

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHMT2014/0012

BETWEEN:

ANTHEA S. THOMAS NEE DANIEL

Petitioner

AND

CHARLES THOMAS

Respondent

Appearances:

Ms. E. Deniscia Thomas for the Petitioner

Mr. D. Raimon Hamilton for the Respondent

2014: June 19
July 30
August 08
September 15

JUDGEMENT

- [1] **Cottle, J.:** This matter concerns an application by the petitioner for ancillary relief pursuant to the Divorce Act 1997 of Antigua and Barbuda. Initially the petitioner sought an order for the maintenance of the two minor children of the marriage and a property adjustment order relating to the matrimonial home which is registered in the name of the respondent.

- [2] At the hearing of the application the petitioner accepted that the application for a property adjustment order was not properly made. That aspect of the ancillary relief proceedings was withdrawn. The matter proceeded to consider only the application for maintenance for the two children.
- [3] Under the Divorce Act at section 10, the duty is imposed on the court to satisfy itself that reasonable arrangements have been made for the support of children of a marriage. In the present case there is already an order in place for the support of the children from a court of competent jurisdiction. It is a consent order dated 22nd October, 2012. In the order the respondent is required to pay \$325.00 per month towards the maintenance of each child. The petitioner now seeks a variation of that order to increase the amount to \$500.00 per month for each child. The relevant statutory provision is section 15 (4) of the Divorce Act which reads as follows:-

“(4) Before the court makes a variation order in respect of a support order the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either spouse or of any child of the marriage for whom support is or was being sought occurring since the making of the support order or the last variation order made in respect of that order as the case may be, and in making the variation order the court shall take into consideration that change.”

The Evidence

- [4] The petitioner filed an affidavit on 17th February, 2014. In it she did not detail any change in circumstances. She merely swore at paragraph 4 that “ the amount of the maintenance award is not sufficient”. She also added that she had been lead to believe by her legal practitioner that the order would have been an interim order.
- [5] In his affidavit in response filed on 16th May, 2014, the respondent swore that the consent order was not intended to be interim and it represented the agreement between the parties who were

both legally represented. He added that, given the level of his present expenses, he could not afford any increase.

[6] Counsel for the petitioner filed helpful written submissions outlining the position of her client. She lists the following changes in the circumstances of the petitioner as changes which merit a variation of the consent order:-

1. At the time the order was made, the respondent resided at the matrimonial home and contributed to the expenses of the household.
2. Since the order, the petitioner had purchased a new vehicle to transport herself and the children since no public transportation is available in the neighborhood of the matrimonial home.

[7] Counsel for the petitioner does not mention the fact that the respondent having moved out of the matrimonial home, now has to meet the expenses of accommodation for himself.

[8] Before this court will interfere with the order for support which the parties entered into with the advice of counsel on both sides, there must be shown a change in the circumstances. It is for the petitioner to adduce evidence of such a change. On the state of the evidence before the court, I find that she has failed to do so. She has filed a petition for divorce. It was obvious that the parties would cease to live together. She will have been aware of this at the time the consent order was entered.

[9] The evidence revealed that the respondent owns vehicles. The petitioner could have negotiated for the use of one of those vehicles or even for an order transferring a vehicle to her for the use of the family. Instead she chose to purchase a new vehicle. She knew of her income and obligations at the time of the purchase. This voluntary incurring of an additional expense is not a change in her circumstances as would merit a variation of the maintenance order.

[10] I also accept the evidence of the respondent that he is unable to afford an increase in the amount he pays for the maintenance of the children.

[11] I therefore decline to grant the petitioner the relief she seeks. The application is refused. I make no order as to costs.

A handwritten signature in black ink, appearing to read "Brian Cottle". The signature is stylized and cursive.

Brian Cottle
High Court Judge