

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2010/0233

BETWEEN:

JUDITH BOUGOUNEAU

Applicant / Claimant

And

FERN HONORE

Respondent/Defendants

Appearances:

Mrs. Dawn Yearwood Stewart of Dawn Yearwood Chambers for the Applicant/Claimant

Mr. David Bruney of David Bruney Chambers for the Respondent/Defendant

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2014: March 28th

May 30th
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DECISION

- [1] **THOMAS, J [AG]:** This decision on this application, with affidavit in support, stems from the claimant's dissatisfaction with an interim payment of \$150.00 per month with respect to an order made against the defendant to pay \$8,845.00 plus costs of \$1,327.00.

- [2] The respondent was cross-examined as to her affidavit of means by learned counsel for the applicant Mrs. Dawn Yearwood-Stewart. The following was revealed: the respondent net salary is \$936.31 out of which \$250.00 is paid as rent to her mother, \$477.00 is paid to the Marigot Co-Operative Credit Union with respect to a loan obtained in 2011, and domestic expenses of \$450.00 are shared in relation to her husband, her son and herself.
- [3] Other shared expenses are the school fees of \$150.00 per month, her son's pampers at a monthly cost of \$150.00 plus school snacks costing a further \$1500.00 per month. The other expenses concern the respondent's lunch and transportation costs of \$350.00 per month.
- [4] There is also a vehicle in the equation which the respondent said was purchased in August 2013 by her husband at a cost of \$10,000.00. Since the purchase the vehicle it was damaged and had to be fixed in early January 2014 which was paid for by her husband and herself. The respondent could not recall the cost of the repairs.
- [5] The applicant in her affidavit in response deposes that she verily believes that the defendant can pay more than the current amount of \$150.00. In this connection the applicant casts doubt on some of the payments claimed including pampers for the respondent's 3 year old son, the sum as transportation cost to work/school and lunch. Most significant are the rent and the transportation costs. In so far as the rent is concerned, the applicant deposes that she knows the respondent has always lived with her mother; and with respect to the transportation cost, this is doubted because the applicant says that the respondent walks to her job or is transported by her brother-in-law.
- [6] In his submissions on behalf of the respondent, learned counsel Mr. David Bruney submits that the respondent has "religiously" paid the \$150.00, a major consideration in these circumstances is the disposable income of the judgment debtor, and the applicant has not raised any matter which could be legitimately considered to increase the amount. Learned counsel has also asked the court to consider the respondent's legitimate responsibility to maintain her son.
- [7] Learned counsel for the applicant submits that the respondent should be ordered to pay \$500.00 per month for the following reasons
1. The respondent has not provided or shown she pays rent of \$250.00 to her mother.

2. There is no indication as to when the loan from the Marigot Co-Operative Credit Union was obtained and there is no documentation
3. There is no documentation as to who in fact purchased the vehicle for \$10,000.00
4. While it is clear that the respondent's net salary is \$1,481.31 after taxes, there is no proof of the other expenses such as costs of pampers and child's school fees.
5. On the present payment of \$150.00 per month the debt will not be paid off until 2019.

Reasoning

- [8] The outstanding feature of the respondent's evidence is that apart from the salary slip relating to January 2014, there is not even a semblance of documentary evidence with respect to all the expenses claimed.
- [9] While the court has no difficulty with learned counsel's submissions that the respondent has legitimate responsibility to maintain her child, it does have a serious difficulty with the lack of documentation for major items such as and school fees and rent for which receipts are usually issued.
- [10] The matter of the purchase of the vehicle also impacts on the issue as the only thing revealed to the court is the costs of \$10,000.00. But although the respondent indicated that it was her husband's expense, the evidence shows that they both shared the other expenses. The further point is that this expense was incurred at a time when the respondent faced a debt in excess of \$10,000.000.
- [11] It is common ground that the onus of proof rests on the respondent to satisfy the court as to her financial position. This has not been done as the court cannot be satisfied with mere *viva voce* evidence in a circumstance where the documentary evidence is required. Therefore, the court is forced to reject most of the respondent's evidence and draw the reasonable inference that some of the monthly expenses claimed cannot be substantiated.
- [12] Finally, the court must note that the disposable income of \$936.31 is arrived at after the deduction of a loan payment of \$477.09 at source for the avoidance of doubt.

Conclusion

- [13] Central to this application is the respondent's disposable income and given the paucity and quality of the evidence, the court cannot accept the respondent's evidence in its entirety based on aspects of the

applicant's evidence and the inferences drawn by the court. Further, it is unreasonable to expect the applicant to wait until 2019 for full payment. Accordingly, the court orders that the monthly payment to be \$350.00 per month with effect from June 2014.

[14] The payments must be made on the last working day of each month commencing June 2014. The matter is adjourned to 7th November 2014 for report.

[15] There is liberty to apply

[16] Order accordingly with penal notice attached.

Errol L. Thomas
High Court Judge