



[2022] JMSC Civ. 46

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2020CV01182

BETWEEN	DELSHA ANNMARIE HYMAN HALL	CLAIMANT
AND	NOEL CARL HALL	DEFENDANT

IN CHAMBERS

Joseph Jarrett instructed by Joseph Jarrett and Company for the Claimant

Judith Cooper Batchelor instructed by Chambers, Bunny and Steer for the Defendant

Heard: December 13, 2021 and February 10, 2022

Matrimonial Home - Variation of Equal Share Rule - Sections 6, 7 and 13 of the Property (Rights of Spouses) Act - Maintenance Act - Maintenance of spouse - Maintenance of Child of the Family - Sections 5, 6 and 14 of the Maintenance Act

LAWRENCE GRAINGER, J

[1] On the 3rd day of April 2020, the Claimant filed a Fixed Date Claim Form, which was amended on the 6th day of May 2021. It sought the following Orders:

1. A Declaration that Apartment No. 11D, 8 Ocean Boulevard is the matrimonial home/family home for the purposes of the division of property under The Property (Rights of Spouse) Act (PROSA).

2. A Declaration that the Claimant is entitled to fifty (50) per cent share of the matrimonial home/family home located at Apartment 11D, 8 Ocean Boulevard, in the parish of Kingston or such reasonable percentage deemed reasonable by the court.
3. An order that upon the determination of the interests of the parties in the aforesaid property, the property be valued by The CD Alexander Company Realty Limited.
4. An order that the Defendant be given the first option if he so desires, to purchase the Claimant's share or interest in the abovementioned property.
5. If the Defendant fails to exercise his option within twenty-one (21) days of receipt of the valuation report, the property is to be sold by public auction or private treaty.
6. A Declaration that the Defendant is liable to pay maintenance to the Claimant and the relevant child of the marriage by way of monthly payment or a lump sum to be assessed by the court or agreed to by the parties.
7. An Order that the Defendant pay the assessed or agreed monthly payments or lump sum from a date to the fixed by the court.
8. An order that the Registrar of the Supreme Court be empowered to execute all documents, necessary to effect a sale and transfer of the family/ matrimonial home in the event that the Defendant fails or neglects to do so.
9. That all costs incidental to the sale of the property including but not limited to the preparation of a valuation report for the property, the payment of transfer tax, stamp duty, carriage of sale, registration and attorney's fees to be borne by the Claimant and the Defendant equally.
10. That Joseph Jarret & Company, Attorneys-at-law shall have the carriage of sale.

THE CLAIMANT'S CASE

- [2] On the 24th Nov 2018 the Claimant, a Cosmetologist, got married to the Defendant, an Accountant, and they lived together at Apartment 11D, 8 Ocean Boulevard, Kingston, from the date of marriage until the 1st April 2019.
- [3] The Claimant said that she and the Defendant ceased to cohabit due to irreconcilable differences between them which stemmed from frequent arguments about their finances and the relevant child. She also said they never went to counselling because it would prove to be futile.
- [4] The relevant child was one from the Claimant's first marriage, born on the 25th November 2009, and she also resided with them for the same period.
- [5] The Claimant asserted that the Defendant maintained both herself and her child during their cohabitation but since she left the matrimonial home, he has not and neither had he communicated with the child.
- [6] She said her income had reduced to \$6000/ \$7000 per week, following an accident in August 2014 but before that, she earned about \$20 000 per week, gross. She provided a list of monthly expenses for herself and her daughter, totalling about \$179, 000.
- [7] Her evidence was that she owned an apartment at 17 Rosewell Terrace but it was jointly owned with the child's biological father, her ex-husband. The property was rented for \$65,000 monthly at the time that the parties lived together and she gave the Defendant \$30,000 each month and the balance was used to pay the mortgage for Rosewell. She has a Maintenance Order against the biological father for \$34,500 monthly but he is in arrears and pays only \$20,000 monthly.

- [8] She alleged that the Defendant was earning over \$800,000 per month plus benefits and that he had an accountancy firm. That however, she has had to be receiving financial support from her mother who is no longer working. Other family members also assist from time to time.

THE DEFENDANT'S CASE

- [9] There was no issue joined between the parties as to how long they lived in the premises at Apartment 11D, 8 Ocean Boulevard, Kingston. The Defendant however, gave evidence that his mother formed a part of his household but left in February 2019 and he only provided general groceries for the house. Outside of that, the snacks for the relevant child and anything outside of general groceries were provided by the Claimant. He said that the Claimant also paid all educational expenses for the child and that he only paid for about 8 extra lessons.
- [10] The Defendant stated that he doesn't know whether the accident reduced the Claimant's ability to work as she works by appointment and he has never heard her complain about feeling unwell. He also stated that his sole source of income is from Jamaica Money Market Brokers where he would receive variable pay which is a bonus based on performance. However, given the financial climate there was no possibility of receiving variable pay.
- [11] His evidence is that the property at Lot 28 White Water Meadows, in the parish of St Catherine, is owned by him and his mother and is not income generating at this point as his mother had to move there because of issues with the Claimant. He claims that she has since returned to live with him but he has not secured a tenant as some structural issues have surfaced.
- [12] His testimony is that he used a savings loan from his employers to purchase his motor vehicle and he is still servicing the loan. However, unlike the Claimant, he gave evidence that they separated in February 2019 and not when she left in April 2019. He remembered that that was when he had asked his mother to relocate

and he was very upset about it and began sleeping in the room that his mother had occupied.

- [13] He said that the tenant at the Claimant's apartment was to pay \$95,000.00 per month and \$65,000.00 was to go towards the Claimant's mortgage, the balance was to be reimbursed to him for the money he spent on her apartment. Therefore, in contrast to what the Claimant said, the \$30,000.00 was a refund and not towards the home's expenses. The tenant, he explained, stayed about three months and he was reimbursed \$90,000.00 in total, \$30,000.00 each month.
- [14] He concluded that he purchased the family home before he married the Claimant and that their marriage was for a short duration and on that basis, he asked the court to vary the equal share rule and for the Claimant not be awarded any interest in the family home.

SUMMARY OF SUBMISSIONS ON BEHALF OF THE CLAIMANT

- [15] Counsel argued that the Defendant was maintaining both the Claimant and her daughter up to the date of separation. However, he then ceased his financial support though at the time of their marriage the Defendant was aware that the Claimant's earnings had been adversely impacted by the personal injuries she suffered in 2014.
- [16] He also submitted that she also made contributions from her hair dressing business towards the family home but the Claimant was unable to stand for more than 15 to 20 minutes at a time without breaks and so her income had declined.
- [17] The Defendant, according to Counsel, has a greater earning power but has not made full disclosure of his earnings. He asserted that Bissuit, which the Defendant started in 2006 to do private financial/accounting work, is an active business at the Companies Office and it provides more than \$450,000.00 per month to him. He conceded however that the extent of this net income is uncertain.

- [18] Counsel proffered that the Claimant obtained a maintenance order for the child's biological father to pay \$34,500.00 monthly, but the father had been in arrears and the Defendant was aware of this. Further, that the Defendant paid for the child's private tuition for a while and she benefitted from whatever food he brought into the home during the marriage.
- [19] He relied on Section 6 of the Maintenance Act to advance the position that the Defendant has a legal obligation to maintain the Claimant upon the termination of cohabitation. It was submitted by Counsel that the evidence presented to the Court shows that he has the means to provide such support. He also highlighted Section 9 of the Maintenance Act to support his argument that the Defendant had assumed financial responsibility of the child and therefore it would be reasonable for the court to grant a Maintenance Order for the child.
- [20] Counsel also argued that the Claimant relied on assistance from her mother who resides in the United States of America but that the mother had stopped working. He contended that the evidence showed that the Claimant and the minor are in need of financial assistance and sought to distinguish the case at bar from what took place in ***Antoinette Nancy West Lehman v Peter Lehman***, [2017] JMSC Civ.186, where the child was not deemed to be in need of maintenance.
- [21] He posited that the marriage was genuine and not void and that the parties had only separated and no decree absolute has been granted. He relied on the case of ***Carol Stewart v Lauriston Stewart*** (2013) JMCA Civ 14 to support the position that even if the court rules that the statutory 50/50 rule does not apply, it is not the law that a short marriage equates to no share being allotted to the Claimant but that the Court is to come to a fair and equitable apportionment.

SUMMARY OF SUBMISSIONS ON BEHALF OF THE DEFENDANT

- [22] Counsel for the Defendant submitted that the variation of the Equal Share Rule is provided for under section 7 of PROSA and argued that the Defendant met two of the considerations in the section. Those were that the subject property is wholly

owned by the Defendant and was acquired by him 15 years prior to the marriage, and that the marriage was for a short duration.

- [23] She also opined that there had to be a clear unequivocal intention to accept the child as part of the family and that allowing the child to cohabit with them for four months and by providing general groceries do not mean that the Defendant accepted the child as a child of the family. She submitted that the Claimant had not produced any evidence to support her assertion that the child was so accepted. The Defendant's position was that he never assumed responsibility for the child's care or upbringing and he never gave any input to the child's affairs. He accepted that he did assist with the extra lessons but it was understood that the child's affairs were solely the responsibility of her biological parents.
- [24] Counsel contended that the Claimant had received an Order for maintenance from the child's father and therefore has the option to instigate the relevant process to recover any moneys due and owing to her for maintenance of the child.
- [25] The Defendant also referred to Section 5 of the Maintenance Act and submitted that the Claimant did not satisfy the requirement for her to prove need. It was also argued that the Claimant relied on her mother for financial assistance and though she mentioned that her mother was not working she did not say how this affected the money that her mother sends monthly.
- [26] It was submitted by Counsel that if the court took into consideration all the funds from whatever source received by the Claimant, a finding could be made that she is not in need of maintenance. That further, a person who is truly in need would find a way to reduce their expenses. She further submitted that the Claimant received a judgement in her favour in the sum of \$6,000,000 and from this she has already received between \$500,000 and \$600,000.
- [27] Counsel for the Defendant advanced the case of ***Antoinette Nancy West Lehman v Peter Lehman*** [2017] JMSC Civ.186 where the marriage lasted one year and six months and the Claimant had claimed that she was entitled to 50% share in the

family home as she made improvements to the property prior to the marriage. Shelly-Williams J, having reviewed Sections 6 and 7 of PROSA, case law and the evidence before her, dismissed the wife's application in its entirety.

[28] It was submitted by Counsel that the same ought to be done in the instant case as the marriage was considerably shorter and the Claimant has not asserted a common intention or provided evidence of any improvements to the house. She said that the Judge had also denied the mother any maintenance for the child though the evidence was that the husband took the child to school and gave her lunch money from time to time amongst other things. The learned judge had concluded that the child was not accepted as child of the family and that the child was not in need of maintenance.

[29] Therefore, Counsel posited, in the instant case the Claimant has already been awarded an order for maintenance for the child and was not entitled to maintenance for herself nor the child and she has also not shown that the Defendant is in a position to assist her financially.

ISSUES

[30] The two main issues for the court's determination are whether the equal share rule should be applied and whether the Defendant should contribute to the Claimant the sum of \$179,000 monthly or any sums at all, as spousal and child maintenance:

ISSUE 1: Are the parties entitled to equal shares in the family home or has Section 7 of PROSA been invoked given the circumstances of the case?

[31] The "Family Home" is defined by Section 2 of the Property Rights of Spouses Act (PROSA) as:

*"the dwelling-house that is **wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence** together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a*

dwelling-house which is a gift to one spouse by a donor who intended that spouse alone to benefit; (my emphasis)

[32] The Claimant did not challenge the fact of the legal ownership of the home at Apartment 11D, 8 Ocean Boulevard by the Defendant and it was accepted that after their wedding that that was their principal family residence.

[33] Section 6 of PROSA creates the equal share rule. It states:

(1) Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home--

a) **on the grant of a decree of dissolution of a marriage or the termination of cohabitation;**

b) on the grant of a decree of nullity of marriage;

c) **where a husband and wife have separated and there is no likelihood of reconciliation. (my emphasis)**

(2) Except where the family home is held by the spouses as joint tenants, on the termination of marriage or cohabitation caused by death, the surviving spouse shall be entitled to one half share of the family home.

[34] Subsection 2 is not relevant to the issues and Section 10 treats with Agreements with respect to property which is not applicable. Section 7 concerns circumstances in which the equal share rule can be varied and will be discussed shortly.

[35] There was no dispute between the parties that cohabitation between them had ended as well as the fact that when the Fixed Date Claim form was filed they were separated with no likelihood of reconciliation.

[36] Additionally, the Court considered Section 13 of PROSA which reads:

(1) A spouse shall be entitled to apply to the Court for a division of property-

(a) on the grant of a decree of dissolution of a marriage or termination of cohabitation; or

(b) on the grant of a decree of nullity of marriage; or

(c) where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or

(d) where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by willful or reckless dissipation of property or earnings.

(2) An application under subsection (1) (a), (b) or (c) shall be made within twelve months of the dissolution of a marriage, termination of cohabitation, annulment of marriage, or separation or such longer period as the Court may allow after hearing the applicant. (my emphasis)

[37] The Claimant's case was that the parties separated on the 1st April 2019 and the Claim was filed on the 3rd April 2020. When the Claim was filed, therefore, it was 2 days more than the 12 months stipulated. There was no formal application made for an extension of time but there was no issue joined between the parties as to whether the Claimant was out of time and the Defendant did not object to the Claim being heard. The Court therefore allowed the Claim to be heard of its own initiative. Additionally, the evidence showed that the decree absolute had not yet been granted and so the Claimant would therefore have up to 12 months after that event to make the application.

[38] Section 7 of PROSA provides:

Where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half the family home, The Court may, upon application by an interested party, make such order as it thinks

reasonable taking into consideration such factors as the Court thinks relevant including the following-

(a) that the family home was inherited by one spouse;

(b) that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;

(c) that the marriage is of short duration.

[39] Section 7 lists some factors which would allow a court to vary the equal share rule propounded in Section 6. The Court agrees with the submissions made by Counsel for the Claimant that the existence of these factors does not automatically lead to no interest being awarded to the Claimant but these are factors to take into consideration when determining whether the equal share rule ought to be disturbed.

[40] From Section 7, the Court finds the following to be applicable to the case at bar:

(i)The marriage was of short duration:

The parties were married on the 24th November, 2018 and on the Claimant's case they separated 4 months and 7 days later, on the 1st April 2019. The Defendant said he moved out of the master bedroom even before that, in February 2019, and he considered them to be separated from then. The Court is prepared to accept that they separated when she left on the 1st April 2019, when both of them were of the belief that the marriage had ended.

Though the Claimant averred in her Affidavit filed on the 3rd April that she was seeking a Dissolution of Marriage, it was still pending.

They were therefore still married at the date of the hearing in December 2021 for a bit under 3 years and 3 weeks but only

cohabited for approximately 4 months. The Court accepts this as a marriage of short duration.

(ii) that the family home was already owned by one spouse at the time of the marriage

It was not a point of contention that the family home was already owned by the Defendant at the time of the marriage. The property had been transferred to the Defendant on the 31st January 2003 and the marriage was not until 15 years later.

[41] In **Carol Stewart vs Lauriston Stewart**, [2013] JMCA Civ. 47, in his analysis of Section 7, Brooks J.A. (as he then was) opined that the use of the word “including” in Section 7 (1), implies that the court is entitled to consider factors other than those listed in the section in deciding whether the equal share rule should He expounded on Sections 6 and 7 in this way:

“... in order to displace the statutory rule for equal interest in the family home the court must be satisfied that a factor, one of those three factors as listed in Section 7 or a similar factor, exist. Contribution to the acquisition or maintenance of the family home by itself is not such a factor which was included in Section 7 in contrast of course to Section 14.”

[42] He expounded on Sections 6 and 7 in this way:

“... in order to displace the statutory rule for equal interest in the family home the court must be satisfied that a factor, one of those three factors as listed in Section 7 or a similar factor, exist. Contribution to the acquisition or maintenance of the family home by itself is not such a factor which was included in Section 7 in contrast of course to Section 14.”

[43] Justice Brooks continued by saying that if the court is satisfied that a Section 7 factor exists, then this provides a gateway for the court to then go on to consider factors such as contribution and so on.

- [44] In the case at bar, it was not argued by the Claimant that she contributed to the acquisition of the family home. The only maintenance she spoke of was a contribution of \$30,000 monthly towards the expenses of the home.
- [45] However, what is clear from the authorities is that there must be good reason for a finding that the parties are not each entitled to one half share of the family home and the overarching principle from Section 7 is that the court must consider whether it would be unreasonable or unjust for each spouse to be entitled to one-half the family home.
- [46] The Defendant was saying the circumstances of his case provided that good reason. He asserted it and was to prove that the circumstances of this case warranted an exception to the rule.
- [47] In **Donna Marie Graham V Hugh Anthony Graham**, Claim no. 2006 HCV 03158 (delivered 8 April 2008), a case cited by the Claimant, Justice McDonald Bishop (as she then was) highlighted that under Section 14 of PROSA, there is a list of relevant factors to be considered when the issue concerns matrimonial property other than the family home. However, these are not expressly stated as being relevant factors when there's an application to vary the equal share rule regarding the family home.
- [48] She concluded that it's for the court to determine the factors to consider in these applications, so a fair and just result can be achieved and that the court should look at the totality of the circumstances in determining if sufficiently good reason exist to depart from the 50 /50 rule.
- [49] Her position was later supported by Justice of Appeal Brooks in ***Stewart v Stewart*** (supra);

“...Whereas, by section 14, the legislature specifically allows the consideration of financial and other contributions in considering the allocation of interests in property, other than the matrimonial home, such a factor is conspicuously absent from section 7. Similarly, what may, inelegantly be called, a “catch-all” clause, placed in section

14(2)(e), to allow consideration of “other fact[s] and circumstance[s]”, is also absent from section 7. From these absences it may fairly be said that the legislature did not intend for the consideration of the family home to become embroiled in squabbles over the issues of contribution and other general “facts and circumstances”, which would be relevant in considering “other property”

[50] Justice Brooks said that it is when the court is considering one of the three factors referred to in Section 7 that issues such as the ages and behaviour of the parties as well as ownership by them of other properties become relevant.

[51] This Court has already determined that two of the gateway factors exist. Therefore, the court is permitted to look to other circumstances of the case:

- i. The parties lived in the disputed premises for an extremely short duration, a bit over 4 months. The husband said (and this was not contested) that he moved out of the master bedroom from February 2019, just 3 months into the marriage. They both agree that the marriage was not good and it appears from the evidence that very soon after the wedding the problems started. There was no, as they say, honey moon period. The Claimant said that she and the Defendant ceased to cohabit due to irreconcilable differences. They had frequent arguments about their finances and the child. She left because of the arguments and the tension, all in 4 months.
- ii. In cross examination, the Claimant also said they never went to counselling because it would prove to be futile. They clearly had no time to build a life together.
- iii. Additionally, she said that she contributed \$30,000 to the expenses of the home but substantially it was the Defendant who bore the financial burden of the family.
- iv. There’s also no dispute that he owned the premises before the marriage, several years before. There was no evidence of refurbishing, improvement or maintenance of the home being done by the Claimant.

- v. The evidence showed that the Defendant had a good relationship with his mother but she seemed to have moved out of the home due to allegations made by the Claimant about her. The Defendant said it was this that led him to leave the matrimonial bedroom.
- vi. Both parties were co- owners of other properties and had possession of the properties.

[52] Given the circumstances outlined above, it would not be just nor reasonable for the Claimant to be given a 50 percent share or any share at all, in the family home and the Court finds that sufficiently good reasons existed to depart from the 50 /50 rule. The Court therefore finds that the Defendant is entitled to 100% interest in the family home.

ISSUE 2: Whether having regard to the needs of the Claimant and the ability of the Defendant, and to all the circumstances of the case, the Defendant should contribute to the Claimant the sum of \$179,000 monthly or any sums at all, as spousal and child maintenance:

THE MAINTENANCE ACT

[53] Section 3 of the Maintenance Act provides:

3(1) Subject to subsection (2), a person may apply to the Parish Court in the parish in which the person resides, or, as the case may be, to the Family Court for a maintenance order in accordance with the provisions of this Act.

(2) In any case where an application is made for the division of property under the Property (Rights of Spouses) Act, the Court hearing the proceedings under the Property (Rights of Spouses) Act may make a maintenance order in accordance with the provisions of this Act.

[54] Therefore, the Maintenance Act provides that jurisdiction lies in the Parish Courts for Maintenance Orders unless an application is being made under PROSA for division of property.

[55] The Claimant applied for division of property under PROSA as one of the Orders being sought in her Fixed Date Claim Form and so, pursuant to the Maintenance Act, the Court may make a Maintenance Order.

[56] Pursuant to Section 5, a maintenance order for the support of a spouse shall-

(1) (a) contain such provisions as will ensure that the economic burden of child support is shared equitably;

(b) make such provision as the Court considers fair with a view to assisting the spouse to become able to contribute to that spouse's own support.

(2) In determining the amount and duration of support to be given to a spouse under a maintenance order, the Court shall have regard to the following matters in addition to the matters specified in section 14(4)-

(a) the length of time of the marriage or cohabitation;

(b) the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;

(c) the effect of the responsibilities assumed during the marriage or cohabitation on the spouse's earning capacity;

(d) the spouse's needs, having regard to the accustomed standard of living during the marriage or cohabitation;

(e) whether the spouse has undertaken the care of a child of eighteen years of age or over who is unable by reason of illness, disability or other cause, to care for himself;

- (f) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support;
- (g) the effect of the spouse's child care responsibilities on the spouse's earnings and career development;
- (h) the terms of any order made or proposed to be made under the Property (Rights of Spouses) Act in relation to the property of the parties;
- (i) the eligibility of either spouse for a pension, allowance or benefit under any rule, enactment, superannuation fund or scheme, and the rate of that pension, allowance or benefit.

[57] Section 6 provides for when the application can be made and what should be taken into account. It reads:

6.-(1) In the case of cohabiting parties and subject to the provisions of this section, after the termination of cohabitation each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent 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.

[58] Finally, Section 14(4) states that:

In determining the amount and duration of support, the Court shall consider all the circumstances of the parties including the matters specified in sections 5(2), 9(2) or 10(2), as the case may require, and-

- (a) the respondent's and the dependant's assets and means;
- (b) the assets and means that the dependant and the respondent are likely to have in the future;
- (c) the dependant's capacity to contribute to the dependant's own support;
- (d) the capacity of the respondent to provide support;
- (e) the mental and physical health and age of the dependant and the respondent and the capacity of each of them for appropriate gainful employment;
- (f) the measures available for the dependant to become able to provide for the dependant's own support and the length of time and cost involved to enable the dependant to take those measures;
- (g) any legal obligation of the respondent or the dependant to provide support for another person;
- (h) the desirability of the dependant or respondent staying at home to care for a child;
- (i) any contribution made by the dependant to the realization of the respondent's career potential;
- (j) any other legal right of the dependant to support other than out of public funds;

(k) the extent to which the payment of maintenance to the dependant would increase the dependant's earning capacity by enabling the dependant to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;

(l) the quality of the relationship between the dependant and the respondent;

(m) any fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.

[59] Section 9(2) treats with dependents who are children and provides for additional matters to be considered when considering Maintenance Orders for the support of children and Section 10(2) addresses dependents who are parents or grandparents. Given the Court's finding regarding the child it did not find it necessary to consider in detail Section 9 (2). The Court did not find Section 10 (2) relevant.

Application of Law to facts

[60] The Court first looked at whether the Claimant has provided evidence that spousal maintenance is necessary as she cannot practicably meet the whole or part of her reasonable needs and also whether the Defendant is capable of maintaining the Claimant or to provide a contribution to her.

[61] The Claimant said that her income had reduced to \$6000 to \$7000 per week following an accident in August 2014 but before that she earned about \$20,000 per week, gross. Her evidence was that hers and the child's expenses are about \$179,000 per month. She and the child's biological father are owners of an apartment at 17 Rosewell Terrace. It was rented for \$95,000.00 monthly, \$65,000.00 went to mortgage and \$30,000.00 to the household. She also has a maintenance Order against the biological father for \$34,500.00 monthly but he is in

arrears and pays only \$20,000.00. The Court accepts an income from the hairdressing business of \$6500.00 weekly and that brings a sub total of about \$46,000.00 as income.

[62] She also said she got help from her family members. Her mother would send between USD\$500 and USD\$1,005 per month but she has stopped working. She said further that other family members and friends assist periodically. She did not say that because her mother has stopped working she no longer sends money or that she sends less. She did not say how much assistance she gets from the other family members and friends. The Court therefore allotted the sum of \$75,000.00 Jamaican monthly that she would receive from her mother, other family members and friends (about \$500 USA). The total monthly income was therefore about \$121,000.00.

[63] However, some of the expenses listed are high and the court did not find them to be reasonable. The Claimant would have to make a conscious effort to reduce them.

[64] Some of the expenses that the Court found unreasonable were:

- i. School fees for the child being about \$42,000.00 per month. This is clearly unaffordable. The Claimant may have to consider at an appropriate time to move the child to somewhere more cost effective. The Court would accept about \$25,000.00 monthly as being reasonable.
- ii. Supermarket bill of \$45,000.00 per month. This can be reduced and the Court believes a more reasonable figure for 1 adult and a young child would be about \$40,000.00 monthly especially because she also goes to the wholesale.
- iii. The security expenses may have to be reconsidered and given up. The court finds it unreasonable as she gives her address as Apartment 5,

Rosewell Terrace so she at least lives on premises with other apartments and she clearly cannot afford it.

- iv. She owns the mortgaged premises with her ex-husband so it is unreasonable that the mortgage payments of \$65,000.00 or any of it should be paid by the Defendant.
- v. The light bill also of \$20,000.00 can be reduced given that it is only two of them, one being a child, \$10,000.00 would be more reasonable.

[65] Therefore, the Court would accept as reasonable expenses the total monthly amount of about \$199, 200.00 (It appears that the addition of the amounts submitted was incorrect) and that there was a shortfall between her Income and Expenses of approximately \$78,200. 00.

[66] As it relates to whether the Defendant is capable of making a contribution, the Court looks at the following: The Claimant did not provide any documentary evidence to support her allegations of how much the Defendant was earning. The Court however accepted the evidence from the Defendant as presented in his pay slips. A review of the pay slips shows a monthly disposable income of between \$260,000.00 and \$320,000.00 He also provided some proof of a few of his expenses.

[67] Additionally, the Defendant's evidence was that his liabilities are more than his assets and the Court found him to be a credible witness. The Court also accepted that though Bissuite remains on the Companies Office books, that it is not operating and he does not earn from it.

[68] Looking at the expenses submitted the Court did not accept all of them. Those in relation to his mother for example were high and unsubstantiated. The Court though accepted that he financially supports his mother and would accept a figure of \$20,000.00 monthly. Additionally, the \$10,000.00 for skin medication was not

supported by any documentation, for example, from a dermatologist, that it is needed. The Court was therefore prepared to accept monthly expenses of about \$230,000.00 which would leave between \$30,000.00 to \$90,000.00 monthly. Therefore, the Defendant can afford to make a contribution to the needs of the Claimant.

[69] However, looking at the relevant factors under the Maintenance Act, should the Defendant be asked to make a contribution to the Maintenance of the Claimant and/or the minor? If yes, by how much and for how long?

[70] The evidence did not reveal that the Claimant made any substantial contribution to the marriage, whether financial or non-financial. There was not much evidence of any responsibilities she assumed during the marriage or cohabitation which would have impacted the Defendant's earning capacity. The Defendant's career was already established before their relationship begun.

[71] We heard evidence of the Claimant cooking but not of other domestic service performed by her for the family. She did say she contributed \$30,000.00 towards the family's expenses but the bulk of the financial burden was on the Defendant.

[72] The Court also considered its previous ruling where it did not find that the Claimant was entitled to any share in the family home. Therefore, she would now only have an interest in the home owned with her ex-husband. The Defendant did not say that he had a legal obligation to support his mother but she lived with him and it appeared that he in fact provided some financial support to her.

[73] In relation to the quality of the relationship between the parties, very early in their marriage problems arose and the Claimant admitted that the marriage was not good. The Defendant said that from about three months into the marriage he became separated from her. The Court was not prepared to consider favourably any accustomed standard of living regarding the Claimant given the short duration of their cohabitation and that the marriage was not good.

- [74] Given his position and length of time that the Defendant has worked with his current company, he may be eligible for a pension, allowance or benefit but that evidence was not led.
- [75] The Claimant now has interest in one property whilst the Defendant owns one fully and co owns one with his mother. The Court accepts that the Defendant's assets and means are greater and that the Defendant has a higher probability to acquire additional assets and means in the future.
- [76] The Claimant is a hairdresser and she says her income has fallen. She however had once earned \$20,000.00 weekly and even with an injury, she has the capacity to be able to make a greater contribution to her own support in the future. As a hairdresser she could also be further trained in some area of specialization or in a vocation where she is not required to stand or sit for an extended time. She still has the capacity for gainful employment.
- [77] The Court has accepted that the Defendant's liabilities are greater than his assets but given his income and expenses, the Court believes that he has the capacity to provide support.
- [78] The Claimant gave evidence of some amount of health challenges but is a relatively young person with a marketable skill. The Court believes that a short monthly payment to the Claimant would increase her earning capacity by enabling her to undertake a course of education or training or to establish herself in a business or otherwise to obtain an adequate income;
- [79] Having assessed the factors as listed in Sections 5 and 14, the Court finds that more of the markers are in favour of her getting a contribution towards spousal support but for a relatively short period of time. Bearing in mind that the expenses presented were not itemized separately for herself and the child, and that the Court did not think it reasonable to ask the Defendant to contribute to her mortgage, the Court assessed that a contribution of \$50,000.00 monthly is fair. This amount is also to assist the Claimant to become able to contribute to her own support by enrolling in

a training course. The Court also believes that given the relevant factors highlighted above, the contribution should not be for more than 12 months when whatever course she has enrolled in should be completed.

MAINTENANCE FOR CHILD OF THE FAMILY

[80] Section 8 of the Maintenance Act provides that:

8(1) Subject to subsection (2), every parent has an obligation, to the extent that the parent is capable of doing so, to maintain the parent's unmarried child who-

(a) is a minor; or

(b) is in need of such maintenance, by reason of physical or mental infirmity or disability.

(2) ...

(3) For the purposes of this Act, a person is the parent of a child if –

(a) the person's name is entered as a parent of the child in the general register of births pursuant to the Registration (Births and Deaths) act, or in a register of births or parentage information kept under the law of any overseas jurisdiction;

the person is or was a party to a marriage (including a void marriage) or cohabitation and the child is a child of the marriage or cohabitation;

(c) the person is a party to a marriage or cohabitation and accepts as one of the family a child of the other party to the marriage or cohabitation; (my emphasis)

(d) the person adopts the child;

(e) the person has admitted paternity or a court has made a declaration of paternity under section 10 of the Status of Children Act in respect of the child;

- (f) the person is the child's natural mother;
- (g) the person has at any time in any proceedings before a court, or in writing signed by the person, acknowledged that the person is parent of the child, and a court has not made a finding of paternity of the child that is contrary to that acknowledgement; or
- (h) the person in loco parents to the child, including a person who has demonstrated a settled intention to treat a person as a child of the person's family, except under an arrangement where the child is placed for valuable consideration in a home by a person having lawful custody.

[81] The Court did not believe that sufficient evidence was led by the Claimant to establish that her child was accepted as a child of the family by the Defendant. There was no evidence for example that the child was referred to by the Defendant as his daughter, her surname was not changed, no evidence of the Defendant assisting her with any homework, taking her to school etc. The only relationship established was that the Defendant bought groceries and has paid for some extra classes. As said by the Defendant, outside of groceries for the house, even the snacks for the relevant child and anything outside of general groceries were provided by the Claimant.

[82] The Court also accepts the Defendant's evidence when he said that the Claimant paid all educational expenses for her child and that he never assumed responsibility for the child's care or upbringing and he never gave any input to the child's affairs. The Court also finds favour with Ms. Batchelor's contention that the Claimant had received an Order for maintenance from the child's father and therefore has the option to instigate the relevant process to recover any moneys due and owing to her for maintenance of the child. It is unreasonable not to pursue the maintenance from the child's biological father but to pursue it against someone

with whom she had lived for less than 5 months and with whom she shared a bad relationship.

[83] There was no special relationship established between the child and the Defendant. The lack of communication after the separation is quite indicative of the lack of bond and acceptance of the child by the Defendant. The Defendant has not had any access to the child since the separation, they have no telephone contact. They had no relationship at all and the court does not believe that the minor was treated by the Defendant as a child of the family. The court therefore does not believe that the Defendant should be asked to maintain her or to contribute to her maintenance.

Order

1. A Declaration is granted that Apartment 11D, 8 Ocean Boulevard is the matrimonial home for the purposes of the division of property under The Property (Rights of Spouses) Act.
2. The Defendant is liable to pay to the Claimant spousal maintenance by way of a monthly payment of \$50,000.
3. The monthly payments as stated above should begin on the 28th February 2022 and end on the 28th February 2023.
4. Orders sought at Paragraphs 2,3,4, 5, 8, 9,10,11 of the Fixed Date Claim Form filed on the 6th May 2021, are refused.
5. No Order as to Cost.
6. The Claimant's attorney at law to prepare file and serve Order.