

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2000/E 528

Filing Cabinet

IN CHAMBERS

BETWEEN PAUL EVERTON CAMPBELL APPLICANT
A N D DIAHANN ROSE CAMPBELL RESPONDENT

Mr. Wendell Wilkins instructed by Robinson, Smith Ledgister & Co. for the Applicant.

Mr. Gordon Steer and Miss Deborah Dowding instructed by Chambers, Bunny and Steer for the Respondent.

**Maintenance – Application to vary consent order for maintenance of child –
Application made pursuant to the Children (Guardianship and Custody) Act –
Whether the circumstances of the applicant are to be taken into account -Whether
the provisions of the Maintenance Act are applicable**

20th March and 4th April 2008

BROOKS, J.

Mrs. Diahann Campbell seeks to vary an order made for the maintenance of the child of her marriage to Mr. Paul Campbell. The parties no longer cohabit and they have been in litigation with respect to maintenance issues, on and off, for over seven years. The order which Mrs. Campbell seeks to vary was made on 8th January 2004. It was made by consent. She now says that the \$22,000.00 per month, which was then agreed, is now inadequate and she wishes the payment to be increased to \$45,000.00 per month. Mr. Campbell is prepared to pay \$28,000.00.

What, therefore, is the appropriate figure to be awarded for the maintenance of this child, "B" who is eight years old? During preliminary submissions by counsel, issues were raised as to whether Mrs. Campbell's means should be taken into account in determining the appropriate figure which Mr. Campbell should pay. I shall assess that issue in the course of this judgment.

Historical background

It may be of assistance to note that the previous orders made in this claim were made by consent. The first was made on 14th January 2000. At that time the agreed monthly figure was \$12,000.00. In addition to this figure, Mr. Campbell was to pay "all reasonable school, dental, medical and optical expenses" (not covered by Mrs. Campbell's health insurance policy). When the order was varied in January 2004, apart from the increase to \$22,000.00, Mr. Campbell was obliged to pay "all educational expenses including but not limited to school fees, uniforms, school shoes, school books and a reasonable sum for other school supplies." In addition to those expenses Mr. Campbell was also to pay all the reasonable medical, dental and optical expenses as before, and he was further required to pay for the B's swimming lessons.

Mrs. Campbell's application

Mrs. Campbell detailed the monthly expenses which she says that she now incurs on behalf of B. The expenses total \$104,117.70. It should be noted that when Mrs. Campbell filed the notice of application for court orders in October 2006, she said at that time that the monthly expenses were \$73,333.00. She has not sought to increase the amount claimed despite the increased expenses. Because of Mr. Campbell's complaints about the current expenditure, I shall set the items out in full:

"Mortgage (½)	\$15,000.00
Nanny	\$18,000.00
Cable (½)	\$ 1,048.50
J.P.S. (½)	\$ 3,516.13
N.W.C. (½)	\$ 1,937.50
Cable and Wireless (½)	\$ 2,501.16
Cooking gas (½ every 4 months)	\$ 800.00
J.P.S. (½) (sic)	\$ 3,516.13 (sic)
N.W.C. (½) (sic)	\$ 1,937.50 (sic)
Cable and Wireless (½) (sic)	\$ 2,501.16 (sic)
Cooking gas (½ every 4 months) (sic)	\$ 2,325.00 (sic)
Grocery for child alone	\$33,898.41
Lunch Money	\$ 800.00
Transportation (including taxi fares)	\$10,000.00
Clothing	\$ 3,000.00
Entertainment (inclusive of birthday gifts, Movies, treats etc.)	\$10,000.00
Misc.	<u>\$ 2,000.00</u>
	<u>\$104,117.70 (sic)"</u>

The compilation obviously has duplications and mathematical deficiencies, but these may be resolved after considering Mr. Campbell's criticisms of the items contained therein. Mrs. Campbell outlined a separate

list of expenses for swimming, track and field, music and extra-lessons. These totalled a further \$17,500.00, approximately, per month.

Against this expenditure, Mrs. Campbell deposed that she earns (as at October 2006) \$98,000.00 per month. She complained in her latter affidavit that Mr. Campbell had not provided his most recent pay slips and stated that she did not believe that the pay slips which were exhibited were “indicative of all his allowances and emoluments”. She did not state the basis of her belief. Despite her complaints, however, she did not provide any recent indication of or documentary support concerning, her income. Mr. Steer, representing her, submitted that she was not obliged to do so.

Mr. Campbell’s criticisms and counter proposal

Mr. Campbell applied his skills as an accountant to critique Mrs. Campbell’s listing of the expenses. He complained about the absence of some supporting documentation, including the claimed mortgage expenses. He also complained about the apportionment of the household expenses, such as utilities, as being exclusively B’s. He opined that the person employed to the household was not really a nanny, but a live-in household helper. He proposed reductions for all the proportions attributable to B.

In respect of groceries, Mr. Campbell asserts that the claimed expenditure is exorbitant. Mr. Wilkins, on his behalf, criticized the list of

grocery items as including “excesses and luxuries”. He submitted that the court should only be concerned with necessities for B and leave Mrs. Campbell to buy luxuries at her own expense. He submitted that the list bore indications of “padding”. Mr. Campbell compiled his own list of groceries which he opined would be wholesome and sufficient for an eight-year-old. His list came to a total value of approximately \$10,000.00 per month.

Mr. Campbell has outlined his own circumstances. Against a net monthly income of approximately \$160,000.00 he states that he has expenses of approximately \$110,000.00, leaving \$50,000.00. Of that sum he says that educational expenses and the monthly maintenance payments as ordered by the court total \$43,000.00 leaving just over \$6,000.00 as disposable income.

Two things are noteworthy about Mr. Campbell’s compilation. The first is that his salary slip indicates two unexplained deductions dubbed “disbursements”. One is for a disbursement entitled “stock”. That figure is in the sum of \$13,246.00. Whether it represents the purchase of shares in his employer’s company or the purchase of goods, it seems that this is a discretionary expense. It cannot take priority over B’s welfare. The other “disbursement” had the cryptic description of “hold voucher”. It was valued

\$5,250.00. The second significant aspect is that Mr. Campbell has claimed expenses for two motor vehicles. No explanation has been given to justify this expenditure.

Findings of fact

Both parties expressed their desire to provide the best for B. It is clear however that they need to adjust their desires in accordance with their respective incomes. I shall first outline my findings as to what expenses I find are reasonable for eight-year-old B.

I agree with Mr. Campbell that too large a proportion, of Mrs. Campbell's household expenses, is allocated to B. There is no evidence that she has any legal interest in the house and yet a half of the mortgage payment is allocated to her. I note that when Mrs. Campbell claimed in respect of this expense in 2003, she had allocated a third to B. The increase to one-half has not been explained.

Similarly I accept Mr. Campbell's criticism that allocating a half of the cost of the utilities to the child is unreasonable. I shall allocate respectively, a third or a quarter of these expenses as being incurred exclusively for B's benefit. I also accept that there is an overstating of the grocery expenditure in respect of B. In adjusting the expenses I shall use

Mrs. Campbell's figures for the majority of the items (except where there are duplications).

Mortgage (1/4)	\$ 7,500.00
Nanny (1/3)	\$12,000.00
Cable (1/3)	\$ 700.00
J.P.S. (1/3)	\$ 2,333.33
N.W.C. (1/3)	\$ 1,283.33
Cable and Wireless (1/4)	\$ 1,250.00
Cooking gas (1/3 every 4 months)	\$ 533.34
Grocery for child alone	\$15,000.00
Lunch Money.	\$ 800.00
Transportation (including taxi fares)	\$10,000.00
Clothing	\$ 1,000.00
Entertainment (inclusive of birthday gifts, Movies, treats etc.)	\$ 5,000.00
Misc.	<u>\$ 2,000.00</u>
	<u>\$ 59,400.00</u>

I shall now look at Mr. Campbell's available income. All figures have been rounded up to the nearest thousand dollars for convenience.

Net salary before "disbursements"	\$159,000.00
Add Rental Income	<u>\$ 15,000.00</u>
	\$174,000.00
Less:	
Personal expenses, less that related to one vehicle:	\$105,000.00
Fixed expenses for B (school fees, education fund and monthly maintenance)	\$ 44,000.00
Swimming (as per Mrs. Campbell's report)	<u>\$ 7,000.00</u>
	\$156,000.00
Amount available for increased maintenance and other miscellaneous expenses:	\$18,000.00

I am mindful that there are other miscellaneous educational expenses which Mr. Campbell will be obliged to bear. It would seem to me fair, that he should have some flexibility in meeting those, as well as other expenses, which he will have to personally bear. On that basis I find that he would be

able to pay one half of what I shall call his "disposable income" toward B's maintenance. This will bring the monthly figure for maintenance to \$31,000.00.

I now turn to two aspects of the law which may be termed, controversial.

The means of the applicant

The main issue of law which arose in respect of this matter was the question of whether Mrs. Campbell should have been obliged to provide details of her income. Mr. Wilkins submitted that she should have. He made a formal application for the court to make such an order, but did not produce any authority. Mr. Steer resisted the application. He cited section 7(3) of the Children (Guardianship and Custody) Act which is the statute which has been used as the basis for the present application. He submitted that the section only spoke to the means of the father. The application was refused in the absence of authority which supported it.

Mr. Wilkinson subsequently cited the cases of *In re T- (Infants)* [1953] LR 1 Ch. 787 and the unreported decision of this court in *Butler v Butler* D1982/B099 (delivered 28/6/91). *In re T- (Infants)* it was held that a stipendiary magistrate who had caused an applicant to give evidence concerning her income was not in error in so doing. Roxburgh, J. in giving

his reasons for that decision relied on statutory provisions very similar in nature to the Children (Guardianship and Custody) Act. The learned judge opined that the equivalent of our section 7(3) did not prevent the court inquiring into the means of the mother of the child where the child resided with the mother. In *Butler* Harrison, J. ((Ag.) as he then was) stated at page 7 of the judgment that “the means of both [father and mother] must be considered when deciding to vary the maintenance order”. *In re T- (Infants)* was one of the cases which were cited in argument before the learned judge.

I was concerned that neither counsel had made reference to the Maintenance Act 2005, and enquired of them whether the court could have regard to the provisions of that Act in considering the point. Both counsel agreed that the court could not do so. The basis of the submission was that the application had been brought under the auspices of the Children (Guardianship and Custody) Act.

Having considered the matter further, I must respectfully disagree with the joint position of counsel. In my view, the court has the responsibility to ensure that the best interests of the child are protected. It cannot be that this court is hamstrung in fulfilling its mandate because of the heading which the applicant chooses to use in filing his or her claim. In *Goodison v Goodison* SCCA 95/94 (delivered April 7, 1995), Forte, J.A. (as

he was then) quoted (at page 11) Ormrod L.J. in *Ward v Ward and Greene* (1980) 1 All E.R. page 176 (Note) where the learned Law Lord said:

“...I have heard it suggested on a number of occasions that in order for the court to make an order for a sale under the Matrimonial Causes Act...it is necessary to issue proceedings either under s 17 of the 1882 Act or, in appropriate cases, under s 30 of the Law of Property Act 1925.

For my part, I have never understood the advantages of multiplying pieces of paper intituled in particular statutes named at the head of the summons. It seems to me to be quite clear that s 17 of the 1882 Act gives the court power to order a sale (certainly as clarified by the Matrimonial Causes (Property and Maintenance) Act 1958) in proceedings between husband and wife in connection with property. Section 30 of the Law of Property Act 1925 gives the court power to order a sale where there is a trust for sale, and **to my mind it cannot matter what the nature of the proceedings are; what matters is whether the circumstances are such as to bring the case within one or other of those Acts which give the necessary power to the court to order the sale....”** (Emphasis supplied)

Forte, J.A. went on to demonstrate that the court should not be hampered by procedural trappings, but should approach its task with practicality. I respectfully adopt that stance in respect of this matter. The Children (Guardianship and Custody) Act does not seek to isolate its provisions from the operation of any other relevant legislation. In several sections of the Act the welfare of the child is emphasised. For example, section 18 in dealing with questions of custody, upbringing or dealing with the child’s property, states, in part:

“...the Court in deciding that question, shall regard the welfare of the child as the first and paramount consideration”

It is true that the Maintenance Act is more insular in its provisions.

Whereas section 9 of this Act allows a court to look at the means of both

parents in making a maintenance order, section 2 defines a "maintenance order" as an order made under that Act for the maintenance of a dependant. There is therefore no universal application.

Despite the restriction in the Maintenance Act, I find that I am not prevented from having regard to the principle contained in its provisions in considering the matter. It would seem therefore that this court would have been entitled to require Mrs. Campbell disclose the details of her income.

Checking the award via the CPI

Another area in which counsel were agreed but in which I am not in accord with them, is the matter of the use of the Consumer Price Index (CPI) as a reference in this matter. Neither party made reference to the CPI and both counsel submitted that the court was not entitled to do so on its own initiative. I cannot agree, however, that this court, charged with the responsibility which it has, should be hamstrung by the normal adversarial norms in assessing what is best for the child. It is true that normally the court should await material being brought to its attention by one party or the other. In *British Caribbean Insurance Company Ltd. v Perrier* (1996) 33 J.L.R. 119 Carey J.A. in speaking about awarding interest on damages, said, at page 127C:

“...I can see no objection to documentary material **being properly placed before the judge** to enable him to ascertain and assess and appropriate rate.” (Emphasis supplied)

It is also true that a judge should not rely on personal experiences in determining the appropriate figures for maintenance. (See *Anna Dyke v Henry Forde* (1990) 27 JLR 556 (CA)) In *British Caribbean Insurance Company v Perrier*, however, the court was dealing with strict adversarial conditions. That is not the situation here. I find that in utilising a tool which is normally available to judges adjudicating in the average personal injury case, I would not be introducing my own personal experiences.

I acknowledge that there are inherent weaknesses in the approach. There is nothing to confirm the appropriateness of the sum arrived at by consent in 2004. One has to assume that it was neither unduly high nor low. It must also be considered that B's needs would have changed over the years; some things would have become less important or even unnecessary, while others have become more prominent as she matured. The benefit of using the CPI, however, is to determine whether the standard, then set, is being maintained by the new order.

Bearing in mind those considerations I shall use the CPI here, not to set the appropriate figure to be awarded, but to test the figure which I have arrived at by the process set out above. In updating the January 2004 award

to the money of today, using the CPI for January 2008 (119.4) the figure resulting is approximately \$35,230.00. It is higher than that which I have concluded is appropriate in the circumstances. I will not say however, that the sum of \$31,000.00 is unduly low. I have to be cognizant of Mr. Campbell's disposable income, and the additional expenses which he will be obliged to bear. Based on that figure, I find that no injustice has been done to the child or to Mr. Campbell by the award contemplated.

Conclusion

Based on the expenses which I find are reasonable to be incurred on behalf of B and the disposable income I find that Mr. Campbell has available to him, I find that that the monthly maintenance should be increased to \$31,000.00.

The order of the court therefore is:

1. The sum payable by Mr. Paul Campbell to Mrs. Diahann Campbell for the monthly maintenance of the child Breann Campbell, pursuant to the consent order made on 8th January, 2004, is hereby increased to Thirty One Thousand Dollars per month commencing on the fifth day of April 2008.
2. All other terms of the said order shall remain unchanged.