

BARBADOS

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
CIVIL DIVISION**

No. CV 208 of 2014

**IN THE MATTER OF THE MAINTENANCE OF THE
MINOR CHILDREN ZAIRE DWIGHT ANDRE
CARTER and ZAAIRE THOMAS BAYO CARTER**

-AND-

**IN THE MATTER OF THE MINORS ACT CAP. 215
OF THE LAWS OF BARBADOS**

BETWEEN:

ANDREA MAYNARD

CLAIMANT

AND

DWIGHT CARTER

DEFENDANT

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

**Dates of Hearing 2014: September 16th
November 4th
December 11th
2015: September 18th**

Appearances:

Mr. F. Albert Pollard Attorney-at-Law for the Claimant

Ms. Verla De Peiza Attorney-at-Law for the Defendant

DECISION

Background to this Application

[1] The parties herein were never married, nor are they *de facto* spouses within the meaning of the law. They are the parents of the two minor children, the subject of this

application, as a result of a visiting relationship which ended before the younger of the two was born (2011).

- [2] Prior to these proceedings, specifically on the 2nd October 2012, the Magistrate of the Holetown Magistrate's Court recorded a Consent Order requiring the Defendant to pay the sum of \$400 per month in respect of the said two children. This Order was discharged by the Claimant in order to pursue the application currently before the Court.

The Application

- [3] This is a common form of application made in the case of unmarried (visiting) parties with minor children. It is an application commenced by Fixed Date Claim Form on February 13th 2014 under the **Minors Act, Cap. 215 of the Laws of Barbados** and invoking the inherent jurisdiction of the Court as it relates to children (see also **Supreme Court of Judicature Act, Cap. 117A**). There is no jurisdiction vested in this Court under the **Family Law Act, Cap. 214** in a matter of this nature, but these courts have routinely applied the same principles when hearing applications in the High Court under the **Minors Act [sections 7 and 10(2)]** for maintenance, as those applied under the **Family Law Act**. In short, this Court looks at the needs of the child (bearing in mind that both parties have a responsibility to contribute to its maintenance and that the needs of the child should be distinguished from the carer's needs) which is balanced against the financial resources of the parents (ability to pay).
- [4] It is an application that the Defendant pay to the Claimant the sum of \$800 per month in respect of their two minor children Zaire Dwight Andre Carter and Zaari Thomas Bayo

Carter together with one-half of all medical, dental, ophthalmic, pharmaceutical and educational expenses and also extra-curricular expenses.

[5] The Claimant's accompanying documents of even date, Statement of Income and Expenditure and Affidavit in Support should endeavour to establish the "needs" of the children the subject of this Application. The Claimant reveals an annual income of \$59,003, but total annual expenses of \$64,854; a deficit of \$5851. Her Affidavit reveals that the Claimant has the responsibility of 4 minor children, two of whom are from her previous marriage. Her Statement of Income and Expenses reveals that she is receiving \$9600 per annum/\$800 per month for the maintenance of these two minor children. There appears to be no accounting in this document for the maintenance received from this Defendant. In the expenses column there is a sum of \$6000 for Child Care and education, but it is unclear whether this figure relates to two children or 4 children. This Statement of Income and Expenditure was amended September 2014: annual income was increased to \$61,971.00 and expenses to \$78,338.16; showing a deficit of \$16,367.16. The increases relate to increased costs of Income Tax, National Insurance, Life insurance and car maintenance.

[6] The Claimant has declared that she is having severe difficulty meeting the financial needs of the minor children the subject of this application, despite the existing maintenance order of \$400 per month.

[7] The Defendant's documents in response are a Statement of Financial Circumstances and Affidavit in Response. His Statement reveals income of \$33,757.08 and expenses of \$32,800.

[8] Both parties requested further information, evidence of which can be found on the file.

[9] An Interim Consent Order was made by this Court on June 4th 2014 on the same terms as the now discontinued Magistrate's Court Order, with the addition that "the Defendant do pay to the Claimant one-half of all medical, dental, ophthalmic, pharmaceutical and educational expenses inclusive of books and uniforms and also all extra-curricular activities reasonably incurred on behalf of the said children until further order."

[10] Both parties are primary school teachers.

The Case for the Claimant

[11] The Claimant submits that the Defendant is financially able to pay a greater sum from his combined income as a teacher together with income he receives from the sale of chickens raise commercially.

[12] She also argues that the Defendant is expected to complete a course of training to qualify him as a teacher with prospects of a salary increase in accordance with the Civil Establishment Teachers Order 2008.

The Case for the Defendant

[13] The Defendant has one source of income, that being his income as a teacher. While he has raised chickens in the past he is presently not earning income from this as his present workload has prevented him from doing so. He has earned no income from this source since December 2013 when he sold his last stock.

[14] The sum of \$400 per month was an amount agreed by the parties and recorded by the Magistrate at the Oistins Court in October 2012 and he is unaware of any changes in the circumstances of the Claimant to necessitate any change in the maintenance sum. His circumstances, however, have changed, as since the filing of his Statement of

Financial Circumstances he entered into an arrangement in August 2014 to purchase a vehicle for his transportation.

The Oral evidence

[15] Both parties gave evidence and were cross-examined.

[16] Counsel for the defendant summarized the oral evidence given to this Court in her Written Submissions filed January 6th 2015 and this Court accepts that summary for these purposes.

Court's Findings and Observations

[17] This Court made the following findings and made certain observations as follows:

1. The Claimant has financial responsibility for 4 children, two of whom are from a previous marriage and maintained by their father. Insufficient attention was paid to establishing what part of the overall expenses of the household can be attributed to the subject minor children as opposed to the expenses of the other occupants of the household.
2. The Claimant has failed to establish on the balance of probabilities that the Defendant has a source of income other than his earnings as a teacher.
3. The Claimant has focused on the ability of the Defendant to pay an increased maintenance and insufficiently on establishing the increased (subsequent to 2012) needs of the minor children. Little effort was made to persuade or satisfy this Court that the sum of \$400 is inadequate to meet the needs of the children. Stated differently, that the sum of \$800 is a reasonable sum to meet the needs of the two minor children.
4. Additionally, the Claimant has failed to establish what part of the maintenance needs of the two children are met by her from her income.
5. This Court accepts that the Defendant's disposable income is (or will be) marginally greater than revealed by his Statement of Financial Circumstances: for example, this Court accepts that the hire purchase payments shall come to an end before the end of 2015, but it is evident that his assumption of further debt subsequent to the filing of his Statement in the form of a car loan has significantly impacted on his cash flow/disposable income. It is noted however, that he receives help from his grandmother towards this outgoing.

6. Judicial notice is taken of the increased cost of living in Barbados for the period 2012 to 2015.

[18] This Court observes that the Claimant's attorney in his Written Submissions made reference to facts that were not deposed in the Affidavits or given in oral testimony. Any such evidence cannot properly be taken into account in this determination.

[19] Ironically, however, those submissions offered an insight into this matter. It is quite evident there from that the severe financial difficulties of the Claimant appear to arise from the fact that the Claimant's ex-husband and father of her two older children has died and as a result she has been receiving no maintenance for them. In addition, at paragraph 10 of his Written Submission he states:

“10. The eldest son (not the son of the Defendant) has severe medical conditions requiring constant attention and frequent medical intervention. This is without medical insurance and whatever costs are incurred other than at the Queen Elizabeth Hospital as an out-patient, have to be met up-front. To compound matters further, the eldest son is expected to undergo 2 surgeries...”

[20] This information, inappropriately drawn to the Court's attention is not relevant to the tests to be applied, but does underscore the opinion already reached that there is no proven causal link between the financial difficulties of the Claimant and the needs of the subject children. It underscores the need of the Court, as emphasized by counsel for the Defendant, not to confuse the carer's needs with those of the children.

[21] In view of the above this Court orders as follows:

It is ordered:

1. That the Defendant pay to the Claimant the sum of \$500 per month in respect of the maintenance of the minor children Zaire Dwight Andre Carter and Zaaire Thomas Bayo Carter with effect from the 28th day of January 2015 and thereafter on every 28th day of the month.
2. That para 2 of the Order of 4th June 2014 is made final.

3. Joint custody of the two minor children Zaire Dwight Andre Carter and Zaire Thomas Bayo Carter shall be vested in the Claimant and Defendant.
4. The care and control of Zaire Dwight Andre Carter and Zaire Thomas Bayo Carter shall be vested in the Claimant with reasonable access to the Defendant, or in default of agreement, to be determined by the Court.
5. Each party shall bear his/her own costs.

MARGARET A. REIFER
Judge of the High Court