

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHMT 2009/0075

BETWEEN:

JULIETTE SIMON

Applicant/Petitioner

And

DEVON SIMON

Respondent

Appearances: Mrs. Shakida Ali-Schneider and Mrs. Stacey-Ann Saunders-Osbourne for the Applicant/Petitioner.

Mr. Cosbert Cumberbatch for the Respondent.

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2010: March 4

2010: April 14
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DECISION

- [1] The matter before the Court is an Application by the Applicant, Juliette Simon, for ancillary support pursuant to section 13 of the Divorce Act, 1997.
- [2] The evidence upon which the Court must decide is contained in affidavits upon which the deponents were cross-examined. The evidence therefore falls within a narrow compass of the parties and comes down to income.
- [3] In her affidavit in support, the Applicant says that her monthly income is \$1,136.86 net which she describes as being "severely restricted".
- [4] On the other hand, the Respondent in his affidavit in reply says that his income is \$500.00 per week gross and \$460.00 per week net. But this is vigorously disputed by the Applicant and has exhibited a job letter from the Respondent's employer which says that he is their most trusted employee and his monthly wage is \$3,500.00 per month. But the Applicant also says that the Respondent earns approximately \$1,300.00 per month from the rental of two houses situated at Cooks Hill and Whenner Road. This is denied by the Respondent who says that the houses are owned by one Sandra Hughes and his daughter Latoya and the rent goes to them. The issue here is not ownership of the houses. It is income.
- [5] But the Respondent's evidence in this regard must be weighed in the context of the totality of his evidence in order to determine veracity.
- [6] Mr. Cumberbatch for the Respondent has urged the Court to accept the Respondent's evidence as being truthful. On the other hand, Mrs. Schneider highlights the many inconsistencies attendant on the Respondent's evidence which point in the other direction. These include the ownership of the rental houses, the ultimate recipient of the rents, the method of payment of the \$350.00 per loan with ACB, the \$800.00 per month cell phone bill, the contribution made by the Applicant to the matrimonial home, and his actual salary.
- [7] On the totality of the evidence, the Court accepts the submission of learned counsel for the Applicant that the Respondent is not a truthful witness. And, in particular, in this regard, the Court finds as a fact that the Respondent's true wage is \$3,500.00 as stated in Exhibit JS 3, Exhibit DS 1 being rejected as being false. The Court also finds as a fact that he also earns \$1,300.00 from the rents. Further, the Court rejects the notion of an \$800.00 per month cell phone bill which supply does not make sense. In any event there is no evidence to support the contention except the Respondent's say so. However, in terms of the other expenses, the Court accepts these as being true.
- [8] This would give the Respondent a gross income of \$4,800.00 per month which the Court reduces by 10% for tax purposes thus yielding as net monthly income of \$4,320.00 per month.
- [9] Under section 13(5) of the Divorce Act, the Court is required to consider *inter alia* the circumstances of each spouse. And under section 13(7), the Court must also consider the economic disadvantage of each spouse as a result of the breakdown of the marriage.
- [10] As noted above, the Applicant's net income is \$1,168.00 per month and her expenses amount to \$1,792.42. And there is nothing in evidence, especially cross-examination, to suggest that her

- lifestyle is extravagant. Rather, there is evidence of the school fees she had to pay in earlier times. Indeed, it is quite basic.
- [11] Further, there is nothing in the evidence to suggest that the Applicant's education goes beyond the basics with the consequence that there is little prospect of a serious increase in her income or income earning capacity given the prevalent trajectory.
- [12] Under the same section 13(7) of the Act, the Court is required to promote the economic self-sufficiency of each spouse.
- [13] This must relate to the Applicant since the Respondent is a landscaper with the potential to branch off on his own business given the skills he must have acquired during his two years, so far, with his present employer. In all respects, the Respondent is on a path to self sufficiency.
- [14] The Court accepts that the Respondent's expenses minus the cell phone bill of \$800.00 per month, is \$2,670.00. And doing the best it can the Court fixes the cell phone bill at \$300.00 (3 times that of the Applicant for her "local telephone"). This would make the expenses of the Respondent \$2,970.00.
- [15] Using the net income of \$4,320.00 per month less expenses of \$2,970.00 would yield a surplus of \$1,350.00. And the Court finds that there is nothing to suggest that the Respondent is unable to pay the Applicant \$400.00 per month. It is fair and reasonable and accords with the legislation. She has to raise two children who are now teenagers.
- [16] Having regard to all the evidence, the submissions by Mrs. Ali-Schneider and Mr. Cumberbatch and the relevant law the Court hereby orders the Respondent to pay the Applicant \$400.00 per month for a period of 4 years consistent with the objective prescribed by section 13 of the Divorce Act. The expectation is that, with the children fast approaching the age of 18, the Applicant would be thrifty and seek to upgrade her qualifications or skills as she is still a young person in terms of working life with approximately 20 years to go.
- [17] The Respondent must also pay costs in the sum of \$600.00. Order accordingly.



Errol L. Thomas
Judge (Ag.)