



[2017] JMSC Civ.140

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**MATRIMONIAL DIVISION**

**CLAIM NO. 2011M01001**

<b>BETWEEN</b>	<b>ANN MARIE PRENDERGAST- BOOTHE</b>	<b>APPLICANT/ PETITIONER</b>
<b>AND</b>	<b>BERIAH ANTHONY BOOTHE</b>	<b>RESPONDENT</b>

**IN CHAMBERS**

Samuel Smith for the Petitioner / Applicant.

Gordon Steer instructed by Chambers, Bunny & Steer for the Respondent.

Heard: 4<sup>th</sup> April, and 31<sup>st</sup> July, 2017.

**Maintenance – Spouse – Child – Division of matrimonial property - Beneficial Interest in company.**

**CALYS WILTSHIRE J. (AG.)**

**Background**

[1] The parties herein are before the court by virtue of divorce proceedings initiated by the Applicant / Petitioner Ann Marie Prendergast-Boothe. Within said divorce proceeding the petitioner, Mrs. Boothe, made application by way of Notice filed on the 16<sup>th</sup> July, 2012 for the court to make orders as follows:

- (a) *That the Respondent Mr. Beriah Boothe, pays maintenance to the Petitioner in the sum of Two Hundred Thousand Dollars (\$200,000.00) per month in a manner and for a period to be determined by the court.*

- (b) *For a declaration that the Applicant has a 50 % beneficial interest in the Matrimonial home situated at Norbrook, in the parish of Saint Andrew being Lot # 31, all the land contained in Certificate of Title registered at Vol. 1000 and Folio 697 of the Register Book of Titles.*
- (c) *That the Respondent pays to the Applicant a sum equal to 50% of the value of the Matrimonial home or in the alternative the matrimonial home be sold and the Applicant recover from the said sale, 50% of the net proceeds of sale.*
- (d) *For a Declaration that the Applicant has 15% beneficial interest in the limited company LOGO STITCH Manufacturing LTD.*
- (e) *That the Respondent pay to the Applicant a sum equal to 15% of the value of the limited company LOGO STITCH Manufacturing LTD.*
- (f) *For consent order relating to the minor children Jada and Geovanni Boothe as follows:*
  - (i) Jada Boothe to reside with Petitioner/Applicant and Geovanni Boothe to reside with the Respondent
  - (ii) The Respondent shall pay to the Applicant a weekly sum of Fifteen Thousand Dollars (\$15,000.00) for the maintenance of the minor child Jada.
  - (iii) The Respondent shall pay all educational and health expenses relating to the minor child Jada.
  - (iv) The Respondent shall be responsible for the full economic support of the minor child Geovanni.
- (g) *Such further and other order as the Court deems fit.*

**[2]** Some aspects of this Application have been disposed of over the years by way of interim and final orders. On the 10<sup>th</sup> December, 2012 the Honourable Justice Frank Williams, as he then was, made an interim order, by consent of the parties that

- a) the Respondent pay the sum of Fifteen Thousand Dollars (\$15,000.00) per week for the maintenance of Jada plus ½ education and ½ medical expenses and
- b) by interim order Justice Williams also ordered the Respondent to pay maintenance in the sum of Seventy five thousand (\$75,000.00) per month to the Applicant/Petitioner

**[3]** By Formal Order dated 30<sup>th</sup> September, 2013 the Honourable Mr. Justice Lennox Campbell made the following orders :

- 1) The Respondent shall pay to the Applicant the sum of Fifteen Million Dollars (\$15,000,000.00) representing the Applicant's beneficial interest in the matrimonial home, situated at Norbrook and registered at Volume 1000 and Folio 697 of the Register Book of Titles.
- 2) That the Fifteen million dollars (\$15,000,000.00) shall be paid within four (4) months of this order.
- 3) Interim order for spousal maintenance made on the 10<sup>th</sup> December, 2012 by Justice Frank Williams shall cease upon the payment of the said \$15,000.000.00, pending the hearing of the spousal maintenance application by the Applicant.

**[4]** The Respondent paid the \$15,000.000.00. By Formal order dated the 4<sup>th</sup> April, 2017 this court made a final order, by consent that joint custody was granted with care and control to the Petitioner/Applicant mother, of the minor child Jada. The other child of the marriage, Giovanni is now an adult.

**[5]** The issues therefore which remain for this court's determination are as follows:

- 1) Should spousal maintenance be paid to the Applicant/ Petitioner?
- 2) How much maintenance should the Respondent pay for Jada?
- 3) Is the Applicant/Petitioner entitled to receive a sum equal to 15% of the value of LOGO STITCH Manufacturing Limited.

**[6]** Both parties filed affidavits which were accepted by this court as their evidence-in-chief, and on which they were both extensively cross-examined. Counsel has also furnished this court with written submissions and authorities for which this court is grateful. I will reference the evidence and submissions to the extent necessary to explain my findings and decision.

#### **Maintenance of child Jada**

**[7]** The Maintenance Act 2005 sets out in Sections. 8, 9 (1) (2) and 14 (4) what the court must consider when addressing an application for the maintenance of a child.

- i. Section 8(1) indicates that every parent has an obligation to support their child, to the extent that said parent is capable of doing so.
- ii. Section 9(1) (a) instructs that any maintenance order made "Shall apportion the obligation according to the capacities of the parents to provide support."
- iii. Section 9(2) (a) reiterates that each parent has an obligation to provide support for the child.
- iv. Section 14(4) sets out all the factors which the court should consider in determining the amount and duration of the support.

- [8] The legislature's clear intention is that where a child has both able and capable parents, then they are expected to share the responsibilities of supporting said child. This may not always be equal but it must be commensurate with the parents' ability. Certainly, in this court's view, it ultimately means that parents must make sacrifices for their children.
- [9] The applicant/mother has stated that she needs \$60,000.00 per month from the Respondent towards Jada's maintenance. The respondent has stated that he cannot afford \$60,000.00 and has counter-proposed \$30,000.00- \$40,000.00 per month. Mrs. Boothe states that she is unemployed and has been looking after herself and Jada from the proceeds of her share of the sale of the matrimonial home, i.e. \$15,000,000.00. Mr. Boothe states that he no longer gets a salary as his company is experiencing financial woes.
- [10] The court has no evidence of what are the expenses incurred or the sums required for the adequate support of Jada. Counsel Mr. Smith has suggested in his submissions that because of the history of this matter, i.e. where the parties very early were made subject to the interim order, by consent of F. Williams J, as he then was, that the Respondent pays \$15,000.00 per week plus ½ education and ½ medical expenses for Jada, then maybe this contributed to no details being afforded the court.
- [11] I will therefore examine the applicant's expenses as outlined in her affidavit filed on 28<sup>th</sup> February, 2013 and also consider the interim order made by Williams J. in 2012, to assist me in my determination. Jada resides with the applicant and therefore some of her expenses would be subsumed under the expenses claimed by Mrs. Boothe. In particular, rent, electricity, water, cable, internet, grocery, car petrol and car maintenance as all these expenses would accrue to the benefit of Jada. These also would be the bare necessities for a child like Jada who up to the time of her parents' separation, would have been accustomed to a certain standard of living.

**[12]** In 2012-2013 when the parties consented to the Respondent paying \$15,000.00 per week, Jada was then, 12 years old. None of the aforesaid expenses listed above can be said to be luxury items. Those expenses total \$155,000.00. Jada's benefit at ½ of those expenses amount to \$77,500.00 per month or \$19,375.00 per week.

**[13]** It is not in dispute that Mr. Boothe has 100% responsibility for Geovanni, their older child, who has also been diagnosed with Attention Deficit Hyperactive Disorder (ADHD). This changed for a period between February 2016 and his 18<sup>th</sup> birthday as a result of an order made by K. Anderson J. which varied the monthly maintenance sums, of \$60,000.00 paid by the Respondent for Jada, to \$40,000.00. This was done with a view to taking into account, the Respondent's maintenance of Geovanni. Counsel for the Respondent has submitted that "it was readily conceded that Geovanni has issues concerning his ability to maintain himself".

**[14]** The court has had some difficulty finding such a concession in the evidence. The evidence developed as follows under cross examination:

- Mr. Steer: Geovanni has challenges?
- Mrs. Boothe: Yes
- Mr. Steer: Do you see him as able to get married get a job in the future.
- Mrs. Boothe: Yes. He is not handicapped. He has challenges. I believe that he has outgrown that challenge.

And further in the cross examination:

- Mr. Steer: Do you have any sort of communication with your son?

- Mrs. Boothe: Yes. 2-3 weeks ago. He said he was going overseas on business for daddy. He attends Quality Academics and then Excelsior, to do engineering.

Further in the cross examination, the Applicant responded:

“Yes, I have not denied that” in response to counsel’s reference to the Respondent’s claim that it takes \$200,000.00 per month to support Geovanni.

- [15] All of the above suggests to this court that Geovanni although diagnosed with ADHD, can and does function, and his education has continued at Quality Academics, although he is now 18 years old. That however is not unusual for our young people today, and does confirm that the Respondent does have continuing expenses for the older child.
- [16] Mention has been made of the Respondent’s oldest child, Mickhaela. Mr. Boothe in 2013 included expenses relevant to said child but there was no additional evidence adduced which spoke to any continued support of her. Mr. Steer asked the Applicant of said child, “Did she go to University?” and she answered, “I hear she went away to Scotland to study.”
- [17] On the basis of my very un-forensic breakdown of the 2012/2013 expenses attributable to Jada, Mr. Boothe’s half contribution would be approximately \$10,000.00 per week. So technically Mr. Boothe is asking the court to allow him to pay a maintenance sum in 2017 based on 2012/2013 expenses. The cost of living has increased and Jada is now 16 years old. There is a marked difference between the needs of a 12 year old and a 16 year old. Even if Mr. Boothe is of the view that he was paying too much then, there was consent to the sum. Today, four (4) years later, expenses would have increased, and I must in the best interest of this child, take that into consideration.
- [18] Although the applicant claims she is unemployed, she is not destitute and must continue to contribute her share to Jada’s maintenance. Although the

Respondent claims huge debts he also is not destitute. I would therefore restore the interim order made by Williams J. that the Respondent pays \$60,000.00 per month plus ½ education and ½ medical expenses for the child Jada,

### **Spousal Maintenance**

**[19]** Sections 4 and 5 and 14(4) of the Maintenance Act 2005 sets out the guidelines regarding the maintenance of a spouse.

**[20]** It is clear from the legislation that there is no right to spousal maintenance. The court must be satisfied that, “such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to-

a) The circumstances specified in Section 14(4) and

b) Any other circumstances which in the opinion of the court, the justice of the case requires to be taken into account.”

**[21]** If the court is satisfied that due consideration should be given to the application then any order contemplated must as per Section 5 ensure that the economic burden of child support is shared equitably and make provisions with a view to assisting the spouse to become independent.

**[22]** There is no dispute regarding the length of time of the marriage – 16 years – 1993-2009. This was not a short marriage. The applicant by affidavit filed on 28<sup>th</sup> February, 2013 stated that she was currently unemployed, did not earn an income and the Respondent was her source of financial support during the marriage and after their separation.

**[23]** By affidavit filed on 16<sup>th</sup> July, 2012, the applicant states that (a) she was a devoted wife and mother (b) she offered the necessary support which allowed the Respondent to open and maintain various business ventures and played an active role without a salary (c) the Respondent encouraged her to stay home and



take care of the family (d) she had to forego all her professional and educational aspirations to support and maintain her family, (e) due to the non-support of the Respondent she faced great embarrassment and has had to rely on the kindness of friends and family to survive, (f) as wife, mother and homemaker during the marriage, she was not able to further her education or gain a profession or skill, (g) her ability to obtain gainful employment has been handicapped and (h) she is now considered unemployable.

**[24]** The Respondent by affidavit, filed on 7<sup>th</sup> December, 2012 challenged the applicant's assertions and stated (a) she did not forgo any educational aspirations (b) she worked as a cashier/waitress while in the Cayman Islands and had no interest in going back to school (c) that she had been living and working in Cayman up to when their relationship commenced, (d) that he paid for her to do courses as a nail technician and manicurist and she practised this profession in the United States of America (e) she did not give up any professional or educational aspirations (f) that for 4-5 years in Jamaica she operated a children's store which he stocked (g) that she became a Herbal Life agent and sold products which continued until he left the home in May 2009 (h) that she worked full time until he left the home May 2009 (i) that she is gainfully employed and earns in excess of \$250,000.00 per month.

**[25]** The applicant outlined her expenses which amounted to \$201,000.00. I have already opined that a portion of those expenses accrued to the benefit of Jada. In my estimation about \$123,500.00, being \$77,500.00 for general expenses for the household and \$46,000.00 for personal expenses, of the total relate to Mrs. Boothe. That therefore would be the sum of the needs that the applicant has submitted, she cannot practicably meet the whole or part thereof.

## **Analysis of the Evidence**

- [26]** The respondent has not produced any evidence that the applicant is in fact gainfully employed and earning in excess of \$250,000.00 per month. The Applicant however, although stating in her evidence in chief that the above assertions “are ludicrous and unfounded,” has not disputed other assertions made by the Defendant.
- [27]** The Court therefore accepts the Defendant’s evidence that after they got married the applicant returned to the Cayman Islands to live and moved on to the United States. It has not been disputed that (1) she worked in the Cayman Islands, (2) that she would only spend at most 2 weeks at a time with the Respondent and then would be off again to the U.S., (3) the Respondent paid for her to pursue courses as a manicurist (4) the Applicant practiced said profession in the United States, (5) the Applicant opened a children’s store with the Respondent’s assistance and financial backing, and operated same for 4 to 5 years, (6) there was a full time live in helper and a day’s worker who looked after the children.
- [28]** Under cross examination the Applicant admitted that since she separated from the Respondent in 2009 she has neither gone to any job interviews nor has she sought employment, but she has done things on her own, and has an intention to start her own business. She further admitted that she practices her skill as a nail technician on her friends, and stated that she did not think that she was too old to practice said profession. She said that her plan is to set up a floral arrangement business “as soon as things are resolved” and she gets spousal support.
- [29]** Having regard to Section 5 (a) of the Maintenance Act, the court finds that (1) at some time during the course of the marriage, Mrs. Boothe was gainfully employed, and (2) Mrs. Boothe did not assume responsibilities during the marriage which negatively impacted her earning capacity.
- [30]** The court does not accept Counsel’s submissions that the Applicant’s husband encouraged her to put her ambition and dream to establish her own business on

hold, forego her educational aspirations and the operation of the kiddies' store, to stay at home and take care of the family.

- [31]** There is no evidence before the court that supports the Applicant's statement that "in light of my role as wife, mother and homemaker during the marriage, I was not able to further my education or gain a profession or skill." The court finds that the Applicant not only worked using a skill which she gained with the assistance of her husband but also operated a business with the assistance and financial backing of her husband.
- [32]** There is also no evidence that the time spent supporting her family handicapped Mrs. Boothe's abilities to obtain gainful employment, thus rendering her unemployable. By the Applicant's own admission, she has elected not to work, or even seek out gainful employment. The Applicant is also not in this court's view, unemployable. There is no evidence of any disability or lack of skill, and she is nowhere near retirement age.
- [33]** The undisputed evidence is that the household employed a live-in helper and a day's worker. There is no evidence of any housekeeping, child care or other domestic service performed by the Applicant for the family as if she were devoting the time spent in performing that service in remunerative employment and was contributing the earnings to the family support. I find however that her contribution must have been vital to the running of the household as on Mr. Boothe's evidence, when she suddenly travelled overseas in 2009 he had to call in his mother to assist.
- [34]** Mr. Samuels has submitted that Mrs. Boothe had become accustomed to a particular standard of living. She did reside in one of the more affluent neighbourhoods. Mr. Boothe's evidence reveals that the family resided in a 4 bedroom house with such amenities as a swimming pool. The household had a helper and a gardener. Mrs. Boothe travelled regularly. Mr. Boothe stated that

she really only spent 2 weeks at a time with him in the initial stage of the marriage.

- [35]** Mrs. Boothe received \$15,000,000.00 pursuant to an order made by L. Campbell J. under the Property (Rights of Spouses) Act. Prior to that she was receiving \$75,000.00 per month from Mr. Boothe pursuant to an interim order made by F. Williams J. (as he then was). By order made by L. Campbell J. the interim spousal maintenance order was discontinued on the payment of the \$15,000,000.00.
- [36]** Mr. Samuels submitted that the Applicant cannot maintain herself in the manner to which she was previously accustomed and lacks the capacity to provide for the reasonable needs of her daughter and herself. He has cited the Applicant's age as a hindrance to her obtaining employment commensurate with the standard of living to which she had become accustomed. Counsel acknowledges her receipt of the lump sum payment but submits that the court should consider same to be the nest egg for a residence for her and Jada since they are living in rented premises. He submitted further that along with the \$200,000.00 per month requested by the applicant the court should also order a lump sum payment to assist the applicant to set up her desired business so that she may become independent in the shortest possible time.
- [37]** The defendant has stated that the applicant is not in need and can meet her reasonable expenses as she is in fact employed and earns \$250,000.00 per month. Although no proof has been furnished, Mr. Steer is asking the court to infer that Mrs. Boothe is working from the evidence of her not seeking employment and her failure to start her own business. The defendant further states that he is not a man of means, he is in debt and no longer takes a salary from his company. He also says that his company has never been profitable.
- [38]** The court will take into consideration that the Respondent solely maintains their son, Geovanni, who is presently a student at Quality Academics. It is undisputed

that he was diagnosed with Attention Deficit Hyperactive Disorder (ADHD), however there is no evidence that he has a learning disability, or requires extra care. I am of the view that Mr. Boothe has more assets and means than the Applicant. He has stated under cross examination that his company has not done well from it started. He said, "always an uphill task", and "Never done well from 2004". This was not revealed in his affidavit of income and expenditure and when challenged by counsel, he stated that "It's a matter of interpretation." He went on further to say that it was through informal communication that he got the information that the company was not profitable. He admits that the company continues to operate and employs roughly 50 persons. Further he earns income from property which he co-owns with his mother.

- [39]** The applicant stated that Mr. Boothe earns in excess of \$1,000,000.00 but has failed to furnish the court with evidence of such earnings. The respondent on the other hand in his Affidavit of income and expenditure in 2012 revealed an income of \$600,000.00 per month.
- [40]** There is no evidence that Mrs. Boothe is earning \$250,000.00 per month. The court accepts that she was dependent on the Respondent during the course of the marriage. Mr. Boothe financed her training as a manicurist and financed her kiddies' store hence contributing to her economic independence. The Applicant has the capacity and the skill to attain her independence from the Respondent. She needed such help in the past and will need such help again in the short term future. The court does take into consideration that the Applicant previously received interim, spousal maintenance in the sum of \$75,000.00 per month for a period of 16 months and has also received a lump sum payment of \$15,000,000.00. But as the Applicant and the child in her custody had been previously accustomed to a lifestyle which boasted a home in an upscale neighbourhood unexposed to a landlord/ tenant situation, the court accepts Counsel's submission that the Applicant be allowed to apply the lump sum to the acquisition of a home for them both.

- [41]** Without dispute, the Applicant has not done enough to contribute to her own support between 2009 and the present, although employable. This failure to start contributing to her own support means that she has not even been able to provide to the court any projections, costing or business plan which would assist the court in making a determination regarding her plan to start a business. As a consequence the court is not persuaded by counsel's submissions that the court should order the payment of a lump sum.
- [42]** The court does not accept that the Respondent is in the dire strait that he describes or that his company from day one was unprofitable and he became privy to this through informal communication. This does not sound like the astute business man who in his affidavit spoke about starting up and working at his own companies from he graduated from CAST, or the same person who stated that he alone acquired, maintained and paid the upkeep for the house at Benson Ave. Mr. Boothe is established as the CEO of an ongoing business and the owner of properties .He is the economically dominant party.
- [43]** In light of the aforementioned, I would award spousal maintenance. The sum submitted by counsel for the applicant is however in this court's view, excessive. The sum of \$200,000.00 suggests to this court that the applicant cannot practicably meet the whole of her needs. I am however of the view that she cannot practicably meet a part of her reasonable needs. As per my earlier breakdown of the expenses outlined by the applicant, \$46,000.00 really applied only to her and \$155,000.00 to both the applicant and Jada.
- [44]** The applicant is now going to have to set up her own business. The parties having separated, the payment of maintenance to the applicant would increase her earning capacity by enabling her to establish herself in a business. I would have ordered maintenance for a period of 6 years but I shall adjust same and discount the 16 months in which the applicant previously received maintenance. She would therefore only receive an additional 4 1/2 years. The Respondent is

therefore ordered to pay the sum of \$80,000.00 per month for a period of 41/2 years commencing the 31<sup>st</sup> August 2017.

## Shares

[45] It is the evidence of Mr. Boothe that he gave Mrs. Boothe 15% shares of Logo Stitch as a gift. The court therefore does not understand why it is being asked to make a declaration regarding her interest in Logo Stitch. It is accepted that Mrs. Boothe made no financial contribution to the acquisition of Logo Stitch however by Mr. Boothe's own admission the shares were a gift and she is therefore a share holder with all the accompanying rights and benefits of a share holder. There is no need for the court to make such a declaration.

[46] The court would also have a difficulty ordering that the Respondent pays to the Applicant a sum equal to 15% of the value of the limited company Logo Stitch. What the Applicant should have asked is that the court order the shares to be valued by a firm of chartered accountants and the value of her shares be paid over to her. Mr. Smith has submitted that the court should make same as a consequential order however I cannot do so as it was not sought by the Applicant.

[47] The court therefore makes the following orders that:

- (i) The Respondent is to pay the sum of \$60,000.00 per month plus  $\frac{1}{2}$  education and  $\frac{1}{2}$  medical expenses for the maintenance of Jada, effective the 30<sup>th</sup> August, 2017.
- (ii) The Respondent is to pay the sum of \$80,000.00 per month for a period of 4  $\frac{1}{2}$  years for the maintenance of the Applicant, effective the 31<sup>st</sup> August, 2017.
- (iii) Liberty to apply.
- (iv) Each party shall bear their own costs.

