

BARBADOS

[Unreported]

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

FL. No. 15 of 2008

**IN THE MARRIAGE OF:-
KATHYANNE YEARWOOD**
of Ellis Village, Hall's Road
in the parish of Saint Michael
in this Island

APPLICANT/WIFE

AND

TERRY YEARWOOD
of Ellis Village, Hall's Road
in the parish of Saint Michael
in this Island

RESPONDENT/HUSBAND

Before the Honourable Mr. Justice William Chandler, Judge of the High Court

**Dates of Hearing: 2015 June 2, November 10
2020 July 10**

Date of Decision: 2021 December 30

Appearances:

**Mrs. Rita Evans Attorney-at-Law for the Applicant/Wife
Mrs. Sandra Browne Attorney-at-Law for the Respondent/Husband**

Family Law-contempt proceedings-definition of contempt-contempt as defined in the Family Law Act of Barbados-noncompliance with order of Court-subsequent orders-whether subsequent orders rendered contempt proceedings nugatory.

Decision

INTRODUCTION

[1] On 20 May 2009 the Applicant/Wife filed an application for an Order that the Respondent/Husband show cause why he ought not to be committed to prison for contempt of Court in failing to comply with an Order of this Court made on 3 April 2000 (the Order) in respect of the maintenance of the infant children of the marriage and ancillary expenses.

Brief Background

[2] The parties were married on 9 December 1995. There are two minor children of the marriage TMY and TY whose maintenance is the subject of this application.

[3] The husband is a carpenter who contracts out his labour to construction companies in return for a fee. The Wife is employed as a laundry assistant.

[4] The marriage between the parties has broken down irrevocably and as a result the Applicant/Wife applied for dissolution of the marriage. Decrees nisi and absolute of dissolution of the marriage were pronounced on 29 February 2008 and 3 April 2008 respectively.

[5] The husband has made sporadic payments towards the maintenance and expenses arrears of which, at the date of filing, stood at \$9,055.00.

[6] It is in respect of these arrears that the contempt application has been brought.

[7] Having taken all the evidence in the matter and in the course of preparing the decision the Court was reminded that the Order upon which the contempt application is predicated had become the subject of the following subsequent orders:

- (a) On 29-02-2008 it was ordered that the Respondent/husband pay the Applicant/Wife the sum of \$50.00 per week towards the maintenance of each child with effect from 29-02-2008 until further order.
- (b) On 3 April, 2008 that order was varied to \$60.00 per week in respect of the maintenance of TY and \$85.00 per week with respect to TMY, with effect 4 April, 2008 together with $\frac{1}{2}$ of the usual ancillary expenses. The sums were ordered to be paid into an account in the name of the Applicant/Wife.
- (c) On 10 June 2011 the Respondent/husband was ordered to pay \$375.00 per week, of which \$60.00 was for the maintenance of TY **in compliance with the order 3 April, 2008** and the remainder towards the arrears of maintenance commencing 10 June, 2011 and continuing every Friday thereafter until further order.
- (d) On 18 June 2012, it was ordered that the dwelling house at Ellis Village aforesaid be valued and that the Respondent/husband transfer his one half share and interest in the property to the

Applicant/Wife **in partial satisfaction of the arrears of maintenance (emphasis added).**

(e) On 23 April 2013 it was ordered by consent that the agreed valuation of the dwelling house was the sum of \$17,500.00. It was further agreed and ordered that the Respondent/husband's share an interest in the dwelling house was \$8,750.00 which was **to be deducted from the arrears of maintenance at the date of the order (emphasis added)**. Those arrears were to be calculated by the attorney-at-law for the Applicant/Wife and forwarded to the husband's attorney-at law by 4 June 2013.

(f) On 8 May 2015 it was ordered that the Respondent/husband pay the sum of \$200.00 per week **towards the arrears of maintenance (emphasis added)** with effect from 8 May 2015 and continuing on each successive Friday until further order. That sum was also ordered to be deducted from the Respondent/husband's wages with his then employer.

[8] In these circumstances, the issue arises as to whether or not the contempt application was properly before the Court. The Court therefore invited counsel on both sides to address this issue.

The Orders for filing of submissions

[9] On 10 November 2015, the Court ordered both parties to file and serve written submissions on or before 27 November 2015. Again on 10 July

2020, counsel were ordered to file and serve submissions on or before 21 August 2020.

The Submission on behalf the Respondent/Husband

[10] Ms. Sandra Browne, counsel for the Respondent/Husband filed written submissions on behalf of the Respondent/Husband on 24 August 2020. The Respondent/Husband's counsel premised her submissions on the definition of contempt proffered by the leaned authors of *The Law of Contempt, 4th edition, Borrie and Lowe, Lexis Nexis UK, 2010 (Borrie and Lowe)* hereinafter quoted and *Attorney General v Butterworth 1963, 1 QB 696*. It was counsel's opinion that content consists of disobedience to an order of Court where a party against whom the order is directed fails to adhere to the said order causing injury harm or damage.

[11] The elements which had to be satisfied were, in her opinion, the following:

- a. There must be a valid Court order in effect,
- b. the other person knows of the Court order,
- c. the facts show a clear violation of the order,
- d. notice of the contempt hearing and a chance to be heard must be given to the person allegedly in contempt and
- e. contempt may be the appropriate remedy for the violation.

Miss Brown submitted also that the standard of proof is the criminal standard of proof beyond all reasonable doubt and that the application should only be made as a "last resort". Counsel conceded that the Respondent/Husband had breached the order of 3 April 2008, however the

Court subsequently ordered him to pay \$500 per month until the arrears were paid but again he fell into arrears. It was also her submission that a variation of the initial order implicitly “informed” that the Court was not proceeding on the contempt issue and did not view the committal of the Respondent/Husband as the most effective remedy. It was her submission that the variation of the order from \$500 per month to \$375.00 per month towards the arrears of maintenance was an indication that the Court was highly persuaded that there was no intention by the Respondent/Husband to wilfully violate the order of 3 April 2008.

[12] Counsel argued that the contempt application mentioned that the Respondent/Husband has paid \$9, 500.00 over a period of time inclusive of the transfer of his interests in the matrimonial home valued by agreement at \$8,750.00 together with other payments to the Applicant/Wife. While Ms. Browne conceded that the Respondent/Husband’s failure to adhere to the orders continued until he agreed to, and did, transfer, his interest in the matrimonial property, she argued nevertheless that the value of his interest together with sporadic payments over the years largely extinguished the claim brought for contempt.

[13] Contempt proceedings, in Ms. Brown’s submission, cannot be employed in respect of future breaches and therefore the application filed on 20 May 2009 could not be used against the Respondent/Husband for breaches in respect of orders subsequent to the application for contempt.

- [14] Ms. Brown recognized that the Respondent/Husband was in breach of the orders made subsequent to 3 April 2008 however, she opined that fresh proceedings ought to have been brought against the Respondent/Husband for each breach.
- [15] She further submitted that, although the Respondent/Husband was irresponsible in his actions, the onus was on the Applicant/Wife to initiate fresh contempt proceedings in relation to each instance where subsequent orders were breached. It was her submission, therefore, that the violation of the subsequent orders would be the basis for a fresh contempt proceedings and that the application filed 20 May 2009 could not be applied to the orders made on 15 July 2009, 10 July 2011, 18 June 2012 and 8 May 2015. Each breach of those subsequent orders, counsel opined, would give rise to fresh contempt proceedings.
- [16] The Respondent/Husband was entitled, in counsel's submission, to have notice of the allegations communicated to him. Ms. Brown posited that the Respondent/Husband ought to have been served personally with a copy of the orders endorsed with the penal notice, a copy of the application for content and a copy of the affidavit evidence in support of the application. This would have afforded the Respondent/Husband the fundamental right to be heard in respect of the allegations against him.
- [17] It was Ms. Brown's opinion that the Applicant/Wife craved compliance with the Order and did not seek an Order of imprisonment of the

Respondent/Husband. Finally, counsel submitted that fresh proceedings ought to be served in relation to the subsequent Orders and proof made of the Respondent/Husband's wilful and intentional disobedience to these Orders and that the Respondent/Husband had the ability to comply with each subsequent Order.

[18] Regrettably and uncharacteristically, Ms. Evans did not file any submissions on behalf of the Applicant/Wife.

The Issues

[19] The primary issue is whether the Respondent is guilty of contempt of Court, and, if so, what is the appropriate punishment.

[20] The secondary issue is whether the subsequent orders of Court have rendered this application for contempt no longer enforceable. It is obvious that if the secondary issue is answered in the affirmative, the first issue pales away. We therefore look to resolve the secondary issue first.

The Law

[21] Before proceeding to examine the secondary issue, we set out the law applicable to contempt proceedings. *Borrie and Lowe* define contempt as either contempt by interference or contempt by disobedience. Contempt by disobedience comprises disobeying court orders and breaking undertakings given to the court. They opine that it is important that the law provides sanctions for the enforcement of the process and orders of a court. A similar definition has been given by the learned authors of *Arlidge, Eady & Smith*

on Contempt, London, Sweet & Maxwell, 2005 who define contempt as consisting of “disobedience of a court order or undertaking by a person involved in litigation.” For the purposes of this decision, it is unnecessary to define contempt by interference.

[22] **Section 87** of the **FLA** provides for the enforcement of decrees and orders made under the **FLA** as follows:

“The rules may make provision for and in relation to the enforcement of decrees made under this Act, including provisions in respect of

- (a) ...;
- (b) ...
- (c) the enforcement of arrears of maintenance;”

Rule 106. (4) of the **Family Law Rules** provides that:

“If a person alleges that another person has willfully disobeyed a decree of a Court, he or she may file in that Court an application in accordance with Form 6 together with an affidavit setting out the details of the alleged wilful disobedience.

The procedure is as follows:

106. (1) Where it is alleged, or it appears to a Court that a person is guilty of contempt in the face of that Court, the Court may order the person to be brought before the Court; or issue a warrant for the arrest of that person.

When the person is before the Court, the Court shall cause him to be informed orally of the contempt with which he or she is charged; may require him or her to show cause why he or she should not be dealt with for the contempt; after hearing him or her and any evidence offered, may determine whether he or she is in contempt, whether he or she has purged the contempt, and whether he or she should be punished for contempt; and may make an order for punishment or discharge, as the Court thinks fit.

The Court may, pending disposal of the charge direct that the person be kept in custody; or direct that the person be released with or without security in such sum as the Court may direct that he or she will appear in person to answer the charge.

If a person alleges that another person has willfully disobeyed a decree of a Court, he or she may file in that Court an application in accordance with Form 6 together with an affidavit setting out the details of the alleged wilful disobedience.

- (5) A copy of the application and affidavit shall be served in accordance with rule 20(a) on the other person.
- (6) If, on the hearing of the application, the other person does not appear, the Court may act in accordance with sub-rule (1).
- (7) If, on the hearing of the application, the other person appears, the Court may act in accordance with sub-rule (2).

107. Every order or judgement in any proceeding requiring a person to do any act ordered by that order or judgement shall state the time within which the act is to be done and there shall be endorsed on the copy of the order or judgement served upon the person required to comply, the following words

“If you (A B) neglect to comply with judgement/order you will be liable to process of execution for the purpose of ensuring your compliance.”

The Discussion and Analysis

- [23] **Section 87 of Cap 214 and Rule 106 (4)** do not specifically mention the word “contempt”, however the words “wilfully disobeyed” in **Rule 106 (4)** make it abundantly clear that an application may be brought for contempt of Court.
- [24] Having established the applicable law, I now turn to the second issue. The Application for contempt is in respect of the order made on 3 April 2008. Subsequent to that order, the parties, in an effort to resolve the issue of continuing default consented to the subsequent orders set out at paragraph [7] above.
- [25] Paragraph 2 the Order of 15 July 2009, provides “ That for the avoidance of doubt the Order made by this Honourable Court on the 3rd day of April, 2008 remains in full effect;” There is no such caveat in the other Orders.

[26] The query raised by the Court was informed by the fact that, at first blush, the subsequent Orders appeared to have varied the Order which is the subject matter of these proceedings, however, the words set out in parenthesis in the subsequent Orders make it clear that the Order remained intact.

Conclusion

[27] I am of the opinion and hold that the subsequent Orders did not vary the Order and that contempt proceedings have properly been invoked in this case. In the circumstances, I am of the opinion that the present application for contempt can properly be maintained.

[28] I now proceed to discuss whether the Applicant/Wife has established that the Respondent/husband is guilty of contempt of this Court's Order.

Discussion and analysis

[29] The Applicant/Wife filed an affidavit in support of the application on 20 May 2009 in which she deposed to the fact that the various Orders set out in this decision were made. She further deposed that the Respondent had failed to comply with the Order and had not made any payments whatsoever towards the maintenance of the children of the marriage. The Applicant/Wife, at paragraphs 7 to 9 of the affidavit, also deposed that she had become solely responsible for the maintenance of the children since their entry into various educational institutions totalling \$9,055.00.

- [30] At paragraph 10 of the said affidavit, she deposed that she had been informed that the Respondent/husband had gone to the United States of America (USA) shortly after the Order was made and that he did not notify her or the children that he was doing so.
- [31] At paragraph 11, she deposed that she verily believed the Respondent/husband had returned to the Island and would shortly be returning to the USA and that she feared that the Respondent/Husband would continue to disobey the Order.
- [32] At paragraphs 12 to 14 she deposed, inter alia, to her continued provision for the children without assistance from the Respondent/husband, the difficulty she experienced in making ends meet and her reliance upon family and friends for material assistance.
- [33] In her viva voce evidence, the Applicant/Wife stated that the home was not in good repair; she asked the Respondent/Husband to effect repairs and he required her to pay for his services and she deposited \$200.00 and \$300.00 respectively to the maintenance account.
- [34] She gave evidence that it came to her knowledge that the Respondent/Husband was engaged on the Farm Labour Programme, however, she did not receive any money from the Respondent/Husband. She further have evidence that, up until the date of hearing of the matter, the Respondent/Husband had not complied with the Order of 8 May 2015 to pay \$200.00 by that said date.

[35] In cross-examination, the Applicant/Wife gave evidence that she was not aware that the Respondent/Husband remitted money from the Farm Labour Programme in Canada to his mother with instructions to pay it over to her. She never asked his mother about it. It was also her evidence that she did not ask the Respondent/Husband to send any money to anyone. In response to the question whether he knew that he had two children to support, he responded that the money was being placed on a bank account.

[36] It was her further evidence that the Respondent/Husband was employed since the contempt application was made; she was aware that he suffered a shoulder injury in 2008 but it was not to her knowledge that it prevented him from working. She did not agree to the suggestion that the Respondent/Husband gave her money whenever he was employed.

The Respondent/Husband's evidence

[37] The Respondent/Husband gave evidence that he was aware of the Order. When asked if he had complied with the Order, he did not respond. In response to counsel's question whether he was paying the \$60.00 per week for Tiara and \$85 per week for TA, he said yes.

[38] It was his evidence that he did not work very often; he stated that he had worked for a Mr. Codrington for two and a half years and received \$450.00 to \$500.00 per week of which he paid \$200.00 towards the maintenance. The balance was used to pay utility bills and purchase food.

[39] The Respondent/Husband swore that he was unaware that there was an application before the Court to the effect that he owed \$19, 120.00 in arrears of maintenance. He stated that he thought that the amount was \$8,000.00 but agreed that an Order was made setting off his one-half interest in the matrimonial property against the arrears of maintenance. He said also that he made payments after the set-off was made but could not recall how much he paid. Those payments, he alleged, were made to an account at the Credit Union and to the Applicant/Wife who gave him a receipt. Afterwards he encountered problems obtaining receipts from the Applicant/Wife.

[40] Of note is the Respondent/Husband's evidence that he worked in Canada repairing cupboards and that he sent \$200.00 to \$300.00 per week to the Applicant/Wife. He said that he was not employed by the Farm Labour Programme. He further gave evidence that his work was sporadic in 2014 but for the past few months his work was consistent.

[41] In cross-examination, the Respondent/Husband said that he spent about \$100.00 for food, \$110.00 to \$115.00, for electricity and \$75.00 for water monthly.

[42] When asked whether he recalled (1) being ordered to file a statement of financial circumstances and (2) whether he was previously represented by Mr. Deighton Rawlins, Attorney-at-Law in the matter, he did not respond. The witness recalled that **Alleyne J** varied the Order with respect to TY's

and TMY's maintenance to \$60.00 and \$85.00 per week respectively and ordered that those moneys be paid into a bank account at First Caribbean Bank but he could not recall any order to pay one-half of the educational and other expenses of the children. When pressed as to whether he filed an application to vary the Order he responded in the negative. It was his evidence that he recalled that the arrears stood at \$9,715.00 when he appeared before **Alleyne J** and that he was ordered to pay \$500.00 by 23 July 2009. He said that he gave this money to the Applicant/Wife in her hand. He did not recall being ordered to pay \$500.00 per month until the arrears were liquidated.

[43] When asked about the means by which he sent money to his mother, he responded that he gave the money to a "guy" who came to Barbados every two weeks on a "business plan" for six months and that it was to his knowledge that his mother got the money. The gentleman's name was Henderson but he could not recall his surname.

[44] It is instructive to note the further cross-examination which is now set out for its full purport and effect and is relevant to the discussion and analysis which follows:

Ms. Evans: Were you present on 3 April 2008 when an Order was made by Alleyne J for you to pay \$60.00 per week maintenance for TY and \$85.00 per week for TMY?

Ans: Yes I was present.

Question: Do you agree that by May 2009 you had accumulated \$9,000.00 in maintenance?

Ans: No Sir, I did pay.

Question: Were you summoned to attend Court on 12 June 2009 in respect of arrears of maintenance of \$9,715.00?

Ans: Yes Sir.

Question: On 15 July 2009 did you appear before Alleyne J with respect to arrears of \$9,715.00?

Ans: No Sir.

Question: Were you ordered to pay \$500.00 on or before 23 July 2009?

Ans: Yes. I was ordered to pay \$500.00 per month until the sum was liquidated.

Question: Have you complied with the order?

Ans: I paid her yes Sir.

Question: Did you pay her \$500.00 per month from 31 August 2009 until present?

Ans: I paid everybody.

Analysis and discussion

[45] The Applicant/Wife gave evidence as to the several Orders of Court which were made, and in particular, the Order which is the subject matter of this application. For the most part there was no real challenge to her evidence that the Order is in arrears. The basic issue for decision is whether the

Respondent/Husband has willfully disobeyed the Order. The evidence of the Applicant/Wife details a woeful history of non-compliance. She alleges that she received no moneys from remittances from the USA or Canada which the Respondent/Husband maintains that he sent to her via his mother. The resolution of this matter depends wholly on the credibility of the parties who I have heard give their viva voce evidence and who I have had the opportunity to observe give their evidence. In this regard the demeanour of the parties is of paramount importance.

[46] The Applicant/Wife gave evidence in a forthright manner. She did not hesitate or equivocate and was confident in what she said to the Court. She impressed me as a witness upon whose evidence I could rely. On the other hand, the Respondent/Husband's evidence, especially under cross-examination, was equivocal and unconvincing. I have set out fairly extensively the evidence which has led me to this conclusion.

[47] The record clearly shows that an answer to the application for dissolution of marriage was filed by Mr. Deighton Rawlins on the Respondent/Husband's behalf on 22 February, 2008. The Order of Court of **Kentish J** made 29 February 2008 and **Alleyne J** of 3 April 2008 demonstrate that Mr. Kwame Rawlins held papers for, Mr. Deighton Rawlins Attorney-at-Law (Mr. Rawlins), and that the parties were present on each occasion. It is not, therefore, within the realm of credibility that Respondent/Husband would be unaware that he was represented by Mr.

Rawlins at any stage during these proceedings. Further, the Respondent/Husband avoided answering simple direct questions with respect to his compliance with the Order of Court as demonstrated in the narrative at paragraph [43] above.

[48] I am unconvinced that the Respondent/Husband remitted moneys to his mother by one “Henderson” to be paid to the Applicant/Wife in compliance with the Order. The Respondent/Husband gave evidence under cross-examination that both parties live at Ellis Village and that there is one house separating the two houses. The house in which he resides was where his mother lived before she passed away. I am also unconvinced that the Respondent/Husband would send money by a person whose surname he does not know to be given to the Applicant/Wife by his mother instead of to the Applicant/Wife who lives one house away.

[49] I now briefly refer to the evidence at paragraph [44] above to demonstrate my difficulty in accepting the Respondent/Husband as a witness of truth. It is not credible that the Respondent/Husband did not appear before **Alleyne J** on 15 July 2009 did you appear before **Alleyne J** with respect to arrears of \$9,715.00 and yet agree that he was ordered to pay \$500.00 on or before 23 July 2009 and \$500.00 per month until the sum was liquidated. At no stage did the Respondent/Husband indicate that he did not understand any of the questions posed or had any challenge(s) which would impair his ability to understand the questions asked.

[50] Finally, on 8 May 2015, I made an order that the Respondent/Husband pay the sum of \$200.00 per month towards the arrears of maintenance with effect from 8 May 2015 and continuing on each succeeding Friday until further order. It was also ordered that that sum be deducted from the Respondent/Husband's wages at E & E Business Solutions, Mr. Eric Codrington or such other entity with whom the Respondent/Husband was employed. The Respondent/Husband gave evidence that he was employed by Mr. Eric Codrington for two and one-half years but it appears that no remittances were received from his employer.

[51] For these reasons I was unable to find that the Respondent/Husband was a witness of truth upon whose evidence I could safely place reliance.

Conclusion

[52] I am of the view and hold that the Respondent/Husband has been in chronic default of his obligations under the Order. Whilst there may have been some challenges to his ability to comply with the Order due to unavailability of work at times, I am not persuaded that the periods of unemployment were so grave as to totally impair his ability to comply. His evidence with respect to employment is sketchy and unconvincing. In the premises, I am of the opinion that the Respondent/Husband has wilfully disobeyed the Order and is guilty of contempt. The sums outstanding at the date of the application stood at \$9,055.00.

Disposal

[53] It is ordered that:

1. The matter is adjourned for the imposition of punishment on 24 January, 2022, and
2. The Respondent/Husband be summoned with a warning to appear on the adjourned date of hearing.

William J Chandler
High Court Judge