

**BARBADOS**

**[Unreported]**

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

**No. 98 of 2016**

**BETWEEN:**

**AF**

**WIFE/APPLICANT**

**AND**

**SA**

**HUSBAND/RESPONDENT**

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

**Date of Hearing: 2017 December 7**

**Date of Decision: 2018 December 14**

**Appearances:**

**Mrs. Duana Peterson Attorney-at-Law for the Applicant//Wife**

**Mr. Benjamin A. Drakes Attorney-at-Law for the Respondent/ Husband**

**RULING**

**Application**

[1] This is an application for an order increasing the maintenance of two minor children from \$1000 to \$1500 per month.

## **History and Background**

- [2] The parties (hereinafter referred to as the Wife and the Husband) were married on 23 December 2005 and separated sometime in 2014.
- [3] Pursuant to an application for dissolution of marriage filed 1 March 2016 by the Wife, this Court on 16 June 2016 granted an Order under **section 27** of the **Family Law Act Cap. 214 (the Act)**.
- [4] No orders have as yet been granted under **section 42** of the **Act**.
- [5] This marriage produced two children, Leila Naomi and Kai St. Clair born 17 December, 2007 and 16 November 2009 respectively. At the date of hearing of this matter they were 10 and 8 years old respectively.
- [6] Care and control is with the Wife who continues to reside in the children's childhood home, but joint custody was vested in the parties. Access arrangements were agreed and reflected in the Interim Order made by the Master on 19 April 2016, but subsequently became contentious; the Husband's expressed desire being that the arrangement be changed to a week-on week-off basis, which was objected to by the wife. The Wife questions the Husband's true motive in this regard. She has no objection to the Husband's liberal access to the children during the week. This issue is not presently being pursued.

[7] The said Interim Consent Order provided for the payment of maintenance by the Husband in the sum of \$800 per month together with the further payment of one-half of all educational, dental, ophthalmic, pharmaceutical and extra-curricular expenses on presentation of bills and invoices by the Wife. The Husband undertook in this Consent Order to pay the full cost of the children's medical expenses and his Statement of Financial Circumstances reveals that he pays for a policy of medical insurance. This remains the *status quo*.

[8] Thereafter, it became apparent that the parties were bitterly divided on the issue of the quantum of maintenance to be paid by the Husband, among other things.

[9] An application for the settlement of matrimonial property was filed on 8 April 2016, but has not been pursued to date and therefore cannot be taken into account as required by **section 53(2)** of the **Act**.

[10] This matter has focused primarily on the issue of maintenance and access arrangements pursuant to Application for Other Relief in a Matrimonial Cause filed 28 October 2016 seeking, *inter alia*, the subject increase to \$1500. Miscellaneous Statements of Financial Circumstances and Affidavits in Support have been filed as follows:

1. Statements of Applicant/Wife filed 1 March 2016; Amended Statement of Financial Circumstances and Affidavit in Support filed 28 October 2016; 1 June 2017.

2. Statements of Respondent/Husband filed 18 April 2016;  
Affidavit 29 March 2017.

[11] By Order dated 21 July 2016 this Court increased the quantum of maintenance payable from \$800 to \$1000 per month until further Order.

### **Submissions**

[12] The Wife's most insistent argument is that the payment of \$1500 represents the *status quo*, in that prior to the separation of the parties the Husband would deposit this sum by automatic salary deduction into a joint account for the purpose of maintenance, educational and extracurricular expenses associated with the minor children. He ceased doing this on or around November 2014 reducing the amount deposited to \$500.

[13] She alleges that she spends \$1500 per month alone in the purchase of food, vitamins, toiletries, snacks and over the counter medications for the children. This is exclusive of extra-curricula activities and associated costs, the purchase of school items etc. Her monthly expenditure exceeds \$3000 (\$3316 according to the budget exhibited to the Wife's affidavit of 28 October 2016).

[14] The Husband alleges that the sum of \$1500 deposited monthly to the joint account was for the purpose of defraying the household expenses in their entirety. The Wife's contribution was \$500.

[15] The Wife's counter to this is, that this was merely the amount deposited by her to the joint account. Her salary was spent in support of the children and the household generally.

### **Oral Evidence**

[16] Both parties were sworn and were cross-examined.

[17] Written Submissions were ordered by the Court and those of the Husband filed 29 December 2017 have been received and considered by the Court.

[18] To date the Written Submissions of the Applicant/Wife remain outstanding. I have today (12 December) been handed Written Submissions of the Wife filed 11 December 2018. They too have been reviewed and considered.

### **Applicable Law**

[19] The approach in matters of this nature is the standard Means/Resources vs Needs Assessment.

[20] This is reflected in **Sections 51 to 55** of the **Family Law Act** which provides as follows:

“51. 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.”

[21] **Section 52** outlines the discretion of the Court in the following terms:

“52. 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.”

[22] **Section 53** is the most important provision in this regard, as it provides that in determining the amount of maintenance only the following matters should be taken into account. **Section 53(2)** therefore provides:

“53(2) The matters to be taken into account for the purposes of this section are as follows:

- (a) the age and state of health of each of the parties;
- (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- (c) whether either party has the care or control of a child of the marriage or union other than marriage who has not attained the age of 18 years;
- (d) the financial needs and obligations of each of the parties;
- (e) the responsibilities of each party to support any other person;
- (f) the eligibility of either party for a pension allowance or benefit under any Act or rule or under any superannuation fund or scheme, or the rate of any such pension allowance or benefit being paid to either party;
- (g) where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;
- (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (i) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;
- (j) the duration of the marriage or union other than marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;
- (k) the need to protect the position of a woman who wishes only to continue her role as a wife and mother;
- (l) if the party whose maintenance is under consideration is cohabiting with another person the financial circumstances relating to the cohabitation;
- (m) the terms of any order made or proposed to be made under section 57 in relation to the property of the parties; and

(n) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.”

[23] The provisions of **section 54(1)** are particularly relevant in the context of the Wife’s submissions. The relevant part of the provision provides:

“54 (1) In determining

- (a) whether to make an order for the maintenance of a child of a marriage...; or
- (b) ...

the court shall take into account, in addition to the matters set out in **section 53(2)**, the following:

...

- (ii) the financial needs of the child; and
- (iii) the manner in which the child is being, and in which the parties to the marriage ... expected the child to be educated or trained.”

## **Findings of fact**

[24] The main findings are as follows:-

1. That the \$1500 paid into the account by the Husband at the time of separation was meant to defray household expenses generally. The Wife admits this at paragraph 4 of her affidavit of 1 June as follows:

“... The monies deposited on the joint account by the Respondent/Husband were used to purchase groceries, toiletries and household supplies, medical expenses, pay for the children’s activities and general upkeep and maintenance of the family. This was done since I was the one responsible for the management of the home and did not want to request from him monies during the course of the month as additional expenses arose.”

2. The Husband’s income far exceeds the Wife’s. He is an architect in apparently stable employment. She is a trained teacher who is also a trained attorney-at-law, but continues in the teaching profession, earning no income as an attorney-at-law. His income is more than twice hers.
3. The children have an active lifestyle inclusive of karate, ballet, tennis, scouts, music and academic lessons, family outings etc. which they appear to have enjoyed pre-and post-separation. It is a standard crafted

by both parties. The standard to which they are accustomed appears threatened. See in particular Wife's affidavit of 1 June 2017.

4. The Court has to balance the children's needs with the fact that there is a matrimonial property with respect to which the Husband continues to pay a monthly mortgage together with his other expenses now that there are two households. There is a curious lack of information as it relates to this property.
5. Both parties enjoy the benefit of rent free accommodation at properties allegedly owned by family members.
6. The Wife's Amended Statement of Financial Circumstances does not take into account the maintenance of \$12,000 per annum. Her total income is therefore \$68,823.12. Her deficit is therefore \$4862.92 (Total expenses \$73,686.04 less total income of \$68,823.12).
7. No allowance appears to be made in her Statement of Financial Circumstances for the fact that the Wife, pursuant to the Consent Order of 19 April 2016, is entitled to be refunded one-half of all educational, dental, ophthalmic, pharmaceutical and extra-curricular expenses on presentation of bills or invoices. Presumably, she is entitled to recover for example, one-half of the sum of \$8,040 listed by her as the cost of Extra-Curricular Activities on the presentation of bills and invoices.
8. The Husband claims to spend \$600 per year on School Uniforms and School Supplies. The Wife's Statement provides that she spends \$2000 per year on this expense. Presumably, this item should fall under educational expenses and the Wife is entitled under the Consent Order to recover one-half of these expenses and to credit the Husband if he has spent \$600 on that expense. He also alleges that he is spending \$600 per year on extra-curricular expenses. If proven there should be some adjustment and/or set off for this.
9. According to the figures provided by the Husband's Statement of Financial Circumstances, his Student Loan should be repaid or almost repaid freeing up \$6000 per year.
10. According to the figures provided by the Husband's Statement of Financial Circumstances, the Scotia Bank Loan is likely to be repaid in 2019 resulting in a further increase in disposable income in 2019.

## **Conclusion**

[25] On the figures presented by the Wife she has not convinced this Court that an increase in maintenance of \$500 per month is warranted. This Court is of the view that many of the increases claimed by the Wife can be accommodated in the one-half of educational, dental, ophthalmic, pharmaceutical and extra-curricular expenses on presentation of bills and invoices. Both parties need to commit to the better management of this process.

[26] However, in full and fair consideration of this matter this Court will take judicial notice of the rise in the cost of living in this jurisdiction bearing in mind that the July 2016 Order is now some two and a half years old.

## **Disposal**

[27] In the exercise of the Court's discretion herein, and on a review and consideration of the matters outlined above, it is ordered as follows:

1. Paragraph 1 of the order of July 2016 is varied to the extent that the Husband shall with effect from the month of December 2018 pay the sum of \$1100 per month towards the maintenance of the minor children.
2. From henceforth pharmaceutical expenses shall include over the counter medications which shall be re-imbursed on presentation of bills and invoices by the Wife;

3. The Husband shall bear the cost (replacement and maintenance costs) of the cell phones purchased by the Wife to facilitate the children's communication with the Husband.
4. No order is made as to costs.

**MARGARET A. REIFER**  
Judge of the High Court