

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Family Division

[Unreported]

Suit No: FL 436 of 2003

BETWEEN

“L. A. E.”

- APPLICANT/WIFE

AND

“J. B. E.”

- RESPONDENT/HUSBAND

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

[In Chambers]

2015: March 18, 19 and April 13

Appearances:

**Mrs. Beverley Walrond, Q.C. attorney-at-law for the Applicant/Wife and
Miss. Margot Greene, Q.C. attorney-at-law for the Respondent/Husband.**

DECISION

- [1] **Crane-Scott J:** This is an application for urgent interim spousal maintenance filed by the Applicant/Wife on January 7th, 2015. It follows an earlier application for interim spousal maintenance filed on December 15, 2014 which was not heard.
- [2] The application is also brought against the background of proceedings for ancillary relief instituted as far back as November 11, 2003 in which the Applicant/Wife sought ancillary relief, seeking, *inter alia*, an order that the Respondent/Husband make provision for her future maintenance. Astoundingly, almost 12 years have elapsed since the Applicant/Wife's application for ancillary relief was instituted and for reasons which are not fully understood by the Court, those proceedings have similarly not yet been heard.
- [3] **The Documentary Evidence:** The documentary evidence supporting the Applicant/Wife's ancillary claim for spousal maintenance, including her recent application for urgent interim maintenance is set out in numerous affidavits and documents as follows:
- (i) Initial Affidavit of the Applicant/Wife filed on November 11th, 2003 in support of her application for ancillary relief;
 - (ii) Applicant/Wife's Statement of Financial Circumstances filed on May 5th, 2004;
 - (iii) Applicant/Wife's Second Affidavit filed on October 17th, 2006;
 - (iv) Affidavit in Support of the Applicant/Wife's first Application for Urgent Interim Maintenance filed on December 15th, 2014;

- (v) Applicant/Wife's Statement of Financial Circumstances filed on December 15th, 2014;
- (vi) Further Affidavit of the Applicant/Wife filed on March 16th, 2015; and
- (vii) Applicant/Wife's Amended Statement of Financial Circumstances filed on March 18th, 2015.

[4] The Respondent/Husband filed the following affidavits and documents opposing the Applicant/Wife's application for ancillary relief, as well as her January 7th 2015 application for urgent interim Maintenance:

- (i) Affidavit of the Respondent/Husband filed on December 9th, 2005;
- (ii) Respondent/Husband's Statement of Financial Circumstances filed on January 31st, 2006;
- (iii) Respondent/Husband's Affidavit filed on March 19th, 2015; and
- (iv) Respondent/Husband's updated Statement of Financial Circumstances filed on March 19th, 2015.

[5] **The Hearing:** At the hearing, Relationship Manager with the Bank of Nova Scotia, Mr. Rommel King, was called as a witness for the Applicant/Wife pursuant to a subpoena. The witness produced from records held by the Bank of Nova Scotia, the Respondent/Husband's Personal Financial Statements as at August 30th, 2013 and October 29th, 2014 respectively. The Statements were admitted in evidence as Exhibits "RK 1" and "RK 2."

[6] At the request of Counsel for the Applicant/Wife, Mr. King then explained the significance of various figures shown on each of the Statements. Reading from Exhibit "RK 1," he drew the Court's attention in particular to the fact that as at August 30th, 2013, the Respondent/Husband's net assets had been

declared to be \$17.5 million Barbados currency. Referring next to the Respondent/Husband's Personal Financial Statement, Exhibit "RK 2", the Court was told that the Respondent/Husband had represented his net assets as at October 29th, 2014 as \$20.5 million Barbados currency. Additionally, Mr. King told the Court that as clearly appears in Exhibit "RK 2," the Respondent/Husband had declared savings as at October 29th, 2014 of \$600,000.00.

[7] At the hearing, and with the leave of the Court, the Applicant/Wife was cross-examined by Counsel for the Respondent/Husband, Miss. Greene Q.C. regarding her current financial situation and aspects of her evidence relevant to the issues before the Court. Counsel for both parties also filed written submissions and made oral submissions for and against the grant of urgent interim maintenance to the Applicant/Wife.

[8] **Background:** In The Court has found it prudent to examine the relevant factual background against which the proceedings for urgent spousal maintenance were instituted. As appears from the affidavits on file, the parties met in 1969 when the Applicant/Wife came to Barbados from her home in Dominica to study for a Bachelor of Arts degree at the Cave Hill Campus. The Respondent/Husband was then employed at Barclays Bank, having left secondary school after 5th form.

[9] In 1972, the Respondent/Husband left Barbados for Concordia University in Montreal, Canada to pursue a science degree, while the Applicant/Wife returned to Dominica after successfully completing her degree.

[10] The couple cemented their relationship on the 2nd day of August, 1973 when they were joined in marriage at the Saint Alphonsus Church in the parish of

Saint George, Dominica. Following their marriage, the Applicant/Wife accompanied her husband to Montreal, Canada where the Respondent/Husband continued his studies at Concordia University, until his transfer on scholarship to McGill University in 1974.

- [11] The Applicant/Wife found full-time employment in the Records Department at Concordia University until the couple's first child was born in June 1974. Following the birth of their daughter, the Applicant/Wife stayed at home to look after the child and returned to full-time employment at the University a few months later.
- [12] The Respondent/Husband subsequently applied to pursue medicine at the University of the West Indies, Mona Campus, and the family unit moved to Jamaica in 1975 where the Respondent/Husband continued his studies until 1978 as a full-time student. The Respondent/Wife obtained employment in Jamaica as a teacher to support the family. During this period, the couple welcomed their second child, a daughter, in September of 1976.
- [13] In 1978 the young family of four relocated to Barbados where the Respondent/Husband completed a 2-year MBBS degree at the Queen Elizabeth Hospital. During this period, the family lived in "married student accommodation" at Enmore, St. Michael. The Applicant/Wife worked in Barbados as a full-time teacher and also pursued a part-time diploma in Education. The Respondent/Husband graduated in 1980 and started earning as an Intern at the Queen Elizabeth Hospital thereby supplementing the family income. A third child, also a daughter, was born in September of 1980.

- [14] Issues have arisen on the pleadings as to whether the Applicant/Wife was in fact the sole breadwinner and therefore solely responsible for the maintenance and upkeep of the family whilst the Respondent/Husband pursued full-time studies in Canada, Jamaica and Barbados respectively, as she claims. Also in issue is whether the Respondent/Husband received money from his parents while studying, and whether he supplemented the family income by engaging in part-time work while at the same time pursuing his full-time studies. There is no agreement as to whether funds from a student loan he had obtained from the Student Revolving Loan Fund had been used to help with the upkeep of the family in Jamaica and Barbados as he claims. All these are matters in dispute to be resolved at the hearing of the substantive proceedings for ancillary relief.
- [15] In 1981, the couple moved once again from Barbados with their 3 small children to Kingston, Ontario in Canada where the Respondent/Husband worked as a resident at Queen's University and undertook specialist studies in urology. During this period, it is agreed that the Respondent/Husband was the sole provider for the family while the Applicant/Wife stayed home with the couple's 3 small children and herself pursued a Masters degree in Education.
- [16] The family moved to Newfoundland in 1984 where the Respondent/Husband pursued a course in paediatric urology. The last of the couple's 4 children, a son, was born in March of 1985 in Newfoundland.
- [17] The family relocated once again to Kingston, Ontario in 1985 where the Respondent/Husband continued studies for his fellowship at Queens University and worked to support the Applicant/Wife and their family of 4

young children. In 1987 the Respondent/Husband completed his fellowship and opened a private practice in association with Dr. Ron Sorenson in Windsor, Ontario between 1987 and 1989. He subsequently opened his own practice between 1989 until July of 1990 when the family uprooted itself once again and returned to Barbados.

[18] As appears from the pleadings, there is also disagreement between the parties as to the role which the Applicant/Wife played in assisting the Respondent/Husband in running his medical practice in Canada. On the one hand, the Applicant/Wife alleges that she provided unpaid services in his office as his Secretary in Canada, generally running his practice, making bookings, looking after his accounts and submitting his bills to the Ontario Health Insurance Program.

[19] On the other hand, the Respondent/Husband denies that the Applicant/Wife assisted the practice to the extent which she claims. He suggests that her role had merely been to collect a disc containing information about his bookings/appointments and billings on a weekly/monthly basis from Dr. Sorenson's Secretary and to deliver the disc to the Ontario Health Insurance Program.

[20] While admitting that the Applicant/Wife worked in the private practice which he opened in Canada in 1989, the Respondent/Husband denies that she had done so for longer than an initial 2 month period. He states that she had only worked with the practice until he engaged a Secretary who he employed in the practice until the family's return to Barbados in July 1990. Clearly, these several disputes of fact cannot be resolved on this interim

application and will have to be finally determined when the ancillary application is heard.

[21] The couple and their 4 young children then moved to Barbados once again in 1990. In that year, the Respondent/Husband opened a medical practice, Emtage Urological Services Inc, specializing in urology at Brigade House, Garrison Medical Centre, St. Michael. The Applicant/Wife was made a director and shareholder of the company. According to the Applicant/Wife, she worked at the practice as his Secretary and Accounts Clerk for the first 2 years of the practice until a Secretary was hired to do the bookings and perform the secretarial duties.

[22] The Applicant/Wife further states that when the Secretary, Gayle King was hired to work in the practice in 1992/1993, she had continued to look after the accounting for her husband's practice without payment until August 1994 when she ceased doing so altogether.

[23] For his part, the Respondent/Husband denies that the Applicant/Wife had worked in the practice for 2 years as she claims. He alleges that the Applicant/Wife had only worked in the practice for about 10 months until Gayle Yarde, formerly Gayle King, was hired and took over full responsibility for running the office. Once again, these factual issues cannot be resolved at this time and will ultimately have to be determined when the substantive application for ancillary relief is heard.

[24] According to the Applicant/Wife, the marriage foundered in or around 1998 following several disagreements about the Respondent/Husband's alleged infidelity. The Respondent/Husband continued to reside in the matrimonial home in Upton, St. Michael. He initially withdrew from the matrimonial

bedroom in or around 1997/1998 before finally moving out of the matrimonial home altogether in May, 1999 to reside in a 2 bedroom condominium. Even the date of their separation is in dispute, since the Respondent/Husband claims that they separated on or about April 30th, 1997 and have lived separate and apart since then.

[25] During the period of the marriage, the couple acquired a number of properties. At paragraph 17 of the Respondent/Husband's affidavit filed on December 9th, 2005, the Respondent/Husband states that around the time of the family's relocation to Barbados in 1990, he had sold a house owned by him at Windsor, Ontario and applied the net balance of the sale proceeds as a deposit on their matrimonial home in Upton, St. Michael, purchased in the name of Emtage Urological Services Inc.

[26] Additionally, it is agreed that in and around 1990, the parties also purchased 3-acres of land at Plum Tree Hill, St. Thomas in both their names.

[27] In 1994, the Respondent/Husband purchased a property situated in Hastings, Christ Church in the name of Emtage Urological Services Inc. In December 1994 also, the Applicant/Wife opened a business called "Flower Market" which operated out of the Hastings, Christ Church property purchased in the name of Emtage Urological Services Inc. The Applicant/Wife states that she discontinued the business in March 1998 due to its unprofitability.

[28] The Respondent/Husband confirms that the Applicant/Wife's business closed in 1998, but he alleges that it was financially successful before it was closed. He further alleges that while the business was operational, the Applicant/Wife had paid no rent for the space occupied by the business at Hastings, Christ Church. He also alleges that the Applicant/Wife did not

contribute any of the profits from her flower business towards the support and maintenance of their household.

[29] The Respondent/Husband further states that all mortgage payments for the properties purchased during the marriage were paid by him. He further states that the Applicant/Wife had never been financially responsible for the running of the home, the repairs to the matrimonial home in Barbados or the education of their children and asserts that he undertook all these responsibilities himself.

[30] He also alleges that between 1990 and 1998, the Respondent/Wife had never sought employment in spite of her having been offered a job at the Caribbean Examination Council (CXC) in curriculum design.

[31] For her part, the Applicant/Wife says that she was financially responsible for running the home from the start of the marriage until 1980 when the Respondent graduated and started earning as an Intern at the Queen Elizabeth Hospital. Thereafter she says that she looked after the home as a homemaker and looked after their children while the Respondent/Husband continued his specialist studies in Canada between 1981 and 1986. The Applicant/Wife also claims that when the Respondent/Husband began practicing privately initially in Canada and later in Barbados between 1986 and 1995, her contributions to the marriage and the family involved running the home, running the office and performing accounting services for the practice for which she received no salary.

[32] Here again, the factual disputes which have arisen between the parties are matters which will inevitably have to be resolved at the substantive hearing.

I turn now to consider the law which is to be applied where a spouse claims to be entitled to an award for urgent interim spousal maintenance.

[33] **The Applicable Law:** The statutory provisions governing applications for spousal maintenance in this jurisdiction are contained in **sections 2(2), 50, 52, 53 and 55** of the **Family Law Act, Cap. 214**.

[34] 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*”.

[35] In light of **section 2(2)** the Court was satisfied for jurisdictional purposes that notwithstanding the grant by **Blackman J** on the 12th day of January, 2004 (some 11 years ago) dissolving the marriage between the parties, the Applicant/Wife is 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.

[36] As Counsel for both parties have quite correctly stated in their respective written submissions, 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].”

- [37] 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, 5th 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 Barbados *Family Law Act.*]
- [38] 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.
- [39] 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.*]
- [40] 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.*]

[41] 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*]

[42] 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.

[43] Finally, an award for urgent interim maintenance whether for a spouse or for a child of a marriage or union may be obtained from a court pursuant to *section 55* of the *Family Law Act* which provides:

“55. Where, in proceedings in respect of the maintenance of a party to a marriage or union,it appears to the court that the party...is in immediate need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.”[emphasis mine]

[44] **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*” from her own resources 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?
- c) Is the Applicant/Wife in immediate need of financial assistance in circumstances where “*it is not practicable for the Court to determine immediately what order, if any, should be made*”?

[45] **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*” from her own income and resources so as to be able to enjoy a standard of living that is reasonable in all the circumstances.

[46] At the outset, the Court was satisfied for purposes of **section 50(2)** of the **Family Law Act**, that this is not a case where the Applicant/Wife claims to be unable to support herself adequately by reason of having the care and control of minor children of the marriage. In this regard, the evidence clearly established that the 4 children of the marriage are now all adults, the eldest daughter being almost 41 and the youngest son having just turned 30.

[47] Additionally, having regard to **section 50(2)** of the **Family Law Act**, the Court was also satisfied on the evidence that this was 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. The evidence clearly established that

while the Applicant/Wife is now a retiree in her early 60's, a mother and grandmother, she is neither physically nor mentally incapacitated.

[48] The Court was, however, satisfied that the evidence in this case clearly established that the Applicant/Wife is in need of urgent spousal maintenance and is unable to support herself adequately from her own resources 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 both parties are now in their early 60's. Specifically, the Applicant/Wife is currently 61 years of age, while the Respondent/Husband is 63. It is assumed that both parties are in good health as neither party has adduced evidence to the contrary.

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 the Respondent/Husband is a medical doctor with a specialty in urology, and is currently in a more advantageous position than the Applicant/Wife in relation to their respective incomes, property and financial resources.

c) As it pertains to their respective incomes, for example, the Court found that the Applicant/Wife is a University graduate and holds a Bachelor of Arts degree, obtained prior to the marriage, as well as a Masters degree in Education which she obtained during the marriage.

- d) However, it is evident from the Applicant/Wife's working career particularly during the first 17 years of the marriage, that as she was constantly relocating with the Respondent/Husband and their young family from country to country during the various phases of his educational and professional development, she did not stay employed long enough at any one place of employment or in any one country, to have acquired for herself an adequate pension or savings.
- e) The evidence also shows that throughout the marriage, the Applicant/Wife put her own career prospects on hold as she followed the Respondent/Husband from country to country with their young family in tow. The Court is satisfied and holds that for much of the marriage the Applicant/Wife provided the necessary support and stability to the Respondent/Husband and their 4 children, working in the home as a wife, mother and homemaker, as he pursued his professional ambitions and established his own professional career.
- f) The facts clearly establish that following the family's relocation to Barbados in 1990 and after many years in which the Applicant/Wife worked in the home as a wife, mother and homemaker, she finally sought and obtained permanent employment at the Caribbean Examinations Council (CXC) in April 1998 as an Assistant Registrar, a position which she held until her retirement.
- g) The Applicant/Wife is now retired. As she had feared on November 11th, 2003 when she filed her initial affidavit in support

of her substantive application for ancillary relief, she is currently in receipt of a meagre monthly pension income of \$1,756.32.

- h) As her Amended Statement of Financial Circumstances filed on March 16th, 2015 also shows, the Applicant/Wife currently pays \$250.00 per month to Sagicor towards personal insurance which, as she explained under oath at the hearing, is a pension insurance which will pay her approximately \$900.00 per month in 9 years when she turns 70. It is evident that that monthly pension is of no assistance to her now.
- i) At the trial, Counsel for the Respondent/Husband, Miss Greene, cross-examined the Applicant/Wife about her employment prospects. She told the Court that she is now 61 years of age and retired. She said that it was not accurate for Counsel to suggest that she did not intend to work again. She stated that if something comes up and she feels disposed, she would work again. She however agreed with Miss Greene's suggestion that the Respondent/Husband ought to provide for her maintenance until her death.
- j) The Applicant/Wife was also cross-examined about the rental income of \$30,000.00 per year which she receives from a townhouse in Welches Grove which she purchased as an investment in 2006 prior to her retirement. As her Amended Statement of Financial Circumstances filed on March 18, 2015 clearly shows, the monthly rental income of \$2,500.00 which she receives from renting the property does not cover the mortgage payment of \$4,930.00 which she is obligated to pay each month.

- k) The Court accepts the Applicant/Wife's testimony under cross-examination at the hearing that while she was still employed at CXC and in receipt of a monthly income of \$8,000.00, she could afford to subsidize the shortfall between the mortgage payment and the rental income. The Court is also satisfied that now that she is retired, she can no longer afford to subsidize the mortgage payment on the Welches Grove townhouse on her meagre monthly pension of \$1,756.32.
- l) The Court therefore accepts the evidence of the Applicant/Wife that it is impossible for her to subsist on her pension alone. The matrimonial home in which she still resides is also in dire need of repair and is expensive to maintain.
- m) Perusal of the Quantity Surveyor's Report detailing the repairs and refurbishment to be undertaken at the former matrimonial home includes such work as the replacement of a/c units, roof repairs, repair to a worm-eaten timber deck and other work consistent with what would appear to be the natural wear and tear of an aging older home.
- n) Additionally, despite having had the Respondent/Husband's interest in the matrimonial home vested in her by a Court order made as far back as 2005, the Applicant/Wife is yet to have the property transferred to her. Her Statement of Financial Circumstances shows that her overall financial circumstances are in serious deficit, with her annual expenditure vastly exceeding her annual income.

- o) In stark contrast, the Respondent/Husband's 2015 Statement of Financial Circumstances declares his total annual income from his salary as a Consultant at the Queen Elizabeth Hospital together with his net income from his profession as a urologist to be approximately \$636,000.00. Unlike the Applicant/Wife who is operating an unsustainable deficit, when his estimated annual expenditure shown in his Statement of Financial Circumstances is deducted from his income, the Respondent/Husband has an annual surplus of \$16,600.00.
- p) Turning to the parties' respective property and financial resources, as clearly appears from the Respondent/Husband's Statement of Financial Circumstances, when compared with his Personal Financial Statement which was adduced in evidence as Exhibit "RK 2", there is such an enormous discrepancy between the Respondent/Husband's net worth of \$20.5 million as disclosed in Exhibit "RK 2" and his net worth of only \$16,600.00 declared on his Statement of Financial Circumstances filed on March 19th, 2015 that it was difficult for the Court not to conclude that the Respondent/Husband had very likely grossly underreported his financial circumstances.
- q) The Court's conclusion that the Respondent/Husband had underreported his financial circumstances was inevitable since Exhibit "RK 2" clearly shows his declared savings as at October 29, 2014 as \$600,000.00, whereas his Statement of Financial Circumstances filed on March 19th, 2015 (a mere 5 months later) suggested, quite incredulously, that he currently has no credits in

bank savings accounts, building societies etc and no cash in hand at any bank.

- r) In contrast, the Court found that although the Applicant/Wife's net worth on paper stands in the region of \$1.6 million Barbados currency, she having acquired an income earning townhouse in Welches Grove which is not fully paid for, she is essentially cash poor having only savings of \$100,000.00 and cash in hand of \$500.00 and a grossly inadequate monthly pension of \$1,756.32.
- s) 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 specialist urologist with a substantial annual income from his employment both as a QEH Consultant as well as from his private practice, the Applicant/Wife is already retired from her post as Assistant Registrar at CXC and would need to consider re-entering the job market at age 61 to make ends meet.
- t) **Re: Section 53(2)(d) - the financial needs and obligations of each of the parties:** The Court has concluded that while the Applicant/Wife's pension and her rental income from Welches Grove townhouse are insufficient to satisfy her current financial obligations, the Respondent/Husband clearly has sufficient financial resources to be able to satisfy not only his needs and obligations, but to also simultaneously provide urgent interim financial assistance to the Applicant/Wife.

u) Accordingly, given the above findings, the Court is unable to accept the submission of Counsel for the Respondent/Husband, Miss Greene, that the Applicant/Wife is not in need and that her application for urgent maintenance should be dismissed. The Court is instead satisfied that she is unable to adequately support herself and that the Respondent/Husband would suffer no financial hardship in providing the urgent interim assistance which the Applicant/Wife desperately needs.

v) **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 accepted that the Applicant/Wife is retired and currently receives a meagre pension of \$1,756.32 per month. Although the Applicant/Wife pays a monthly premium of \$250.00 to Sagicor towards a pension insurance which is expected to pay her approximately \$900.00 per month in 9 years when she turns 70, she will not be not eligible to receive that sum for another 9 years. Accordingly, the Court is satisfied that the second Sagicor pension cannot help alleviate her current financial situation. Additionally, at age 61, she is not presently eligible to receive an NIS pension.

w) The Husband's 2015 Statement of Financial Circumstances does not suggest that he is part of any pension plan or savings scheme. Like the Applicant/Wife he will become entitled to receive an NIS pension in the future. Nonetheless, as Exhibit "RK 2" suggests, the Respondent/Husband's net worth as at October 29, 2014 was

\$20.5 million Barbados currency, including savings of \$600,000.00.

- x) In the Court's view, the Respondent/Husband has very considerable financial resources and is in a position to satisfy not only his needs and obligations, but to also simultaneously provide urgent interim maintenance to the Applicant/Wife at least until the hearing and final determination of the Applicant/Wife's Application for ancillary relief filed on November 11, 2003.
- y) **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 evidence discloses and the Court accepts that during the marriage, particularly in the years after the Respondent/Husband had graduated and established himself professionally, the parties and their 4 children lived very comfortably indeed.
- z) The family lived in their own home paid for by the income generated by the Respondent/Husband from his employment as a medical practitioner both in Canada and Barbados. Although the Applicant/Wife remained at home and contributed as a wife, mother and homemaker, the Respondent/Husband's income was such that the family was able to afford a maid who helped with the children and with the cooking, cleaning and washing for the family under direction of the Applicant/Wife.
- aa) Following their separation in 1997, the Applicant/Wife continued to live in the very spacious 4 bedroom matrimonial home with

some of the children. The Respondent/Husband initially continued to pay the all outgoings for the property, but as her Statement of Financial Circumstances filed in 2004 clearly shows, the Applicant/Wife is now solely responsible for all outgoings and expenses in respect of the former matrimonial home which is an aging home and in need of immediate repair and refurbishment.

- bb) A comparison of the Applicant/Wife's Statements of Financial Circumstances filed in 2004 and 2015 respectively will also reveal that her financial circumstances have changed for the worse as she is now retired and currently no longer in receipt of the annual salary of \$87,601.00 which until her retirement in 2013, she had earned from her employment as an Assistant Registrar with the CXC.
- cc) Additionally, although she is the owner of a townhouse in Welches Grove which is rented out, the rental income of \$2,500.00 per month which she receives is applied towards repayment of the monthly mortgage instalment of \$4, 930.00, resulting in a shortfall.
- dd) By comparison, and as is evident from his 2015 Statement of Financial Circumstances, the Respondent/Husband earns a total annual income of \$636,000.00. He continues to live comfortably and has acquired valuable real estate and shares in numerous companies.
- ee) *Re: section 53(2)(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: – The Court is satisfied and finds that during the marriage the Applicant/Wife made significant contributions to the income, earning capacity and property of the Respondent/Husband. Following their marriage in 1973 and doubtless, by reason of her tertiary level qualifications as the holder of a Bachelor of Arts degree, she was able to secure full-time employment in Canada, and subsequently in Jamaica and Barbados thereby enabling the Respondent/Husband to study full-time and to acquire his academic and professional qualifications in his chosen field.

ff) Although the extent of the Applicant/Wife’s contribution in supporting the Respondent/Husband and their young family while he undertook his medical studies and developed his practice in Canada, Jamaica and Barbados is in dispute, the Court is satisfied that the role she played over the years as a wife, mother, homemaker, including the work she performed as an unpaid office manager in his medical practice, contributed in no small measure to the earning capacity of the Respondent/Husband and to his ability, as the eventual sole breadwinner of the family, to acquire the family’s considerable financial resources. Her contributions also enabled him to concentrate on his professional and financial ambitions, freed of the burdens of the household.

gg) ***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 Court is satisfied that the marriage was a relatively lengthy one. It commenced with the couple’s marriage in 1973 and

officially terminated following a Court order made in 2004 and so would have officially lasted approximately 30 years. However, difficulties arose between the parties in the late 1990's with the Respondent/Husband finally moving out of the matrimonial home in May 1999. For practical purposes, it may be said that the marriage lasted approximately 24 years.

- hh) In the period following the family's relocation to Barbados in 1990, the Applicant/Wife earned no income and was primarily a 'stay-at-home' wife, mother and homemaker. Whether the Applicant/Wife stayed at home by choice or by agreement with the Respondent/Husband after their return to Barbados in 1990, is unclear. However, she opened a flower business in 1994, and closed it in 1998 after just over 3 years, due, she claims, to its unprofitability. The Respondent/Husband alleges that the business was in fact a successful venture.
- ii) Again, while it is unclear whether her decision to work outside the home was in any way connected with the difficulties the parties were experiencing within the marriage around that time, the Applicant/Wife obtained full-time employment in 1998 and embarked on a full-time career as an Assistant Registrar with CXC - a post she held until her retirement in 2013 at age 60. At the start of her full-time career with CXC, the Court is satisfied that she was already in her mid-forties.
- jj) The Court accepts the evidence of the Applicant/Wife and finds that having obtained full-time employment with CXC so late in

life, she was effectively only able to acquire approximately 15 years of pensionable service. In the result, she has only qualified for a monthly pension of \$1,756.32 which sum is insufficient for her needs. Given her annual expenses, the Court is satisfied and holds that her meagre monthly pension is inadequate to enable her to live comfortably, even accepting that she cannot expect to live at the exact standard as the family enjoyed during the marriage when the Respondent/Husband paid all the outgoings.

- kk) In contrast, the Respondent/Husband's professional career could be said to be at its height. As his 2015 Statement of Financial Circumstances shows, he is paid an annual salary of \$246,000.00 from his employment as a QEH Consultant and also receives a net income from Emtage Urological Services Inc of \$390,000.00 and is financially independent and has been for many years.
- ll) His practice is run through a corporate vehicle, Emtage Urological Services Inc, which he directs and controls, apparently as he alone sees fit. The Applicant/Wife has been a director and shareholder of the company from its inception. However, she is not involved in the company's operations and decisions. She receives no income from the company, save for gratuitous payments made from time to time by the Respondent/Husband since their separation and even after their divorce. Even the vehicle which she drives is owned by the company. Nor is there any evidence that she has ever been paid dividends from the company's profits on account of her shareholding.

- mm) *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 is of the view that that the justice of the case requires the Court to have regard to the fact that the Applicant/Wife's application for ancillary relief (including relief in the form of spousal maintenance) filed since 2003 has been considerably hampered and delayed by the apparent unwillingness and/or refusal of the Respondent/Husband to attend Court on the several dates when this matter has come on for hearing and/or to otherwise engage in the process with any sense of urgency.
- nn) The Court has adverted to the Third Affidavit filed by the Applicant/Wife on March 15, 2011 in which the Applicant/Wife details the several difficulties which she and her attorney-at-law have been experiencing in getting the Respondent/Husband to comply with her formal requests for discovery and production of financial information relevant to the substantive proceedings.
- oo) The said Affidavit also details the fact of the Respondent/Husband's failure and/or neglect, despite repeated requests, to transfer to the Applicant/Wife the former matrimonial home which was vested in her pursuant to the interim order of **Blackman J.** made on September 22nd, 2005.

- pp) The Respondent/Husband has in his Affidavit filed on March 19, 2015 only sought to formally respond (some 4 years later) to the Applicant/Wife's complaints about his lack of cooperation in relation to her requests for discovery and for the transfer to her of the former matrimonial home. He denies having resisted giving total disclosure of his assets or that he has not made full disclosure and informs the Court that there are certain legal stumbling blocks which, according to him, stand in the way of his effecting a legal transfer of the former matrimonial home to the Applicant/Wife.
- qq) The Court is satisfied that the unacceptably long delay which has occurred since the dissolution of the marriage in resolving the Applicant/Wife's substantive application for ancillary relief and settling the outstanding financial issues between the parties, has contributed in no small measure to the financial hardship which the Applicant/Wife is now facing.
- rr) The Court is firmly of the view that had the outstanding financial issues between the parties been resolved in a timely manner, the Applicant/Wife would undoubtedly have been in a more favourable position financially than the untenable one she finds herself in today.
- ss) It is not in dispute that she is a director and shareholder of Emtage Urological Services Inc. The company has evidently been the primary source from which many of the assets which the Respondent/Husband has acquired over the years (whether jointly

with the Applicant/Wife or in other companies which he controls) have been funded.

- tt) Yet, some 12 years following her application for ancillary relief filed in November of 2003, the Applicant/Wife is yet to receive a full financial settlement from the considerable financial resources controlled by the Respondent/Husband and in the interim, her overall financial situation has deteriorated considerably.
- uu) Finally, it has not escaped the Court's attention that despite the Applicant/Wife's requests for discovery and production of financial information filed in the proceeding as far back as May 13, 2005, it was only by virtue of a subpoena and from Exhibits "RK 1" and "RK 2" produced by Mr. Rommel King at the hearing, that the Court was able to obtain some insight into the Respondent/Husband's financial circumstances, including his considerable net worth, savings and financial resources.
- vv) The Court has already adverted to certain discrepancies which have been revealed between these documents and the Respondent/Husband's most recent Statement of Financial Circumstances filed on March 19th, 2015. It is clear that these discrepancies and many other matters will inevitably have to be explored in more detail at the long awaited hearing of the substantive application for ancillary relief.

[49] Having regard to the pleadings and to the totality of the evidence, the respective submissions and the applicable law, the Court is satisfied firstly, that it is not practicable for the Court to immediately hear and determine all

of the many issues which have arisen on the Applicant/Wife's application for ancillary relief (including her claim for spousal maintenance) filed November 11, 2003. Nor is it practicable for the Court at this time to immediately and finally determine what orders, if any, should be made on that application.

[50] However, having regard to the application for urgent interim spousal maintenance filed by the Applicant/Wife on January 7th, 2015 and to the foregoing findings of fact, the Court is satisfied that the Applicant/Wife is "*in immediate need of financial assistance*" and is "*unable to support herself adequately*" from her own income and resources so as to be able to enjoy a standard of living that is reasonable in all the circumstances.

[51] Finally the Court is also satisfied, based on the Respondent/Husband's Statement of Financial Circumstances filed on March 19, 2015 and the financial disclosures contained in Exhibits "RK 1" and "RK 2" adduced at the hearing, that the Respondent/Husband possesses significant financial resources, and generates sufficient income from his medical practice carried on as Emtage Urological Services Inc in which the Applicant/Wife is both a director and shareholder, so as to be "*reasonably able*" to financially contribute towards the urgent interim maintenance of the Applicant/Wife.

[52] **Disposal & Order:** In the result, the Court hereby orders that the Respondent/Husband shall pay to the Applicant/Wife as urgent interim spousal maintenance, the sum of \$12,000.00 per month commencing on April 30th, 2015 and continuing on the last day of each succeeding month until the hearing and determination of the Applicant/Wife's Application for Ancillary Relief filed on November 11, 2003 or until further order.

- [53] The Respondent/Husband shall also pay to the Applicant/Wife on or before April 30th, 2015, a lump sum payment of \$100,000.00, being the amount she has requested to enable her to carry out urgent repairs to the former matrimonial home which was vested in her by the interim order of **Blackman J.** on September 22nd, 2005 and which is in dire need of repair.
- [54] Finally, as the Court is satisfied that the circumstances of this case justify a departure from the general rule set out in *section 94(1)* of the *Family Law Act*, it is also ordered that the Respondent/Husband shall bear the Applicant/Wife's costs of the application for urgent interim maintenance certified fit for one attorney-at-law to be taxed, if not agreed.

Maureen Crane-Scott
Judge of the High Court