulties and the breakdown of the marriage, the Respondent/Husband left the matrimonial home in December 2008 and now lives with his girlfriend in rented accommodation;
- (q) The Court accepts that since leaving the matrimonial home in December 2008, the Respondent/Husband's disposable income has been reduced primarily by the fact that he is now committed to paying the sum of \$800.00 per month for rented accommodation while at the same time still contributing his share of the mortgage payment for the matrimonial home where he no longer resides;
- (r) After reviewing the Respondent/Husband's pay slips for the months of March 2008, May 2009, July 2009 and August 2009 respectively, the Court is satisfied that despite

his having testified under cross-examination that he had not had a salary increase since 2008, the Respondent/Husband's monthly basic pay has in fact been increased by approximately 5% from \$4,997.00 in March 2008 to \$5,247.00 as evidenced by his pay slips for May, July and August, 2009.

- (s) Notwithstanding the increase in his basic pay since 2008, the Court nevertheless accepts the Respondent/Husband's affidavit evidence that his earnings from overtime work have suffered a significant reduction from their 2008 levels and that he no longer earns at the same level;
- (t) In this regard, the Court observes from the Respondent/Husband's March 2008 pay slip that his overtime earnings for that month were \$1,664.00, whereas his overtime earnings in May 2009, July 2009 and August 2009 were \$1,211.00, \$1,348.00 and \$363.25 respectively.
- (u) The Court is satisfied that the Respondent/Husband's claim to have suffered a 50% reduction in his overtime earnings is not substantiated by the pay slips which were put in evidence and appears to be an over-exaggeration.
- (v) Based solely on the 4 pay slips which were put into evidence and in the absence of evidence adduced by the Applicant/Wife to the contrary, the Court is nonetheless satisfied and holds that there has been a significant reduction in the level of the Respondent/Husband's overtime earnings from his full-time employment. This fact, coupled with his new living arrangements, has

- contributed to a deterioration in his standard of living and the overall deterioration in his financial circumstances;
- (w) The Court is satisfied from their respective Statements of Financial Circumstances that both parties appear to be in a weak financial situation.
 - (x) The Applicant/Wife was not cross-examined and is, on paper, also debt-ridden and financially in a very weak position. Unlike the Respondent/Husband, she however, still resides in the former matrimonial home. Additionally, she is in the fortunate position of having her 2 adult children reside with her in the former matrimonial home.
 - (y) The Court accepts her evidence and finds that although their incomes are not large and they may not always be employed, the Applicant/Wife does receive assistance from her adult daughter in purchasing the school clothing for one minor child and in purchasing clothes for all of the children on a regular basis. This is valuable assistance to the Applicant/Wife from another source and a fact and circumstance which the justice of this case dictates cannot be overlooked or ignored;
 - (z) By comparison, the Respondent/Husband is weighed down by numerous debts incurred during the marriage. He is, in the Court's view a man who is living on the edge and just managing to keep his head above water. He has started life afresh and now finds himself paying rent as well as his share of the mortgage payment for the former matrimonial home. His girlfriend earns meagre wages and the Court is

satisfied on the evidence that she is not able to contribute in any meaningful way to the household expenses of the Respondent/Husband's new living arrangements;

- (aa) The Court is nonetheless impressed and finds that despite his limited resources and shaky financial situation, the Respondent/Husband has remained committed to providing financially for the 2 minor children of the marriage. It is not in dispute, and the Court so finds, that in addition to paying the Applicant/Wife maintenance of \$600.00 per month for the 2 children and continuing to pay his share of the mortgage on the matrimonial home, the Respondent/Husband, continues to pay the monthly electricity bill (approximately \$145.00) and pays for the telephone line (approximately \$40.00 per month) and internet service (approximately \$68.00 per month) at the former matrimonial home despite the fact that he no longer resides there.
- (bb) In the view of the Court, these payments (totaling approximately \$253.00 per month) represent financial contributions which the Respondent/Husband is in effect still making to the Applicant/Wife out of his limited financial resources to ensure the continued well-being and standard of living of the 2 minor children who remain with the Applicant/Wife at the matrimonial home.
- (cc) In short, having regard to section 53(2)(n) of the *Family Law Act*, the Court is of the opinion that the justice of the case dictates that the payment by the Respondent/Husband

for electricity, telephone and internet is a fact or circumstance that cannot be ignored or overlooked and must be taken into account by the Court in determining the appropriate level of maintenance which he should be ordered to pay to the Applicant/Wife in respect of the 2 minor children.

[65] 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 the Applicant/Wife has not established that the Respondent/Husband is in a position financially to pay her any more than the \$600.00 per month which he now pays as interim maintenance for the 2 minor children of the marriage.

[66] In the result, the Applicant/Wife's application for maintenance of \$800.00 per month for the 2 children is refused.

[67] **Order:** Pursuant to section 52 of the *Family Law Act*, the Court now makes the following final order for maintenance in respect of the 2 minor children of the marriage:

- (i) The Respondent/Husband shall pay to the Applicant/Wife the sum of \$600.00 per month as maintenance for the 2 minor children of the marriage commencing on the 24th day of November, 2009 and continuing on the 24th day of each succeeding month until further order;
- (ii) The Respondent/Husband shall within 14 days of the presentation of receipts evidencing such payment, also pay to the Applicant/Wife, one-half

of all educational, dental, medical, ophthalmic and pharmaceutical expenses incurred in respect of the said children of the marriage;

- (iii) Each party shall bear his or her own legal costs of the proceedings.

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